


**In the  
Supreme Court of the United States**



**SIGNET BUILDERS, INC.,**

*Petitioner,*

v.

**JOSE AGEO LUNA VANEGAS,**

*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Seventh Circuit**

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**BRIEF OF AMICUS CURIAE  
NATIONAL PORK PRODUCERS COUNCIL  
IN SUPPORT OF PETITIONER**

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## **IDENTITY & INTEREST OF AMICUS CURIAE**

Pursuant to Supreme Court Rule 37, the NATIONAL PORK PRODUCERS COUNCIL (“NPPC”) respectfully submits this amicus curiae brief in support of Petitioner Signet Builders, Inc.<sup>1</sup>

NPPC is an association of 43 state pork producer organizations, based in Des Moines, Iowa with a public policy office in Washington, D.C. that proudly represents the interests of the 67,000 pork producers in the United States. NPPC advocates for the social, environmental, and economic sustainability of U.S. pork producers and their partners by fighting for reasonable public policy, defending pork producers’ freedom to operate, and expanding access to global markets to ensure that the U.S. pork industry, and the hard working family farmers that comprise it, can continue for generations to come. NPPC has championed the growth of the pork industry and helped to advance the industry’s critical contributions to the U.S. economy and local rural communities across the nation. As a result, NPPC is in a unique position to convey the trends, trajectories, and innovations taking place in the pork industry and throughout U.S. agriculture generally.

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<sup>1</sup> Amicus Curiae timely notified counsel of record for both parties of its intent to file this brief, and both have consented to the filing of this brief. No counsel for a party authored any part of this brief, and no such counsel, party, or other person made any monetary contribution intended to fund the preparation or submission of this brief.

The issues before the Court in this case pose fundamental questions about agricultural labor that will have far-reaching effects on the ability of the industry to continue to grow and modernize. NPPC’s wealth of experience and expertise will provide the Court with necessary and helpful information on the systemic and economic ramifications of this decision. NPPC’s goal here is, as it always has been, to promote the continued development of our critical agricultural sector so that both those in the industry and those dependent on the industry—for both the nutrition it provides and economic opportunity it supports across rural America—can continue to thrive. NPPC’s view is that a broad interpretation of the agricultural exemption under the Fair Labor Standards Act is necessary to achieve that goal.



## SUMMARY OF ARGUMENT

The Petition filed by Signet Builders, Inc. seeks review of an order from the Seventh Circuit Court of Appeals reversing the district court and finding that construction of livestock facilities does not fall under the agricultural exemption to the Fair Labor Standards Act (“FLSA”). The Court should grant Signet Builders, Inc.’s Petition because the appellate court’s decision exposes a circuit split on this issue that will cause significant economic harm to the nation’s rural agricultural economy and goes against this Court’s holding in *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134 (2018), which directed that these exemptions should be fairly read and not narrowly construed without textual support.

NPPC appears as *Amicus Curiae* to provide industry insight on the ramifications of this legal issue on the trajectory and modernization of our country's agricultural framework. That trajectory begins at our founding, when individual farmers and their families performed nearly all tasks themselves, including constructing fences and barns to house livestock for agricultural production. To support continued growth in the agricultural industry, and the ability of the nation to feed itself, Congress created the agricultural exemption to the FLSA, explicitly intending it to be broadly interpreted. The policies resulting from that broad interpretation have allowed the industry to thrive, providing food for billions of people around the world, creating millions of jobs, making the United States a global economic leader and agricultural powerhouse, and providing the nation significant diplomatic and security benefits. Without a broad interpretation of the agricultural exemption supporting this growth, labor costs will rise dramatically, the innovative spirit in the industry will be hampered, and rural economies will be harmed. Building a livestock facility—whether a fence back in colonial times or a state-of-the-art modern confinement facility today—is inherently agricultural. The only difference is that the industry has grown, evolved, and modernized. It should not be penalized for those efforts and set back decades.

