No. 05-864

IN THE

Supreme Court of the United States

HENRY LEE "LEROY" PICKETT, *et al.*,

Petitioners,

v.

TYSON FRESH MEATS, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF AMICI CURIAE R-CALF USA AND 36 CATTLE PRODUCER GROUPS IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Pursuant to Rule 37 of the Rules of this Court, and with the written consent of the parties reflected in letters lodged with the Clerk, the undersigned submits this *amici curiae* brief on behalf of the Ranchers-Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) and the following 36 groups representing cattle producers:[1]

> Beartooth Stock Association; Calaveras County Cattlemen's Association; Cattle Producers of Washington; Cherokee County Cattlemen's Association; Colorado Independent CattleGrowers Association; Crowley-Lincoln-Kiowa Cattlemen's Association; Dakota Resource Council; Dakota Rural Action; Independent Beef Association of North Dakota; Independent Cattlemen of Nebraska; Independent Cattlemen's Association of Texas, Inc.; Intertribal Agriculture Council; Kansas Cattlemen's Association; Kit Carson County Cattlemen's Association; Lincoln County Stockman's Association; Madera County Cattlemen's Association; McPherson County Farmers Union; Merced-Mariposa Cattlemen's Association; Mississippi Livestock Markets Association; Modoc County Cattlemen's Association; Montana Cattlemen's Association; Navajo County Cattlemen's Association; New Mexico Cattle Growers Association; North Central Montana Stockgrowers Association; Northern Wisconsin Beef Producers Association; Oregon Livestock Producer Association; Powder River Basin Resource Council; South

[1] Pursuant to Rule 37.6, *amici curiae* state that no counsel for any party has authored this brief in whole or part, and no person or entity other than the *amici curiae*, its members or its counsel, made a monetary contribution to the preparation and submission of this brief.

Dakota Stock Growers Association; Southern Colorado Livestock Association; Southwestern Colorado Livestock Association; Spokane County Cattle Producers; Stevens County Cattlemen's Association; Washington Cattlemen's Association; Washington County Stockmen's Association; West Carroll Cattlemen's Association; and Women Involved in Farm Economics.

R-CALF USA is a non-profit association representing over 18,000 U.S. cattle producers in 47 states across the nation. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Various main street businesses are also associate members of the group. R-CALF USA's mission is to represent the U.S. cattle industry in trade and marketing issues to ensure the continued profitability and viability of independent U.S. cattle producers. R-CALF USA itself was not a party to the case below. However, the certified class includes some R-CALF USA members and a number of R-CALF USA members testified at the trial. The 36 groups joining R-CALF USA in this *amici* brief are non-profit associations representing the interests of independent cattle producers at the local, state, and tribal level.

Each of the *amici curiae* has a substantial interest in supporting the subject petition. The decision below threatens to undermine severely the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. § 181 *et seq.*, (PSA), a statute Congress intended to protect cattle producers such as those represented by *amici*.

SUMMARY OF THE ARGUMENT

At issue is whether the Eleventh Circuit erroneously construed the Packers and Stockyards Act of 1921, *supra*, and thereby undermined the statute's objectives, when it held that any business justification for a challenged commercial practice would negate an otherwise actionable claim.

Clear expressions of Congressional intent, the manifest scheme of the Act on its face, and certain judicial decisions indicate that the PSA is, *inter alia*, a remedial statute designed to address unfair business behavior, not just promote the efficiency objectives of antitrust laws. Yet, the Eleventh Circuit construed the Act to require that a plaintiff must demonstrate that a business practice is absolutely anti-competitive in order to establish a violation. This undermines the statute's objectives.

Further, the decision below conflicts with decisions of other Circuit Courts that have also construed the PSA. The Circuits disagree whether the Act is intended primarily to promote market efficiency or is a distinctive body of regulation tailored to the meatpacking industry to address its concentrated structure and its propensity to unfair behavior. This Court should resolve the conflict.

A resolution is particularly compelling given the PSA and the industry it regulates are national in scope and operation. Moreover, the industry has undergone major change in recent years, as the Eleventh Circuit observed, and this Court has never addressed the Act's application to the business practices in issue in this case.

ARGUMENT

I. THE COURT SHOULD REAFFIRM THE PURPOSES OF THE PSA AND THEREBY REVIVE ITS REMEDIAL OBJECTIVES, WHICH THE ELEVENTH CIRCUIT HAS UNDERMINED.

