



July 5, 2017 (updated July 10, 2017 with additional signers)

Senator Hannah Beth Jackson
 Chair, Senate Judiciary Committee
 State Capitol, Room 2187
 Sacramento, CA 95814

RE: Opposition to Assembly Bill 243 (Cooper): California Beef Commission Law (as amended on July 3, 2017)

Dear Senators Jackson,

On behalf of the undersigned organizations, we write to reiterate our strong opposition to Assembly Bill 243 (AB 243), authored by Assemblymember Jim Cooper. As we articulated in our letter dated June 14, 2017, AB 243 vastly amends the current process in place to manage the state's mandatory beef checkoff program in ways that weaken California cattle producers' standing and subjects them to uncapped taxation -- for many, potentially without representation. We are especially concerned that despite recent amendments, AB 243 is poised to unfairly, disproportionately and adversely impact the smaller, innovative producers who are striving to meet consumer demand for non-commodity beef products.

AB 243 weakens democratic processes.

According to the Assembly Agriculture Committee analysis, most California laws require a 65 percent vote to establish a commission like the one being proposed in AB 243.¹ AB 243 bypasses a vote of producers to establish the new commission through legislation, lowers the required voting participation threshold, and also lowers the approval threshold for increasing taxes.²

In 2012, the California Department of Food and Agriculture (CDFA) conducted a statewide vote of producers seeking support to increase the checkoff from \$1 to \$2 per head of cattle. The measure failed.

¹ Assembly Committee on Agriculture, AB 243 Cooper - As Amended April 18, 2017 bill analysis. Subject: California Beef Commission. April 26, 2017. http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB243

² Compare Sections 65062 and 65069(b) as proposed in AB 243 to Food and Agricultural Code 64672.

Because there is not enough support among the state’s producers to create either the California Beef Commission or to increase the tax amount, AB 243’s proponents are turning to the legislature to circumvent the wishes of many California cattle producers.

Other than a general reference to “producers,” details regarding eligibility for participating in any fee increase vote and the voting procedures are not defined in AB 243, leaving the matter of who votes, how eligibility is established and the process for accomplishing the referendum largely uncertain.³ During the 2012 referendum vote, some California ranchers claimed that “the CDFR profiled certain individuals from a list of approximately 1,700 submissions, challenged their eligibility to vote and disqualified their ballots, while the ballots of identically qualified voters were accepted.”⁴ Many small-scale producers who oppose increased checkoff fees are rightfully concerned that they will be deemed ineligible to vote and yet still be required to pay. And if the initial referendum proposed in AB 243 does not pass, the bill allows an additional referendum to be conducted at the Commission’s request as often as *every other year* until a vote is successful.⁵

AB 243 has recently been amended to remove any ability of producers to terminate the Commission once it has become operational. Many checkoff programs authorize a mandatory termination referendum at the request of a certain number of producers (often a percentage of the total in the state). Although AB 243 originally had a provision by which producers could petition for a termination, that provision has now been removed and replaced by five-year review process in which the secretary may hold a re-approval referendum.⁶ If the vote is not successful, the Commission is not terminated. Instead, the secretary shall declare the chapter to be “suspended.”⁷ AB 243 contains no provisions that would prevent a proponent of the Commission from simply calling for a new implementation referendum to start up operations again.

AB 243 does not supplement the existing state checkoff program, but *swallows* it and allows for control of both programs by the same people simply wearing multiple hats.

AB 243 does not propose to amend existing law which governs the existing beef checkoff program. Instead, AB 243 creates entirely new sections of law which include authorizing a process by which the Commission could administer not just the newly created supplemental checkoff, but “any governmental program related to the California cattle, beef, and beef products industries.”⁸ While a recent amendment purports to make an exception to this rule for certain Council activities, this purported separation of powers is meaningless in light of AB 243’s express provision that permits members of the Council and Commission to be the same people.⁹ AB 243 additionally authorizes the Council and Commission to

³ See also, Sec. 65066, which requires that an implementation referendum pass by “majority” vote, but doesn’t specify the what the majority is measuring. For example, it would be a very different calculation if the referendum had to receive a majority of eligible producers in the state to pass than if it simply had to receive a majority of producers voting. The former option avoids questions relating to issues of voter notification and voting methods; the latter most certainly does not.

⁴ Richard and Susie Snedden. AB 243 opposition letter. March 28, 2017.

⁵ AB 243, Sec. 65067.

⁶ Sec. 65069.