NPPC firmly believes that the nation's agricultural industry can only continue to grow if we embrace the integration of technology in modern livestock facilities and the need for specialized services, including construction services, that comes with it. The Court should grant the Petition and recognize that Congress intended for the agricultural exemption to the FLSA

to align with the long-term development and growth of the nation's rural agricultural economy and that the activities at issue in this case are inherently agricultural.



## ARGUMENT

Construction of livestock facilities is fundamental to the agricultural industry. As far back as building simple pig pens and modest family farms, our history shows that these facilities are at the heart of any livestock farm. Today, that tradition continues, although like the industry as a whole, construction is modernizing and innovating at a near-constant pace. New technology, improved agricultural techniques, and a growing market necessitate that our livestock facilities adapt through continued development and construction rendered by professional service providers. Amicus Curiae the NATIONAL PORK PRODUCERS COUNCIL (“NPPC”) appears before this Court to emphasize that current modernization demonstrates the need for the broad, flexible agricultural exemption Congress envisioned. Such a definition would not only reinforce and recognize the history of these facilities but allow continued growth in the future.

By discussing innovations in livestock facilities, particularly in the hog production industry, NPPC hopes this Court finds such construction is critical to and fundamentally centered on modern agriculture. Thus, as Congress intended, it should fall under the agricultural exemption to the Fair Labor Standards Act (“FLSA”). The Court should grant Petitioner Signet

Builders, Inc.'s Petition for Writ of Certiorari to address this highly consequential question of law and ultimately allow our nation's agricultural sector to flourish.

**A. Granting Certiorari Is Appropriate to Uphold Deeply Rooted Protections and Support for the U.S. Agricultural Industry Instilled by Congress.**

As a preliminary matter, it is important to note the historical meaning and interpretation of the agricultural exemption to the FLSA. The FLSA itself was introduced in Congress by then Senator and later United States Supreme Court Justice Hugo Black with the aim of fundamentally transforming the country's labor framework to balance industrial growth and employment protections. *See, e.g., Hugo Black, 1937–1971*, Supreme Court Historical Society, <https://tinyurl.com/2p8famfb>; Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. Department of Labor, <https://www.dol.gov/general/aboutdol/history/flsa1938#>. That balance is observable in the FLSA's pronouncement of overtime pay requirements coupled with many sweeping exemptions, including an exemption applying to agricultural labor. 29 C.F.R. § 780.0. The agricultural exemption in particular is, without a doubt, intentionally broad:

“Agriculture” includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Agricultural Marketing Act, as

amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

29 C.F.R § 780.103.

While the legislative rationale for the agricultural exemption may be subject to debate, *see, e.g.*, Autumn L. Canny, *Lost in a Loophole: The Fair Labor Standards Act's Exemption of Agricultural Workers from Overtime Compensation Protection*, 10 DRAKE J. AGRIC. L. 355, 365–69 (2005) (identifying and criticizing posited rationales of “constitutional concerns,” “lobbyists’ concerns,” and “concern for the farmer”); Patrick M. Anderson, *The Agricultural Exemption from the Fair Labor Standards Act of 1938*, 12 HAMLINE L. REV. 649, 654 (1989) (opining the “political factor was undoubtedly the underlying rationale”), the intent of the legislature is not. This was clearly expressed by Senator Black in sponsoring the FLSA bill: “I simply state to the Senator that the committee reached the conclusion that agriculture in all its phases should be exempted. Therefore they attempted to draw up a comprehensive definition which would accomplish that purpose.” 81 Con. Rec. 7658 (1937). In other words, the clear intent was to exempt agriculture broadly, at any stage, and categorically. This legislative intent underlying the FLSA shows that Congress fundamentally understood the importance of agriculture to this country and intended to provide a comprehensive

exemption such that the industry could grow unimpeded.

Since the FLSA's enactment, courts have routinely and appropriately taken the legislature at its word, including this Court. *See, e.g., Maneja v. Waialua Agr. Co.*, 349 U.S. 254, 259–60 (1955) (noting “Congress exempted agriculture from the terms off the FLSA in broad, inclusive terms” that were “meant to embrace the whole field of agriculture”). Further, this Court has emphatically rejected the notion that FLSA exemptions should be construed narrowly because Congress gave no textual indication that should occur; in fact, the opposite. *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1142 (2018). Thus, exemptions should be given a “fair reading”, even as to applications that “Congress did not foresee” and could not have foreseen. *Id.* at 1143.