A. Congress intended the PSA to promote multiple social goals, not just market efficiency.

Congress enacted the PSA to regulate the meatpacking industry. The Act was designed not only to prohibit anti-competitive and monopolistic practices, but also to protect livestock producers from unfair, deceptive, and manipulative practices by the meatpackers to whom the producers must sell. Thus the Act goes far beyond traditional antitrust concerns of efficiency and market competition. This is evident in legislative history, the structure of the Act itself, and certain judicial decisions. The Eleventh Circuit ignored these realities by reading the Act restrictively to prohibit only acts and behavior having an absolutely anti-competitive impact. The appellate court thereby undermined the purposes of the PSA.

First, as to Congressional intent, the reports that accompanied the initial PSA do not describe the circumstances or evils that Congress sought to address in the Act.[2] One statement makes clear, however, that the elaborate regulatory scheme was designed to:

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[2] There was elaborate discussion of the Act's constitutionality and Supreme Court cases on the Commerce Clause. *See generally* H.R. Rep. No. 77, 67th Cong., 1st Sess. 2 (1921). There was concern in 1921 whether Congress could so extensively regulate commerce.

> safeguard the interest of the public and *all* elements of the industry from the producer to the consumer without destroying *any* unit of it. [Emphasis added.]

H.R. Rep. No. 77, 67th Cong., 1st Sess. 2 (1921). Thus, protecting "unit[s]" was an objective.

Statements of individual Congressmen, however, filled the gap the reports left open. For example, Congressman Voigt alluded to the then-existing "Big Five" meatpackers (Swift & Co., Armour & Co., Morris & Co., Wilson & Co., and Cudahy Packing Co.) and saw the Act as necessary to confront the industry's "concentration." 61 Cong. Rec. 1863 (May 27, 1921). Congressman Tincher stated as follows: "Time has demonstrated that the business of producing meat in this country can not be carried on under existing conditions."[3] *Id.* at 1809 (May 26, 1921). Congressman Rayburn characterized the Act as giving the Secretary of Agriculture wider power than that of the Federal Trade Commission. *Id.* at 1806. These statements, it must be recalled, were made when the Sherman Act was already law.

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[3] Upton Sinclair portrayed these "conditions" in his classic 1906 novel, *The Jungle*. The book presents the packing industry, at the turn of the twentieth century, as characterized by predatory greed, where a handful of powerful packers exploited workers and dealt unfairly in multiple forms of business activity. It is widely recognized that Sinclair's novel played a role in prompting reform and extensive regulation of the industry. *See, e.g.*, *Alvarez v. IBP, Inc.*, 339 F.3d 894, 897-98 (9th Cir. 2003) ("From the time that publication of Upton Sinclair's *The Jungle* provoked *** passage of the Meat Inspection Act of 1906, the meat packing industry has been one of the most regulated businesses in the United States."), *aff'd IBP, Inc. v. Alvarez*, 126 U.S. 514, 163 L. Ed. 2d 288 (2005).

Congress more directly discussed the Act's purposes in amendments in 1958. The House Report then stated as follows:

> The Packers and Stockyards Act was enacted by Congress in 1921. The primary purpose of this Act is to assure fair competition and fair trade practices in livestock marketing and in the meatpacking industry. *The objective is to safeguard farmers and ranchers against receiving less than the true market value of their livestock* and to protect consumers against unfair business practices in the marketing of meats, poultry, etc. Protection is also provided to members of the livestock marketing and meat industries from unfair, deceptive, unjustly discriminatory, and monopolistic practices of competitors, large or small. [Emphasis added.]
>
> * * * * *
>
> The Act provides that meatpackers subject to its provisions shall not engage in practices that restrain commerce or create monopoly. *They are prohibited from buying or selling any article for the purpose of or with the effect of manipulating or controlling prices in commerce.* [Emphasis added.]

H.R. Rep. No. 85-1048, 85th Cong., 2nd Sess. (1958), *reprinted in* 1958 U.S.C.C.A.N. 5212, 5213. The Report further clarifies that the PSA served objectives *in addition* to those embodied in the Sherman and the Clayton Acts. *Id.* at 1517. These further purposes were to address the problems Congress confronted in 1921.

