

**Testimony (Draft) of Scott Hamilton, Poultry Grower
Phil Campbell, Alabama
before the
Committee on Agriculture, Nutrition, and Forestry
United States Senate
hearing on
Economic Challenges and Opportunities Facing American Agricultural
Producers Today

April 18, 2007**

Chairman Harkin, Ranking Member Chambliss, and Members of the Committee-

Thank you for the opportunity to testify before you today on this important topic.

My name is Scott Hamilton. I am a poultry grower from Phil Campbell, Alabama. I also raise cattle on my farm, where I live with my wife and two children. I graduated of Auburn University in 1995 with a degree in Zoology, and also later graduated from Auburn's Agriculture and Forestry Leadership Program.

I am very pleased that this hearing is being held, because it demonstrates that this Committee understands the importance of competitive markets and fairness standards to the family farmers of this country. The structure of U.S. Agriculture has changed significantly in recent decades, and the American farmers are rapidly losing their independence. For many of us, that independence was lost years ago.

I am here today to tell you a few of my experiences as a poultry grower, as well as those of other poultry growers, with regard to the abusive practices that have become commonplace when one party in a contract relationship has complete power.

Poultry has been grown under production contracts since the 1950s, and contracting is nearly universal today, particularly for broilers. In 2004, the Winston-Salem Journal in North Carolina did a series of articles entitled "Plucking the Farmer" about the abuses that poultry growers face in the contract relationships with large, vertically integrated poultry firms. An editorial in this series stated it well when it described the relationship as follows:

"The companies own the chickens, control what kind of birds the farmers get, control the feed, control the pay system and can cancel a contract at almost any time. The farmers take out loans to build the chicken house they own, but the companies often ask for expensive improvements such as new fans, scale systems, egg-collector conveyors, lights and other equipment.... The U.S. Department of Agriculture has little authority in cases involving unfair or illegal practices involving contract chicken farmers. And the way the contracts are written gives farmers little recourse in courts."

An even more extensive series of expose articles of the poultry industry's mistreatment of growers ran in the Baltimore Sun in 1999, and stated that:

"[The] imbalance of power begins and ends with a farmer's contract."

When I first decided to get involved in the poultry growing business in 1995, it was my hope and expectation that I would be in a close working partnership with my poultry company. After all, I was putting up \$350,000 of borrowed capital for single-use poultry houses on my farm, built to the poultry company's specifications, in order to raise their chickens to full slaughter weight. But instead of a partnership, I quickly learned what so many other poultry growers have learned, that the poultry growing relationship is more like a dictatorship or a feudal system of serfdom.

Often a grower does not even see a written contract until after they've gone to the bank to get the loan to build the houses on their land. The bank often makes the loan based on a letter of intent from the poultry company. Because of the large size of the loan, growers usually have to put up their farmland and their homes as collateral. So once the grower actually sees the written contract, they are in no position to argue. The extreme debt required to get into the poultry growing business and the fact that there are not alternative uses for the poultry houses, give the poultry company total control. For most growers, you can not shop around for companies to grow for. There is very little competition in local areas. And even in those unusual instances where two companies overlap a certain area, companies are very reluctant to pick up a grower who has disagreed in any way with another company.

There are no negotiations, because the company has total power. Either you sign what's put in front of you, or they don't bring you chickens. If they don't bring you chickens, you can't make your mortgage payments, and you lose your farm and home.

So it is from this basic imbalance that all of the abuses experienced by poultry growers originate. The company has total leverage and the grower has absolutely none.

Let me briefly describe some of the abusive contract clauses that growers face as a result of this imbalance of power.

The Ranking System of Payment

Most poultry growers are paid based on a "ranking system" which pays you in competition with other growers. Essentially, the company has you compete with other growers based on your success in putting weight on the bird during the 7-to-9 week grow-out period, relative to how much feed you used. This is called the feed conversion. But the catch is that all the inputs that determine your feed conversion are controlled and supplied by the company itself. From the day-old chicks, to the feed, to the specifications of your poultry house, all are controlled by the company. Often one grower will receive different inputs than another grower in the same "ranking," which can influence your feed conversion greatly. Yet those growers are still ranked together as if it were a straight-up, fair competition. The difference between a top ranking and a bottom ranking can mean many thousands of dollars to a grower for a 7-to-9 week flock.

The irony is that while the company portrays this system as a competition, there is really only one winner, and that is the company. Because no matter how successful you are at raising their birds, the system is rigged so that half the growers get pay cuts to compensate for the other half that get bonuses. This system also helps to make growers suspicious of each other, to minimize the potential for any group action by growers.