**B. The Broader Policy Goals of Encouraging Innovative and Cost-Effective Development of Livestock Facilities Also Warrants Granting Certiorari.**

The exemption has become a crucial part of a broader national policy encouraging more, and more cost-effective, production, designed to ensure the ability of the United States to feed both itself and to utilize its surplus production to feed the world. “It is estimated that by the year 2050 the world population will be over 9 billion people and food production will need to increase up to 60% more to meet demand.” Samaneh Azarpajouh et al., *Application of Precision Livestock Farming Technologies in Swine Welfare Management: What is Possible Today?*, Pork Information Gateway (July 1, 2020), <https://bit.ly/3rO0Xh8>. Here, even opponents of agriculture’s unique position in the “American

Ideology” agree: “[A]ny governmental action that elevates the price of food unconscionably exacts an extra pound of flesh from the weakest and the youngest members of an obscenely rich society.” Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809, 861–62 (1995) (providing statistics illustrating the disproportional burden of more expensive food on low-income persons, children, and mothers).

“Feeding the world” is just as much a mantra in American agriculture as that other battle cry, “Adapt or die,” *id.* at 853, and while both are hopefully to the benefit the American farmer, they are definitely to the benefit of the American consumer in search of an affordable meal. In other words, the savings provided from exemption from the FLSA are meant to be passed to consumers. And the savings have been substantial. With innovative “new technologies,” agricultural productivity growth *tripled* between 1948 and 2017, fueling the industry’s ability to feed our growing population. Eric Njuki, *A Look at Agricultural Productivity Growth in the United States, 1948–2017*, USDA (May 5, 2020). Thus, the agricultural exemption to the FLSA is a crucial piece of broader legislative protection of agriculture, to the benefit of all.

The economic benefits of this policy are also substantial. For the year 2021, the United States Department of Agriculture reports that “[a]griculture, food, and related industries contributed roughly \$1.264 trillion to U.S. gross domestic product (GDP) in 2021” and that “America’s farms contributed \$164.7 billion of this sum”. Moreover, direct on-farm employment accounted for 2.6 million jobs alone, not to mention others in the industry or other peripheral or downstream industries. *Ag and Food Sectors and the*



*Economy*, USDA (Jan. 26, 2023). Isolating just the pork industry, NPPC estimates that \$35.86 billion in labor income was paid to workers in agriculture, including those working in agricultural construction and transportation. Holly Cook & Lee Schulz, *The United States Pork Industry 2021: Current Structure and Economic Importance*, National Pork Producers Council, at 10 (July 2022). Further, agricultural innovations in the United States are often adopted abroad, resulting in more efficient food production in developing countries and decreasing poverty on a global level. See, e.g., Keith Fuglie, et al., *Harvesting Prosperity: Technology and Productivity Growth in Agriculture*, World Bank Group (2020). These innovations and growing opportunities for work also draw people to this country, often under H-2A visas like the Respondent here. In fact, in fiscal year 2021, the Department of Labor certified 317,000 seasonable farm jobs, up 15% from the prior year and more than three times as many as those listed in 2013. Philip Martin, *A Look at H-2A Growth and Reform in 2021 and 2022*, Wilson Center (Jan. 3, 2022). The sum of all these parts is that even age-old sectors of our economy such as agriculture are growing, changing, and diversifying. The FLSA must be interpreted in such a way that supports these widely beneficial policies.