The text of the Act itself further reflects its multiple concerns. First, on its face, it sets forth a detailed list of business practices that Congress wished to proscribe, and the provisions address many concerns other than maximizing market efficiency.[4] Second, like other "fair trade" statutes, the Act sought to protect *certain actors* ("units"),[5] particularly small cattle producers, who had to sell their livestock in a market dominated by powerful

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[4] The statute provides:

> It shall be unlawful for any packer *** to:
>
> (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or
>
> * * * * *
>
> (e) Engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices ***.

7 U.S.C. § 192. Note these prohibitions are stated as absolute bans, unlike the prohibition in § 192(c), which bars supply apportionment "if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly." No such limitation is present on the face of the statute regarding subsections (a) and (e). The decision below has the effect of inserting the limitation which Congress only chose to include in subsection (c) into all other parts of the section.

[5] *E.g.*, the U.S. antidumping law, currently in Title VII of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1673 *et seq*. This unfair-trade-practice statute provides relief for U.S. industries injured by *unfair* import pricing (*i.e.*, the pricing of imports below their "normal value"), such that the statute protects a class of *competitors*, not pure competition itself as might be the case of an antitrust law. Significantly, the original antidumping law was the Antidumping Act, 1921 (P.L. 67-10), which Congress enacted on May 27, 1921, less than three months before enacting the PSA on August 15, 1921.

buyers. *See* the discussion of legislative history *supra*; *see also, e.g.*, William E. Rosales, *Dethroning Economic Kings: The Packers and Stockyards Act of 1921 and its Modern Awakening*, 2004 WIS. L. REV. 1497 (2004) (a scholarly history of the PSA). Thus, the Act promoted *social goals,* not only market efficiency.

Finally, several courts have recognized that the PSA's objectives extend beyond promoting market efficiency. In its first review of the Act, for example, this Court explained that the PSA sought not only to promote competition but also to protect the interests of small producers, stating:

> [The Act] forbids [packers] to engage in unfair, discriminatory, or deceptive practices in such commerce, or to subject any person to unreasonable prejudice therein, or to do any of a number of acts to control prices or establish a monopoly ....

Stafford v. Wallace, 258 U.S. 495, 513, 66 L. Ed. 735, 740 (1922). While noting the "chief evil" Congress sought to address through the Act was "the monopoly of the packers, enabling them unduly and arbitrarily to lower prices," the Court also noted "[a]nother evil" targeted by Congress. 258 U.S. at 514–15, 66 L. Ed. at 741. The other evil was unfair trade practices such as "exorbitant charges, duplication of commissions, [and] deceptive practices in respect to prices ...." *Id.* The Court explained that the imbalances in power between the packers and stockyards, on the one hand, and the owners and sellers of livestock, on the other, "create a situation full of opportunity and temptation, to the prejudice of the absent shipper and owner [of the livestock]." *Id.*

Other courts have echoed this reading. The Ninth Circuit found the PSA "was not intended merely to pre-

vent monopolistic practices, but also to protect the livestock market from unfair and deceptive business tactics." *Spencer Livestock Com'n Co. v. Dep't of Agriculture*, 841 F.2d 1451, 1455 (9th Cir. 1988). The Seventh Circuit saw the Act was designed to go beyond existing anti-trust statutes in effect at the time of its enactment, stating "the Act does not specify that a 'competitive injury' or a 'lessening of competition' or a 'tendency to monopoly' be proved in order to show a violation of the statutory language." *Wilson & Co., Inc. v. Benson,* 286 F.2d 891, 895 (7th Cir. 1961). That Court subsequently affirmed this understanding, stating further, "The Act is remedial legislation and is to be construed liberally in accord with its purpose to prevent economic harm to producers and consumers at the expense of middlemen." *Swift & Co. v. United States,* 393 F.2d 247, 253 (7th Cir. 1968). The Eighth Circuit has agreed: "… the purpose of the Act is to assure fair trade practices in the livestock marketing and meat-packing industry in order to safeguard farmers and ranchers against receiving less than the true market value of their livestock …." *Bruhn's Freezer Meats of Chicago, Inc. v. U.S. Dep't of Agriculture,* 438 F.2d 1332, 1337 (8th Cir. 1971).

B. The Eleventh Circuit disregarded the PSA's important remedial objectives.

The Eleventh Circuit construed the PSA as a measure to promote maximum competition to the exclusion of other objectives. Thus, the defendant, Tyson Fresh Meats, the nation's largest meatpacker, was able to offer several self-serving reasons for its long-term marketing agreements, each of which assertedly served a valid business purpose and competitive objective. The Eleventh Circuit stated:

> If there is evidence from which a jury reasonably could find that none of Tyson's as-

> serted justifications are real, that each one is pretextual, Pickett [the cattle producer] wins. Otherwise, Tyson wins.

