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## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JEAN CARNAHAN, a Senator from the State of Missouri.

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have blessed this Nation with truly great leaders in each period of our history. In Your providential care, You choose them, nurture their characters, hone their minds, and sharpen their convictions. You give them opportunities to serve You by caring for the needs of society. You allow their hearts to be broken by what breaks Your heart so that they can heal wounds, right wrongs, and lead others to grasp their full potential.

Today, we thank You for such a leader. You have placed Your hand of blessing on Senator BARBARA MIKULSKI. With Your endowed gifts of leadership, she has become a lodestar leader in her state and in her party, in the Senate, and in the Nation. Thank You for her intellectual acumen, her ability to get to the point, her loyal faithfulness, and her lively sense of humor. The Senator has the courage of her convictions and says what she means and means what she says. She is a patriotic American who is proud of her Polish heritage. We rejoice with Senator MIKULSKI today as she is given one of the highest honors ever bestowed by the Polish Government, the Commanders' Cross with Star of the Order of Merit of the Republic of Poland. May this be a truly memorable day for her, her family, all Polish-Americans, and all of us here in

the Senate family who are privileged to be her friends. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable JEAN CARNAHAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD.)

The legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, December 13, 2001.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEAN CARNAHAN, a Senator from the State of Missouri, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mrs. CARNAHAN thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

### SCHEDULE

Mr. REID. Madam President, pursuant to the order entered last evening,

there will be 90 minutes of debate equally divided and controlled in the usual form on the Bond amendment prior to a vote in relation to that amendment. There will be no intervening amendment in order prior to that vote.

The majority leader also announced last night that, after having filed a cloture motion on this legislation, there would be a cloture vote on that matter either today or tomorrow, whatever the two leaders work out. There will be votes throughout the day, and we will await further word from the leader as to what is going to transpire this evening.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### AGRICULTURE, CONSERVATION, AND RURAL ENHANCEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 1731, which the clerk will report. The legislative clerk read as follows:

A bill (S. 1731) to strengthen the safety net for agricultural producers, to enhance resource conservation and rural development, to provide for farm credit, agricultural research, nutrition, and related programs, to ensure consumers abundant food and fiber, and for other purposes.

Pending:

### NOTICE

Effective January 1, 2002, the subscription price of the Congressional Record will be \$422 per year or \$211 for six months. Individual issues may be purchased for \$5.00 per copy. The cost for the microfiche edition will remain \$141 per year with single copies remaining \$1.50 per issue. This price increase is necessary based upon the cost of printing and distribution.

Michael F. DiMario, Public Printer

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S13079

Daschle (for Harkin) Amendment No. 2471, in the nature of a substitute.

Bond Amendment No. 2513 (to Amendment No. 2471), to authorize the Secretary of Agriculture to review Federal agency actions affecting agricultural producers.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 90 minutes debate, equally divided and controlled in the usual form, on the Bond amendment, No. 2513.

The Senator from Missouri.

#### CONGRATULATING SENATOR MIKULSKI

Mr. BOND. Madam President, I yield myself such time as I may require.

First, before I get into the discussion of this amendment, which I think is very important, I want to add an earthly endorsement to the holy blessings that our Chaplain just brought upon our very good friend and colleague, Senator BARBARA MIKULSKI.

It is a great honor she receives today. We all rejoice with her. She has been an outstanding Member of this body, one whose compassion, commitment, and good humor have seen us through many difficult times.

As one who has had the pleasure of working with her on the Veterans Affairs, HUD, Independent Agencies appropriations subcommittee, I can tell you there is no finer, more dedicated servant in the Senate. It is with great joy that we congratulate her on the very outstanding and generous award made to her today by the land of her forefathers, the Government of Poland.

With that, we say good wishes and congratulations, BARBARA. It is a well deserved honor.

#### AGRICULTURE, CONSERVATION, AND RURAL ENHANCEMENT ACT OF 2001—Continued

AMENDMENT NO. 2513

Mr. BOND. Madam President, may I inquire what is the pending business?

The ACTING PRESIDENT pro tempore. The Senator's amendment is the pending question.

Mr. BOND. I thank the Chair.

Last night I laid down an amendment which I think enhances this farm bill and focuses on what is important for agriculture. We have had a lot of discussion about how we have to help farm families. Clearly, they are struggling.