With the intended breadth of the agricultural exemption and its crucial role in American agricultural policy, it is clear it was meant to and should adapt with the times. This Court reinforced this reality in *Holly Farms Corp. v. NLRB*, acknowledging that the line between practices that are and are not “incident to or in conjunction with” farming “is not susceptible of precise definition.” 517 U.S. 392, 408

(1996). This recognized flexibility (and overall deference to the findings of the National Labor Relations Board in that case) leads to the inevitable conclusion that the agricultural exemption must “evolve with the ever-changing line between agriculture and industry.” Victoria V. Johnson, *Did Old Macdonald Have A Farm? Holly Farms Corp. v. National Labor Relations Board*, 69 U. Colo. L. Rev. 295, 330 (1998). To hold otherwise and opt for a restrictive view of the exemption would ultimately deteriorate the policy goals of the exemption and allow the law to fall behind the industry.

### **C. Granting Certiorari Is Fundamental to Preserving Modernization in the Agriculture Industry.**

Indeed, this Court has already observed the inexorable modernization of agriculture as long ago as 1949, noting “[t]he determination [of what is ‘agriculture’] cannot be made in the abstract,” as “[e]conomic progress . . . is characterized by a progressive division of labor and separation of function.” *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 761 (1949). Agriculture must continue to develop, because in today’s world, we “can no longer meet increases in food and fiber demands merely ‘by expanding the area cultivated,’” but must develop an increasingly diversified and science-based industry. Chen, *The American Ideology*, 48 VAND. L. REV. at 849. Again, as this Court rightfully noted in *Maneja v. Waialua Agricultural Co.*, “[t]here is no reason to construe the FLSA so as to discourage modernization in performing this same function.” 349 U.S. at 259. In short, the exemption must develop with agriculture, and the changing methods and on-farm workforce specializations by

which agricultural goals are accomplished do not make it any less an agricultural function.

Exciting new innovations are occurring in agriculture with great frequency. From using satellite data, Luis O. Tedeschi, et al., *Advancements in Sensor Technology and Decision Support Intelligent Tools to Assist Smart Livestock Farming*, Oxford Academic (Feb. 2021), to implementation of automatic livestock management algorithms, Serap Göncü, et al., *The Innovative Techniques in Animal Husbandry*, ANIMAL HUSBANDRY AND NUTRITION (July 18, 2018), to using artificial intelligence to continuously assess animal wellbeing, *The Livestock Farm Digital Transformation: Implementation of New and Emerging Technologies Using Artificial Intelligence*, National Library of Medicine (June 23, 2022), modern innovations have completely transformed how most farms operate. All this new technology improves efficiency and expands the agricultural industry to meet the demands of our modern world. See, e.g., *Agriculture Technology*, USDA, <https://www.nifa.usda.gov/topics/agriculture-technology> (“Modern farms and agricultural operations work far differently than those a few decades ago, primarily because of advancements in technology, including sensors, devices, machines, and information technology. . . . These advanced devices . . . allow businesses to be more profitable, efficient, safer, and more environmentally friendly.”).

Across the board, our fundamental agricultural practices have progressed to require highly specialized skills and technology. “For as long as agriculture has existed, mankind has desired to make improvements in producing plant and animals for food, fiber and other uses. Those persons that gained greater experience

[and] knowledge of enhanced production practices were sought out for their advice. These advisors were generally termed ‘consultant’[.]” *The Early Years*, American Society of Agricultural Consultants, <https://www.agconsultants.org/history.php>. Today, for example, crop consultation is a highly specialized industry necessitating the need for outside professionals. *See Background*, National Alliance of Independent Crop Consultants, <https://naicc.org/about-us/background/> (discussing the scope and modernization of the crop consultation industry). Nonetheless, tending to crops is at the core of agriculture. So too is tending to the care and wellbeing of livestock. In 1862, President Abraham Lincoln created the United States Department of Agriculture in part to address rates of death and disease among livestock, identifying a “need for well-trained veterinarians to cope with this problem.” From there, the veterinary profession proliferated, providing care to livestock across the United States and incorporating more advanced technology along the way. Dr. Michael R. Dicks, *A Short History of Veterinary Workforce Analyses*, JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION (Apr. 15, 2013) (citation omitted). This shift towards specialized care and technology was a necessary step in our agricultural system to match the growth of our burgeoning country. In other words, modernization is essential to agriculture itself, not degradative of it. The industry has to grow and change to survive.