Pickett v. Tyson Fresh Meats, Inc., 420 F.3d 1272, 1281 (11th Cir. 2005); Pet. App. at 14a. Put differently, any valid business justification[6] for the marketing agreements in issue would defeat Pickett's PSA relief, regardless of whether a less harmful or restrictive means of accomplishing the alleged justification might exist or could be found.[7] Under this framework, it was immaterial that the jury found (a) that Pickett's cattle were higher quality than the cattle from Tyson's captive source, yet (b) because of the long-term marketing agreements Pickett received a lower price. *Pickett*, 420 F.3d at 1276; Pet. App. at 24a. The Court found as a matter of law that this would not be probative of unfair or manipulative behavior proscribed by the PSA.

This Court should reaffirm the PSA's original objectives as described in subpart I-A, above. And it is criti-

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[6] The Circuit Court used the term "pro-competitive justifications," (*Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1279 (11th Cir. 2005); Pet. App. at 11a), while the District Court used the term, "business justifications" (*Pickett v. Tyson Fresh Meats, Inc.*, 315 F.Supp.2d 1172, 1175 (M.D.Ala. 2004)). Here we use the District Court's terminology.

[7] In contrast to the Eleventh Circuit's approach here, this Court has stated, in an antitrust context, that, in considering whether business conduct is impermissible, "it is relevant to consider its impact on consumers and *whether it has impaired competition in an unnecessarily restrictive way*." *Aspen Skiing Co. v. Aspen Highlands Skiing*, 472 U.S. 585, 605 (1985) (emphasis added). Here, the lower Court did not consider whether Tyson's challenged marketing arrangements were the least anticompetitive method of achieving their allegedly legitimate business objectives.

cal that it do so now. As the Eleventh Circuit observed, industry practices have undergone changes in the "last decade or so" (*Pickett,* 420 F.3d at 1275; Pet. App. at 4a). These changes place small cattle producers (including many *amici* members) at the mercy of very large packers. As the Eleventh Circuit explained, before the advent of the long-term agreements, "packers purchased cattle almost exclusively through the cash market," *id.,* but now they utilize captive sources and effectively manipulate market prices to the injury of small producers, as the jury found below. Therefore, unless this Court re-affirms the PSA's true objectives, the industry may revert to the pattern existing in 1921 when Congress enacted the PSA.

II. IN ANY CASE, THIS COURT SHOULD RESOLVE A SPLIT IN THE CIRCUITS AND CLARIFY THE STANDARD FOR PSA VIOLATIONS.

The Eleventh Circuit's decision to require a showing of absolute anti-competitive impact to establish a PSA violation conflicts not only with the remedial purpose of the Act, as described in subpart I-A, above, but also with specific interpretations other Circuits have given the Act. Indeed, the Eleventh Circuit, itself, noted this split, *see below*.

The Eleventh Circuit ruled below that a plaintiff must show that a defendant's conduct was absolutely anti-competitive to establish a PSA violation. Thus, any business justification for challenged business behavior would constitute a "saving grace" and defeat a plaintiff's claim for relief. Thus, the Eleventh Circuit held that the Act "requires a plaintiff to show an adverse effect on competition," with regard to both unfair practice claims under section 202(a) of the Act (7 U.S.C. § 192(a)) and price manipulation claims under section 202(e) of the Act (7 U.S.C. § 192(e)). *Pickett,* 420 F.3d at 1280; Pet. App. at

12a. The Court cited its earlier holding in *London v. Fieldale, infra,* with regard to unfair practice claims to support this conclusion. *Id*.