This country has been in a recession for about 15 months. We have been under attack by terrorists for about 3 months. But farmers across this country and their families and those with whom they work closely know they have been in recession for 4 or 5 years.

The collapse of the overseas agricultural markets has driven prices down. That is why, among other things, it is vitally important that this body pass trade promotion legislation because we must get those markets back.

In the meantime, we look for things we can do to assist farmers. We are

going to send them financial assistance. In the last several years as they have suffered from low prices, we have provided very significant amounts of money to help fill in the void left by low market prices.

We can do research for them. Research in new ways of doing business made our farmers continually more productive.

We must be sure adequate transportation exists. In the heartland that means keeping the vital waterways of the Missouri and Mississippi Rivers open to transportation so we can have economical and efficient ways of getting our farm products to market.

But there is one thing farmers tell me they are concerned about, perhaps more than anything else. While they are concerned about the weather, they understand you cannot change that. They are concerned about crops and pests and their interaction. They are concerned about markets. As I said, markets have been down.

But the one thing that really frustrates them is that too often our Government seems to have farmers in their sights. They want to accomplish all kinds of good purposes, but they want the farmers to do it. The farmers who control much of the land of the United States are the ones to whom the Federal Government says: We would like to see this done, and we will have you, the farmers, who are trying to earn your living off the land, make the changes that we think are good policy whether it be environmental policy, whether it be economic or income distribution policy, or whether it be food policy. Some farmers tell me that they spend more time preparing for public hearings than they spend on their combines.

The amendment before us today says farmers are going to get a chance to have an advocate at the U.S. Department of Agriculture.

We all know that regulatory requirements are necessary. They often carry out the purposes that have been approved by the Congress. They are authorized by law, but the problem is sometimes the regulatory agencies that are trying to carry out those purposes know nothing about agriculture or farming or how the individual farmer trying to earn a living for himself or herself and their families is affected by it.

We are trying through this amendment to give the USDA the responsibility and the tools to help farmers who are being oppressed.

This is a life preserver thrown to farmers whose livelihood or safety is threatened by bad Federal regulations.

I introduced last night two letters with lengthy endorsements from farm and agricultural organizations, nationally and from my home State of Missouri.

I am pleased to be joined by Senators GRASSLEY, ENZI, HAGEL, and MILLER as cosponsors. I hope we will have more who will come to the floor and be will-

ing to speak on behalf of this legislation once they understand its importance.

Let me go through the legislation very briefly. It is unlike the rest of the farm bill. A lot of people are still trying to read through the 900 pages of the original farm bill and 900-plus pages of the amendment that was dropped on us. This one is easy.

It says the Secretary may review any agency action proposed by a Federal agency to determine whether the action would likely have a significant adverse economic impact on or jeopardize the personal safety of agricultural producers—farmers. If the Secretary determines that it is likely to have such a significant adverse impact, the Secretary, No. 1, shall consult with the agency head, call him up on the phone, and talk with him; No. 2, advise the agency head on alternatives to the agency action which would be least likely to have a significant economic impact or jeopardize personal safety.

Then, if after a proposed agency action is finalized the Secretary thinks it would have a significant adverse impact described above, the Secretary may defer to the President, who not later than 60 days after the date on which the action is finalized reviews the determination of the Secretary. The President can reverse, preclude, or amend the agency action if the President determines that overturning that action is necessary to prevent the adverse economic impact and is in the public interest.

In considering this, the President takes into account the public record, competing economic interests, and the purposes of agency action.

The President may not overturn an agency action that is necessary to protect human health, safety, or national security, significantly limiting his options. If the President chooses to overturn an agency action, the President has to notify Congress of the decision and submit a detailed justification.

Congress then has the opportunity to review the action under the expedited procedures set forth in the bill which I was very pleased to sponsor back in 1996, the Small Business Regulatory Enforcement Fairness Act, which provides for expedited review in the Senate without the chance of filibuster. By majority vote in both Houses, the President's action overturning any of these adverse impact agency regulations could be reviewed.

That seems to me to give the President the power to step in.

It is my intention to provide, first, the Secretary of Agriculture with the responsibility of looking for these agency actions that may have an adverse impact, calling them to the attention of that agency head, and working to resolve the problems so the objectives of the proposed regulation can be achieved without imposing the burdens that the Secretary believes would be unnecessarily inflicted on farmers.