Without a broad, flexible definition, the FLSA quickly loses grasp of how agriculture is actually practiced. Again, Congress wisely knew that it could not foresee the unforeseeable. It made no attempt to preemptively predict or rigidly define what agriculture

is or the crops and methods used to produce food, fiber, and feed, knowing that throughout history the industry has and will always be bound to change. That change incentivizes efficiency, productivity, and prosperity, all beneficial policies that have allowed the United States to remain the global leader in the agricultural industry.

**D. Constructing Livestock Facilities Is Agriculture, and This Court Should Grant Certiorari to Establish as Much.**

Which brings us to the fundamental conclusion in this case: constructing facilities for livestock is agriculture.

Going all the way back to the dawn of civilization, 12,000 years ago, agriculture changed the way humans lived and evolved. Central to that change was the domestication of livestock. *The Development of Agriculture*, National Geographic, <https://education.nationalgeographic.org/resource/development-agriculture/>. Indeed, agriculture and agricultural labor were central to the Code of Hammurabi, including labor of herdsman and the responsibility of herdsman to restrict the free-range movement of livestock and to provide stables for their protection. *Code of Hammurabi*, <https://avalon.law.yale.edu/ancient/hamframe.asp> (incorporating, for example, Nos. 57, 58, 266, and 267). In ancient Egypt, barns—including barns designed around the control of animal waste—were known to exist. J. Hartung, *A Short History of Livestock Production*, Institute for Animal Hygiene, Welfare and Farm Animal Behaviour, University of Veterinary Medicine Hannover (June 2013), [shorturl.at/afhjC](http://shorturl.at/afhjC).

This evolution of animal husbandry and the development of specialized structures being constructed for the housing of animals has continued, including throughout our nation's history. In early colonial America, farmers "constructed buildings and fences from local stone or wood" to house animals. Elvin F. Frolik, *The History of Agriculture in the United States Beginning with the Seventeenth Century*, University of Nebraska-Lincoln (1977). Of course, animal agriculture in this country has evolved over time, but the act of taking measures to enclose animals for production remains nonetheless agricultural. For example, widespread access to barbed wire shifted animal agriculture in the United States away from open-range grazing and towards controlled confinements. Nonetheless, the use of these enclosures to raise animals was and is still fundamentally agricultural. See, e.g., *A Condensed History of American Agriculture 1776–1999*, USDA, <https://www.usda.gov/sites/default/files/documents/history-american-agriculture.pdf>. There is no doubt that agricultural facilities continue to change and improve, but this innovation should not be held against the industry itself by deeming it to wipe away its agricultural identity. See, e.g., *The Transformation of U.S. Livestock Agriculture*, USDA at 1 (Jan. 2009) (discussing the "transformation" of animal agriculture brought on by larger, modern facilities and the efficiencies and changing dynamics that come with these innovations). Rather, constructing livestock facilities is fundamentally "part of the agricultural enterprise," *Maneja*, 349 U.S. at 262, and "part of the agricultural function" of a farm, *McComb*, 337 U.S. at 761.

The adaptability intended by Congress is crucial to construction of livestock facilities. The modernization, commercialization, and global scaling of U.S. agriculture has seen the construction of silos, fences, barns, and other facilities shift from being performed by individual farmers to outside sources of labor. It might look different when, as here, a person performs some of the obligations formerly handled solely by the farmer or their children, *i.e.* housing and maintaining livestock. However, it remains “agriculture” in either its primary or secondary sense. *Holly Farms Corp.*, 517 U.S. at 398 (quoting *Bayside Enters. Inc. v. NLRB*, 429 U.S. 298, 300 (1977)) (identifying the two branches of agriculture grown from the definition within the agricultural exemption). Though the methods, scale, costs, and other details have changed, the act of building an enclosure to house and maintain livestock is, and has been, at the very heart of animal agriculture since the dawn of civilization. In other words, modern technology and practices clearly bring change, but they only elevate agriculture, not erase it. *See, e.g., Agriculture and Infrastructure: What’s the Connection?*, Pennsylvania State University Extension (discussing the importance of infrastructure systems and facilities in modernizing agriculture). An activity that has always been fundamentally agriculture remains so even though the industry has and is changing, as it has many times over the course of human history. The change and innovative drive behind these improvements to agricultural infrastructure should be embraced and incentivized, not punished. *See Maneja*, 349 U.S. at 261 (holding the FLSA should embrace modernization).