But some growers have seen through that smoke screen to understand that only through working together will they gain the leverage to demand better contracts. Often the lack of transparency in the ranking system has been a tool for companies to retaliate against growers who attempt to speak out about the abuses or organize with other growers to try to bargain for better contract terms. It is very common for such outspoken growers to suddenly see their ranking fall drastically, costing them thousands of dollars.

In my personal experience, after I started to be more active in the Alabama Poultry Growers Association, I saw

my ranking fall and was put on a probation-like program. I had sick birds, through no control of my own. I was told that I was doing poorly as a grower, and would need to do better. When you are put on this program, you need to show improvement in the ranking or the next step is termination, even though you've made a huge investment for the purposes of the contract and your ranking may have nothing to do with your own performance.

In a more extreme example, a breeder hen grower in Georgia, Chris Burger, was the victim of severe retaliation by his poultry company when he tried to organize a breeder hen grower group in his area. The company deliberately targeted him and delivered chickens with cholera to his farm. He was able to sue and years later he won his case after it was proven that the company deliberately targeted him with the bad birds because of his organizing efforts. But his victory in court palled in comparison to the loss of his farm and the loss of his family to divorce related to the stress of those years.

Forced Equipment Upgrades at the Growers' Expense

A major part of the leverage that the companies hold over growers is their debt. Growers without debt are growers that are in a position to say "no" to the company, or to insist on a better contract, because they have less to lose.

So it's not surprising that as growers pay down their loans, the companies will often put pressure on them to take out new loans to upgrade their houses, even though the houses they originally built were constructed based on the company's own specifications. The companies want to experiment with new technologies, but they force the growers to pay for those experiments. In some cases they may offer small pay increases to those who agree to make the upgrades, but never are the increases enough to cash flow the new debts and the additional energy costs needed to power the new equipment. Almost always, those growers who decline to upgrade are threatened with contract termination.

I have a neighbor whose company is pressuring him to upgrade is four chicken houses. In order to make the upgrades, he would need to spend \$157,000. In exchange, he would be given increase in pay of about one-third a penny per pound. Based on his average weight, that equates to about \$9700 per year, less than the cost of the interest on the loan. And even that return would not be guaranteed.

Flock to Flock Contracts

There is no such thing as a long-term contract in poultry. Even when growers think have a signed agreement for a multi-year contract, the company will often come back with a new, shorter and less favorable version of the contract. Either you sign or you get no new birds. Again, if you don't get birds, you can't make your mortgage payment and then you risk loosing your farm in bankruptcy. It is becoming more and more common that growers are actually given "flock to flock" contracts, meaning that they can terminate you at any time. Remember, most growers have made investments of about \$500,000 to \$1 million. If they knew going in that the guarantee of income would be for one 7-to9 week flock, would any grower have made that investment? No.

Arbitration Clauses

And perhaps one of the most abusive contract clauses that growers are facing currently is the mandatory arbitration clauses. As poultry growers in the 1980s and 1990s started to win lawsuits against poultry companies over contract abuses, companies started to present new contracts to their growers. These new contracts included little-understood provisions that essentially said that growers were waiving their right to take the company to court for any reason. Instead, the growers would be given access to a private system called mandatory arbitration, where a private group of arbitrators would hear their case and render a decision. But

the up-front costs of this process are prohibitive. Some growers have been handed bills for as much as \$20,000 just to get an arbitration hearing. In some cases, these upfront costs are actually in excess of the claim itself. Further, unlike a public court process, there is limited right of discovery in arbitration, meaning that the grower can not get access to the evidence that they need to prove their case. And lastly, the outcome of an arbitration proceeding is not public, so the horror stories that are commonplace in poultry are kept under wraps.

In the mid-1990s, a grower by the name of Tom Greene and 38 other Alabama contract poultry growers were pressured by their poultry company to sign a new contract that included a mandatory arbitration clause. As described in the 1999 Baltimore Sun article I mentioned earlier:

“The farmers said the company’s new contract was unfair and a ticket to the poorhouse. Local bankers agreed... [T]he farmers refused to sign. They might as well have challenged a tank squadron with pitchforks. In the year that followed, ConAgra defied or intimidated nearly every institution that usually calls the shots in small-town America. The banks surrendered. The local newspaper softened its punches. Government regulators watched but did nothing, prompting one state investigator to quit in exasperation. Real estate agents sensed a raw deal but fearfully kept their mouths shut... Of the 39 growers who first stood up to the company, 20 quickly caved in and signed the contract they despised. The other 19 tried to sell their farms, but ConAgra undermined every offer to buy. On January 7 [1999], Tom Greene became the third farmer to lose his land to foreclosure.