⁷ *Id.*

⁸ AB 243, Sec. 65045. Notably, this provision does not limit itself to government “marketing” programs relating to California cattle, beef, and beef products industries. It is unclear then how broadly such a provision could apply, e.g., livestock health, environmental, animal welfare laws, etc.

⁹ AB 243, Sec. 65022.

have the same chairperson, vice chairperson, executive director, staff, offices, and property.¹⁰ This fictitious distinction between the Council and Commission would effect a broad transfer of control that, if executed, would put the very same people at the helm of both the state's checkoff programs.

This blurred separation between the Council and Commission is especially troubling in light of the unique distinctions between the two entities. The Council is a policy-neutral body that is prohibited from political activities, including lobbying in any manner. AB 243 would impose no such restriction on the Commission. The Council is prohibited from making false, unwarranted, or disparaging claims as part of its marketing activities. AB 243 would impose no such restrictions on the Commission. The Council is accountable to all producers in the state, who are required to fund its activities through a mandatory assessment. AB 243 purports to make refunds available to those producers who don't support its work, thereby making it accountable to only a specific segment of the industry that agree with its policy positions.

Such fundamental distinctions require a clear and readily apparent separation between the two entities. AB 243 does just the opposite. In fact, in addition to sharing personnel, offices, and property, AB 243 would allow for joint projects between the Council and Commission and shared expenses. Such sweetheart financial arrangements are inherently problematic because they use the Council's policy-neutral funds to decrease the Commission's expenses and, as a direct consequence, enable more policy work by the Commission. The Council's prohibition against lobbying "in any manner" means that it cannot be used to reduce the Commission's administrative expenses, which would invariably allow the Commission to engage in increased policy activity. The Council would be unlawfully subsidizing activities of the Commission that the Council would be prohibited from engaging in directly.

AB 243 dangerously exempts all activity of the Commission from the state's antitrust and unfair practices laws.

AB 243 poses a threat to marketplace and consumer safeguards by exempting *all* Commission activity from two of the state's most important antitrust and unfair practices laws.¹¹ There is no need for such wholesale exclusions from these laws designed to protect the public and the marketplace "by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented." Cal. Bus. & Prof. Code § 17001. Removing such protections undermines California's fundamental framework for ensuring against deceptive and anticompetitive practices.

Recent amendments to AB 243 left these provisions unchanged, despite concerns raised about threats to marketplace and consumer protection such provisions would impose and without justification as to why such drastic immunities are needed by the Commission. California's citizens should not lightly be deprived of these most basic protections from unscrupulous business activities.

AB 243 drastically weakens the Secretary's control of the checkoff.

AB 243 contains several provisions that collectively operate to weaken the Secretary's oversight authority, including a flat prohibition against blocking any Commission activity undertaken pursuant to

¹⁰ AB 243, Secs. 65028, 65044, 65048.

¹¹ AB 243, Sec. 65004.

its new grant of authority.¹² And because the bill removes the public safeguards imposed by the state's unfair practices law, the Secretary would be powerless to stop such activity. This flies in the face of the state's fundamental interest in a fair and honest competitive marketplace.

AB 243 would make farmers personally liable for corporate debts.

AB 243 would subject business owners and operators to *personal liability* for assessment debts of the business.¹³ Such extraordinary terms would obliterate those corporate protections that are essential to entrepreneurship and a robust marketplace. Instead, a farmer's personal and family belongings could be vulnerable, a threat that would be particularly hard-felt by small, family farming operations.

And if the Commission obtains such a judgment against a producer, AB 243 mandates a prohibition against the producer "conducting any type of business regarding cattle or beef" until the judgment is satisfied. This strong sanction not only deprives producers of engaging in the work they'd need to in order to actually pay the Commission, but is so broadly worded that it could be devastating to farmers and their animals if construed to impact existing customer obligations or feed contracts, for example. The law already provides adequate rules for obtaining and satisfying judgments without adding oppressive burdens on hard-working farmers.

AB 243 would require small-scale California beef producers who strive to meet growing consumer demand for non-commodity beef to pay into a marketing program that does not serve their business interests, ethics, or values.

Smaller beef producers around the state take pride in their ability to provide a product that is an alternative to large-scale, industrialized beef. These producers engage in more humane animal husbandry, eschew unnecessary use of antibiotics and other drugs, and provide their cattle with more wholesome feeds than is often given to feedlot cattle.¹⁴ These specialty producers do not benefit from generic, commodity-focused advertising campaigns like those that would be funded through the new Commission promoting beef producers as if all beef products are the same. In fact, these smaller producers are disproportionately and adversely impacted by the increased checkoff tax than are large-scale operations. Their business model relies on consumers making informed choices when it comes to purchasing beef products; their efforts to distinguish their products are undermined by commodity marketing.

