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February 27, 2025

Sen. Nader Hasim, Vice Chair
And Other Members of the
Senate Committee on Judiciary

Re: Additional Testimony Concerning S. 45 Testimony

Dear Members of the Senate Committee on Judiciary:

Thank you again for the opportunity to speak to you today. I am writing to provide you with some additional testimony simply to correct some statements made to the Committee today. You heard testimony that the video I showed you during my testimony was of an extreme storm event from last summer. That was not accurate. The video I showed you was evidence that was presented in the 2022 trial, and it was taken during a modest rain event in October of 2021. My client's case at trial was not based on extreme weather events, it was based on the impacts the tile drains have during common weather events.

You also heard testimony that the odor claim in the case at issue was a trespass claim. Again, that is incorrect. It was brought and adjudicated solely as a nuisance claim.

Finally, I will point out that while it is true the agency of agriculture did not offer expert testimony at the trial, that was not what they were there for, and the farm was not depending on them to provide such testimony—both parties had each hired their own experts who testified extensively at trial.

While there are of course many points of disagreement, I thought it was important to correct the record as to the above factual errors, since they are critical to the core issue that the Committee is addressing. Please continue to bear in mind that the existing law does not place the ultimate burden of proof on a farm claiming its protection—rather it provides farms enhanced protection against nuisance suits if it can demonstrate that certain criteria are present, and imposes an even higher burden on the plaintiff if they are. If those criteria are not met, the plaintiff still has the burden of proving their case as in any other litigation.

As always, please let me know if I can be of any further assistance to the Committee.

Very truly yours,

/s/ Merrill E. Bent

EDGAR T. CAMPBELL MERRILL E. BENT JOHN D. STASNY
JESSICA GLASS POLLACK