The pork industry in particular has proudly welcomed change. In America, pig production has existed since before our nation's founding, when droves of pigs were herded to market and wild hogs were a public menace. *Pork Fact Book 2002–2003: History of the Pig and the U.S. Pork Industry*, Extension Foundation & USDA (Aug. 29, 2019), <https://swine.extension.org/pork-fact-book-2002-2003-history-of-the-pig-and-the-u-s-pork-industry/>. To meet demand for pork as well as other considerations such as environmental sustainability and animal welfare, the industry had to and did change.

Now, most hog confinement facilities are much more complex out of necessity, with specialized housing to protect the animals, slotted floors, and separate systems for management of manure,<sup>2</sup> feeding lines, water lines, insulation, ventilation, heating, cooling, and more. See Dale Miller, *Designing 'Greener' Pig Barns*, NATIONAL HOG FARMER (Sept. 19, 2011). Other facilities on the forefront of the industry have also installed state-of-the-art air filtration systems, wind barriers, biosecurity protections, and even odor reduction technology on top of improved feed delivery systems, climate control, and sustainability features. *Reicks View Farms Opens Ultra-Modern Hog Barn*, Iowa Pork Producers Association (Sept. 22, 2016); Donald G. Levis, *How to Evaluate Facility Maintenance for Animal Well-Being*, Pork Information Gateway

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<sup>2</sup> When he constructed it in 1787, George Washington's "stercorary" was likely the first building in America devoted entirely to composting and management of manure. *Dung Repository*, Mount Vernon Ladies' Association of the Union, <https://www.mountvernon.org/the-estate-gardens/historic-trades/dung-repository/>.



(Apr. 17, 2012) (describing swine facility innovations such as floor surfaces, pen partitions, and water, ventilation, heating, cooling, and feed systems); Donald G. Levis, *Biosecurity of Pigs and Farm Security*, University of Nebraska-Lincoln Extension (Nov. 3, 2011). This specialized construction work requires outside professionals like Petitioner Signet Builders, Inc. to provide construction services and labor, and the mere contracting out of this necessary part of modern livestock production does not make it any less agricultural.

Work on a farm is never done. NPPC understands this and is always searching for ways to push the industry forward and stand up for the wellbeing of pork producers. NPPC firmly believes that embrace of change is essential in agriculture and that we can only succeed in this regard by interpreting the law to fit the modern agricultural framework as Congress intended in passing the exemption.

In sum, the agricultural industry in the United States is perpetually innovating to meet the needs and demands of consumers. This innovation, consistent with congressional intent, entails a greater and greater shift to newer, more efficient livestock facilities. This shift is in the interests of industry stakeholders to maximize efficiency, laborers and the economy to maximize job opportunities and create wealth, and the approximately eight billion consumers worldwide who rely on our nation's farms for sustenance and nutrition. Respondent's role is integral to meeting these goals. Hundreds of thousands of workers like Respondent fill the same time-honored and fundamental agricultural role historically completed by farmers—erecting a fence, constructing a barn, or otherwise building some structure to house animals for produc-

tion. That role is and always has been agricultural at its core; only now the facilities are more complex and require outside professionals and labor to build. However, finding that this role is no longer agricultural due to this innovation and specialization would counterintuitively stymie further innovation by drastically increasing labor costs and effectively penalizing industry leaders for making their facilities better. NPPC sees Respondent and other similarly situated persons as stepping into the shoes of the individual farmers that helped build this country, and it respectfully requests that the Court embrace that view as well.



## CONCLUSION

For these reasons, the National Pork Producers Council respectfully requests that the Court grant Signet Builders, Inc.'s Petition for Writ of Certiorari and hear argument on the issues therein that are key to the growth of the agricultural industry in this country.

Respectfully submitted,

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