AB 243 creates the illusion of a voluntary checkoff program, but creates barriers that make avoiding participation difficult.

AB 243 states that producers may request a refund if they wish not to participate, but places barriers to accessing these refunds and provides no assurance as to how efficient, amenable, or fair the refund process would be.¹⁵ The vague language of AB 243 (e.g., "necessary information as the department may require") creates a huge loophole that could easily lead to a deliberately cumbersome and burdensome

¹² AB 243, Sec. 65058.

¹³ AB 243, Secs. 65078, 65088.

¹⁴ It is not uncommon for feedlot cattle to be fed chicken manure and slaughterhouse byproducts. See, for example: <http://www.motherjones.com/food/2013/12/cow-feed-chicken-poop-candy-sawdust>

¹⁵ "Sec. 65076.

refund process or, more likely, forced participation. Although a recent amendment provides some additional procedures for obtaining refunds, they fall short of what would be necessary to protect producers who do not support this program -- likely to be a relatively high number given the lack of support for the 2012 referendum to increase the assessment. AB 243 is not a voluntary checkoff program by any meaningful interpretation.

Importantly, if this program is truly voluntary, it is unclear why the proponents even need AB 243. AB 243's sponsors are currently free to initiate a voluntary program among the state's producers, engage in lobbying activity, and even disparage competing products. The question then is why do the proponents need—or deserve—to have a government endorsement of their operations? Why do they need—or deserve—exemptions from marketplace and consumer protection laws for their operations (which AB 243 would provide)? The answer is they don't.

Proponents' own policy resolutions indicate that their members have directed them to pursue an increase of \$1 in the assessment paid to the Council, for California-related efforts.¹⁶ There are no federal constraints on their ability to do that. The California Beef Council law is a state promotion program that operates independently of the federal checkoff.¹⁷ No portion of any increase pursued through the Council's referendum process needs to be shared with—or controlled in any way by—the federal program. Any suggestion that federal law prevents additional assessments from being kept in California to promote California beef is simply inaccurate, and cannot be used to justify the need for AB 243's approach.

Other checkoff programs with provisions similar to AB 243 within and beyond California have raised bona fide corruption concerns and are often fraught with a lack of transparency and accountability.

According to the AB 243 analysis by the Assembly Committee on Agriculture, California commissions focused on marketing and research have come under scrutiny in recent years.¹⁸ The analysis states that one commission was recently terminated by its respective industry and another was found to have misused funds, as discovered by a state audit.

This is not just a California phenomenon. Beef checkoff programs and associated commissions in some of the most beef-centric states in the country have been found to be operating dubiously, and some even illegally. Just last month an Oklahoma Beef Council employee was found guilty of embezzling upwards of \$2.6 million from the very producers they are charged to help.¹⁹

Unfortunately, AB 243 does not include provisions that are conscious of these concerns. Rather, AB 243 explicitly exempts much of the information obtained by or for the Commission's use from California's

¹⁶ California Cattlemen's Association, Policy Resolution 16-02. [http://www.calcattlemen.org/pdf/2016-2017%20CCA%20Policy%20Book%20Online%20Edition\[1\].pdf](http://www.calcattlemen.org/pdf/2016-2017%20CCA%20Policy%20Book%20Online%20Edition[1].pdf) (accessed July 3, 2017)

¹⁷ See Cal. Food & Agric. Code Ann. § 64702(c)(stating that there are no federal requirements applicable to any increase in the Council assessment). Moreover, there are no requirements that the Council spend any of its funds on promotion of anything other than California beef.

¹⁸ See *supra*, note 1.

¹⁹ United States Department of Justice. Former Oklahoma Beef Council Employee Pleads Guilty to \$2.6 Million Embezzlement and Signing a False Tax Return. May 24, 2017. <https://www.justice.gov/usao-wdok/pr/former-oklahoma-beef-council-employee-pleads-guilty-26-million-embezzlement-and-signing>

public records act requirements and the bill does not prohibit checkoff funds from being used for lobbying activities. These troubling provisions alone would justify a “no” vote from anyone who believes in good government and government transparency.

The funds collected from California producers would not be required to be spent promoting California beef.