In a more recent example, Mississippi contract poultry grower Gertrude Overstreet was alleging that her poultry company was violating the terms of her contract, and she wanted to have her case heard in court. However, the company had added an arbitration clause to her newest contract, even though she had been growing with them since 1976. In a rare occurrence, she was able to get the Court to recognize the injustice of the arbitration clause, and to rule it as “unconscionable and therefore unenforceable.” Mrs. Overstreet had very few economic resources and she and her husband were on food stamps. But she was being asked to pay \$11,000 up front by the arbitrators just for the right to have their case heard. The judge who overturned the arbitration clause in that case stated simply, “My conscience is shocked.”

Why is this Permitted to Happen?

First, in any situation where one party has total control over another, the opportunity for abuse is great. Second, unlike other contract relationships, such as real estate contracts or car contracts, poultry contract relationships are largely unregulated.

While the Packers and Stockyards Act makes it unlawful for a livestock packer or live poultry dealer “to engage in or use any unfair, unjustly discriminatory or deceptive practice or device, or to give any unreasonable advantage to any particular person or locality,” it does not give USDA the administrative enforcement authority to take action against a poultry company.

In contrast, when violations of the Act are discovered in the livestock industry, GIPSA has the authority to take administrative actions, including holding hearings and assessing civil and criminal penalties. However, GIPSA does not have this administrative enforcement authority in the poultry industry.

When violations of the Act are discovered in the poultry industry, GIPSA can only issue an order to cease illegal conduct. In extreme cases, GIPSA can send the complaint to the Justice Department. From the poultry company’s perspective, breaking the law and increasing company profits through fraudulent or deceptive practices carries little financial or legal risk.

In addition, even the limited authority that USDA does have in the poultry sector does not apply to protection for breeder hen or pullet growers, even though those growers are a vital part of that poultry production process and equally vulnerable to abuse.

Without question, USDA's Grain Inspection, Packers and Stockyards Agency can and should be more aggressive in pursuing abuses in the poultry sector. But we must also acknowledge that they do not have as much authority as the need to do that job well.

In reality, there is no cop on the beat for poultry growers.

What's the Solution?

Senators Harkin and Enzi have introduced legislation (S.622) that addresses many of the concerns that I raised in my testimony. The bill would-

1) close the "poultry loophole" by amending the Packers and Stockyards Act to give USDA the full authority to enforce against poultry companies that use unfair and deceptive trade practices against poultry growers. It would also provide protection for breeder hen and pullet growers, not just broiler growers.

2) amend the Agricultural Fair Practices Act to close loopholes that have made the Act difficult for USDA to enforce, and would set minimum contract standards of fairness for agricultural contracts. Specifically-

- it would prohibit pre-dispute, mandatory arbitration clauses, and would assure that decisions to pursue arbitration are voluntary. (Senators Grassley and Feingold have introduced similar legislation on this topic, which is also being addressed in the Judiciary Committee)

- it would specify that if growers were required to make major capital investments for purposes of servicing an agricultural contract, that they could have their contracts terminated without XX days of forewarning, and that they be told the reason for the termination and be given the right to remedy the problem.

- It would further specify that a grower can't be forced to make an equipment upgrade at their own expense, unless both parties to the contract agree ahead of time and the company fairly compensates for the expense.

3) And perhaps most importantly, the Harkin bill would require companies to bargain in good faith with producer associations, so that competition can truly work and farmers can have the leverage to bargain for fair contracts, instead of having a take-it-or-leave-it contract forced on them.

Closing

I am honored to be here providing this testimony. But at the same time, it is a sad commentary on the state of our nation that I had to seriously consider whether or not my testimony here today would put me in financial jeopardy because of retaliation.

In no way am I arguing that contracting is a bad thing. Contracts are vital to the economy in this country. But it also vital that basic standards of fair dealing apply to contract relationships.

The poultry model of contract production is spreading rapidly into other sectors of agriculture- hogs, tobacco, peanuts, specialty grains, and others. While the issues of market concentration and loss of competition may be presenting themselves differently in different sectors of agriculture, all of these manifestations are examples of that same problem.

Therefore, over 200 organizations sent a letter to this Committee in January of this year, urging that a comprehensive competition title in the 2007 Farm Bill. The letter spelled out 8 specific legislative solutions to

this problem, including those in the Harkin bill that I mentioned above. But it also included many proposals of great importance to hog farmers and cattle ranchers. A copy of that letter is attached to my written statement.

It is my hope that this Committee will include all of these provisions when the Farm Bill is drafted later this year.

Thank you.