London is particularly important for purposes of the petition in the instant case. There, the Eleventh Circuit itself acknowledged that its decision to require a showing of anti-competitive impact was a matter of some dispute among the Circuits. *London v. Fieldale Farms Corp*., 410 F.3d 1295, 1303 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 752, 163 L. Ed. 2d 574 (2005). For example, the *London* Court noted its disagreement with the Ninth Circuit (*id.*), which gave the Act a far different construction in *Spencer Livestock Com'n Co. v. Dep't of Agriculture*, 841 F.2d 1451 (9th Cir. 1988). In *Spencer*, the Court characterized the position of the petitioners therein as one in which the PSA was "nothing more than a mirror of the antitrust laws." 841 F.2d at 1455. The Court categorically rejected the position, stating:

> This argument relies on an incomplete understanding of the objectives of the Act [*i.e.*, PSA]. The primary purpose of the Act was "to assure fair competition and *fair trade practices* in livestock marketing…." H.R.Rep. No. 1048, 85th Cong., 2d Sess., *reprinted in* 1958 U.S. Code Cong. & Admin. News 5212, 5213 ([Court's] emphasis added). It was not intended merely to prevent monopolistic practices, but also to protect the livestock market from unfair and deceptive business tactics.

Id. Spencer therefore ruled as follows:

> {W]e uphold a finding of a § 213 violation where the evidence establishes a deceptive

> practice, *whether or not it harmed consumers or competitors*. [Emphasis added.]

Id. The subject of *Spencer* was section 213 of the PSA proscribing deceptive practices. However, the Ninth Circuit's rationale (based on the purposes of the PSA as reflected in legislative history) logically applies as well to section 202 provisions proscribing unfair practices and price manipulation, the PSA provisions at issue in this case.

The *London* Court cited other Circuits in support of its conclusion. *London*, 410 F.3d at 1303. However, these other Courts have not been uniform in their interpretations of the Act, and none have applied the *Pickett* rule that any business justification can defeat a PSA claim, including a price manipulation claim under section 202(e).

Thus, the Eighth Circuit relied on a claimant's failure to show competitive injury when it found no violation of section 202(a) of the PSA in *IBP, Inc. v. Glickman*, 187 F.3d 974 (8th Cir. 1999). But, in that case, all parties agreed there was no lowering of prices to producers nor was price manipulation alleged under section 202(e), a difference not addressed in *Pickett*. This difference is particularly significant given the Eighth Circuit's previous recognition that the PSA was designed "to safeguard farmers and ranchers against receiving less than the true market value of their livestock." *Bruhn's Freezer Meats,* 438 F.2d at 1337.

The Seventh Circuit, also cited as supportive in *London* (410 F.3d at 1303), has additionally issued interpretations varying somewhat from the Eleventh Circuit's. Pointing to the PSA's legislative history and to its own previous decisions, the Seventh Circuit said: "Section 202(a) of the Act does not require the Government to

prove injury to competition." *Swift,* 393 F.2d at 253, citing *Wilson*.

The Eleventh Circuit particularly relied on *Armour & Co. v. United States,* 402 F.2d 712 (7th Cir. 1968), to support its position that all section 202(a) violations require a showing of anti-competitive impact. *See London,* 410 F.3d at 1303. However, the Seventh Circuit handed down *Armour* just six months after *Swift*, discussed above, and *Armour* observed: "[w]hile Section 202(a) of the Packers and Stockyards Act may be broader than antecedent antitrust legislation," it does not allow:

> … condemning practices which are neither deceptive nor injurious to competition nor intended to be so …. Even if predatory intent is absent, Armour's coupon program might violate Section 202(a) if it would probably result in competitive injury, tend to restrain trade or create a monopoly.

Armour, 402 F.2d at 722. The Eleventh Circuit relies on *Armour* without accounting for the *Armour* Court's careful statements that a practice may violate the PSA if it is either injurious to competition or deceptive, and if there is either competitive injury or a restraint to trade.

Thus, the Eleventh Circuit's holding here lies at the outer edge of the varying interpretations offered by the various Circuits construing the PSA. While some Circuits find the PSA prohibits unfair, deceptive, and manipulative practices regardless of anti-competitive effect, others state the Act only prohibits those practices which can be shown to injure competition. The Eleventh Circuit appears to go further still by requiring the anti-competitive effect to be absolute, with no business justifications.

The law should be clear for all. It should put packers on notice as to the threshold of potential liability and it should clarify for cattle producers when they can obtain relief. The resolution of this conflict is central to the scope and effectiveness of the Act. Claims under the PSA should succeed or fail based on their merits under the law as intended by Congress, not based on the court in which they happen to be heard. Accordingly, this Court should review the instant case to clarify the PSA's meaning.