Although it purports to benefit California cattle producers, AB 243 does not limit promotional activities using fees the proposed Commission collects to those that would benefit California beef producers.²⁰ As such, AB 243 could result in the promotion of and increased market share of beef products from cattle raised in foreign countries and imported by out-of-state corporate packers and producers.

The momentum is against checkoff programs like that proposed by AB 243.

In 2011, the Wyoming legislature overwhelmingly rejected a proposed \$1 tax to fund a new state beef commission very similar to the one AB 243 is proposing.²¹ Minnesota cattle producers voted down a proposed checkoff in 2014 and nearly 75 percent of Missouri cattle producers said “no” to a proposal to establish a new state beef checkoff in 2016.²² The dramatic number of Missouri operations that have gone out of business (40 percent), the drastic decline in beef consumption (32 percent), and the concern over checkoff dollars being used to promote foreign beef were just a few of the concerns driving this outcome.²³

Given the lack of compelling support among California beef producers for an increased checkoff fee as recently as 2012, opposition to AB 243 from producer groups like the Kern County Cattlemen's Association and the California Dairy Campaign, the history of corruption and concern with checkoffs in other states, the explicit efforts to pierce the corporate veil, co-mingle government and business interests, allow for wanton collusion, retreat from significant consumer protections and avoid transparency, and the government overreach that comes along with mandating an inequitable tax to support expenditures on behalf of a private industry, we strongly urge you to hold AB 243 in your committee.

Sincerely,

Carrie Balkcom
Executive Director
American Grassfed

Lisa Griffith
Interim Executive Director
National Family Farm Coalition

²⁰ Sec. 65002(b) designates one of the purposes of the act to promote “beef and beef products produced, processed, manufactured, sold, or distributed in this state.” Yet only those actually producing California beef (and not those engaged in processing, distribution, etc.) are burdened with funding these promotions. Beef or beef products that are processed, manufactured, sold, or distributed in California—regardless of where they were originally produced—would be equally promoted by the Commission while conferring no benefit on the farmers funding the program.

²¹ Wyoming House Bill No. HB0016 Wyoming beef council-fee collections.
<https://legisweb.state.wy.us/2011/Introduced/HB0016.pdf> Vote was Y:8, N: 49

<http://legisweb.state.wy.us/2011/SessionVotes/VoteDetail.aspx?ID=5088&Title=Wyoming+beef+council-fee+collections>

²² Beef Magazine. 4 States Look to Raise Checkoff. April 9, 2014. <http://www.beefmagazine.com/blog/4-states-look-raise-checkoff>

²³ Missouri Rural Crisis Center. 2016. Press Release: Missouri’s Cattle Producers Overwhelmingly Reject New Missouri Beef Checkoff. <https://morural.org/articles/missouricattlewin>

Paul Towers
Organizing Director & Policy Advocate
Pesticide Action Network

Rebecca Spector
West Coast Director
Center for Food Safety

Kendra Kimbirauskas
Chief Executive Officer
Socially Responsible Agriculture Project

Janaki Jagannath
Coordinator
Community Alliance for Agroecology

David Runsten
Policy Director
Community Alliance with Family Farmers

Cooper Freeman
Program Manager
Occidental Arts & Ecology Center

Michael Dimock
President
Roots of Change

Julie Morris
Owner, Morris Grassfed Beef
and T.O. Cattle Company

Brent Newell
Legal Director
Center on Race, Poverty & the Environment

Adam Scow
California Director
Food and Water Watch

Brenda Ruiz
Chair, Policy Committee
Slow Food California
President, Sacramento Food Policy Council

Doniga Markegard
Owner, Rancher
Markegard Family Grass-Fed LLC

Richard Holober
Executive Director
Consumer Federation of California

Mike Weaver
President, Organization for Competitive Markets

Scott Beckstead
Director, Rural Affairs
The Humane Society of the United States

Wendy Millet
Director, TomKat Ranch

Sallie Calhoun
Owner, Paicines Ranch

Janet E. Derecho
Executive Director
Ecological Farming Association

Jonathan Kaplan
Food and Agriculture Program Director
NRDC

Monica White
Owner, New Hope Farms

Guido Frosini
Owner, True Grass Farms

cc: Assemblymember Jim Cooper
Members of the Senate Agriculture Committee
Members of the Senate Judiciary Committee
Senate President pro tem Kevin De Leon
CDFA Secretary Karen Ross
Graciela Castillo-Krings, Office of Governor Edmund G. Brown, Jr.