III. THE NATIONAL SCOPE OF THE INDUSTRY UNDERSCORES THE IMPORTANCE OF REVIEWING THIS CASE.

Conflict among the Circuits regarding the PSA's meaning is particularly harmful in this case, where fulfillment of the Act's remedial objectives depends on clear national standards. The livestock and meatpacking industry is national in scope, as are the instant *amici*. At the same time, the PSA was specifically designed to provide for nation-wide regulation. This Court stated in *Stafford*:

> The act … treats the various stockyards of the country as great national public utilities to promote the flow of commerce from the ranges and farms of the West to the consumers in the East. It assumes that they conduct a business affected by a public use of a national character and subject to national regulation.

258 U.S. at 516, 66 L. Ed. at 741. In fact, today, hundreds of thousands of small, independent cattle producers all across the country, including those who are members of *amici*, sell to an industry increasingly concentrated in

the hands of four large packing companies.[8] This concentration among packers approaches and may even exceed the level of concentration in 1921. Indeed, the four largest beef packing companies control more than 80 percent of steer and heifer slaughter.[9] Contracting practices employed by those packers affect cattle producers from Washington State to Florida. Courts should apply the law to these practices with consistency and predictability.

In addition to being national in scope, this case is also of national importance. The defendant, Tyson Fresh Meats, processes up to forty percent of the beef products sold nationwide. *See Pickett,* 420 F.3d at 1274; Pet. App. at 1a–2a. Tyson also plays a dominant role in the cattle slaughter market, purchasing 10 million of the 25 million cattle slaughtered each year. *See Pickett,* 420 F.3d at 1276-77; Pet. App. at 6a. The contract practices now in issue were used in twenty to fifty percent of all of Tyson's cattle purchases between 1994 and 2002. *See Pickett,* 420 F.3d at 1276 fn.1; Pet. App. at 4a, fn. 1. Moreover, this form of contracting developed relatively recently, and its use in the industry grew rapidly over the 1980s and 1990s. *See Pickett,* 420 F.3d at 1275-76; Pet. App. at 4a. During the same period, packer concentration has increased and the cattle producers' share of each retail dollar for beef has fallen.[10]

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[8] *See, e.g.*, J. MacDonald, et al., "Consolidation in U.S. Meatpacking," Agricultural Economic Report No. 785, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture (2000).

[9] U.S. General Accounting Office, "Packers and Stockyards Programs: Actions Needed to Improve Investigations of Competitive Practices," GAO/RCED-00-242 (2000) at 31.

[10] The rancher's share of each retail dollar earned on beef was 45 cents in 2004, down from 56 cents in 1993. USDA Economic Research Service, "Beef Values and Price Spreads,"

This Court has never addressed these new business practices, and thus the issue presented is one of first impression for this Court. In drafting the PSA, Congress recognized the need for the Act to be open to judicial interpretation so that future practices by powerful packers could be scrutinized and remedied if necessary.[11] Ironically, this very openness is now being used to undermine the purposes for which the Act was enacted. The Eleventh Circuit has given a narrow construction to the Act's intentionally flexible terms and curtailed the relief the Act can provide.

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available on-line at: http://www.ers.usda.gov/briefing/foodpricespreads/meatpricespreads/.

[11] Congressman Anderson observed during the House debates on the PSA:

> Industry is progressive. The methods of industry and of manufacture and distribution change from day to day, and no positive iron-clad rule of law can be written upon the statute books which will keep pace with the progress of the industry. So we have not sought to write into this bill arbitrary and iron-clad rules of law. We have rather chosen to lay down certain more or less definite rules, rules which are sufficiently flexible to enable the administrative authority to keep pace with the changes of methods in distribution and manufacture and in industry in the country.
>
> * * * * *
>
> As I said the other day, business is progressive, and there must be a certain amount of flexibility in the prohibitions in order that the prohibitions may keep up with the progress of industry.

61 Cong. Rec. 1887 (May 27, 1921), 1920 (May 31, 1921).

Accordingly, this Court should reaffirm the PSA's founding objectives and provide guidance to the lower courts on how to interpret the Act consistently on a nation-wide basis. Otherwise, the gross imbalances in bargaining power and abuses of that power that prompted the enactment of the PSA in 1921 may re-emerge with no remedy available to those very cattle producers whose interests the PSA was designed to protect.

CONCLUSION

This case presents important issues arising under a federal statute that impacts the nation as a whole. It also represents an issue on which the Circuit Courts disagree. Accordingly, for all of the reasons set forth above, this Court should grant a *writ of certiorari*.

Respectfully submitted,

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