If that does not work, then the President has the discretion to resolve disputes and say in this instance the public would better be served if we overruled this regulation and issued a new one.

This amendment should force USDA to be more aggressive in protecting and fighting for farmers. It should help make other agencies more responsive to the needs of farmers.

We can help families with \$170 billion in spending that we are talking about here today. But if we really care about them, and if we really care about their economic contributions, the social value of farm families, and certainly their contribution to feeding our Nation, protecting our food security, and our national security, then we ought to provide that the agency designed to serve farmers has the power and the responsibility to speak up for farmers to ensure that they are not overrun by an unthinking, ill-considered undertaking and ill-considered action.

We protect the blind mussels or other endangered species. We ought to be concerned about a farm community being threatened or endangered. I think this gives the farmers some limited leverage in assuring that they are protected.

It will not be necessary very often for the President to intervene once people know he has that power because agencies should, with this mandate to the Secretary of Agriculture, work out the problems in advance. This Presidential discretion which can be reviewed on an expedited basis by the President is a fail-safe mechanism.

This country has been in a recession for 15 months. We have given the President broad discretionary power since September 11 to conduct war and fight crime. We have appropriated tens of billions of dollars to help restore the strength of this country. We tried to help the airlines, and we are pursuing an economic stimulus package.

Parenthetically, we absolutely must pass legislation to shore up the insurance agencies to provide assurance that terrorism insurance will be available. We will have a major shutdown in our economy if we don't get that done.

I urge the majority leader to take this up immediately because we may be finding ourselves without insurance as of January 1 if we don't. I urge him to go back to the bipartisan measure worked out by the leaders of the banking committee and to pursue that legislation.

To go back to the farmers, as part of the stimulus we are going to provide assistance to the unemployed. We should recognize that farm families in rural America have been in a recession for 4 years. One of the things we can do in addition to providing dollars is to give them some protection from their Government. That is something they told me. If you ask the farmers in your State, I assure you that you will be told it is vitally important.

There is a challenge, limited as it is, that when resource issues affect farms

and their families, it is OK for the Government to fight for the farmers. In the past, the fight has always been one-sided against the farmers.

In this instance, I urge my colleagues to support the amendment and send a message to farmers that we believe farmers are worthy of protection. We want the Government to make every sensible attempt to act as an advocate. We believe the USDA should be active and visible in fighting for farmers. We believe that the President and the Congress are capable of this and can be trusted with the public interest. This says to the administration that farmers don't always have to be at the bottom of the food chain.

I urge support of the amendment. I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. JEFFORDS addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time to the Senator from Vermont?

Mr. HARKIN. Madam President, how much time do we have on our side?

The ACTING PRESIDENT pro tempore. The Senator from Iowa controls 45 minutes.

Mr. HARKIN. How much time does the Senator wish?

I yield the Senator as much time as he needs.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. JEFFORDS. Madam President, I rise in opposition to the amendment offered by the Senator from Missouri. Mr. BOND. This amendment gives broad authority to the Secretary of Agriculture and the President to overturn the legal responsibilities of Government agencies if they determine that an agency action might—might—have adverse economic impacts on or jeopardize the personal safety of a farmer or rancher.

While I know the Senator is concerned about the economic well-being of farmers and ranchers—and we all are—this amendment would waive many of the protections that our Federal agencies are charged with providing.

Under this amendment, if the Environmental Protection Agency sets a water quality standard to prevent degradation of a stream, and the Secretary and the President think meeting that standard may have an adverse economic impact on a farmer or a rancher, the President can reverse the agency action. Or, if the Secretary of the Department of the Interior adds a species to the list of threatened or endangered species, and the Secretary of Agriculture and the President determine that recovering that species may have an adverse—may have an adverse—economic impact on a farmer or a rancher, the President can reverse that action.

When Federal agencies are considering the actions they are required to take under the law, the agencies consider the cost, and weigh the cost with the benefits the actions will have before proposing them.

Finally, the amendment does not consider the necessity of protecting our environment when considering reversing an agency action; therefore, I oppose the amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

If neither side yields time, the time will be charged equally to each side.

Mr. BOND. Madam President, I suggest the absence of a quorum and ask unanimous consent that the quorum call be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HARKIN. Madam President, I yield myself such time as I might consume.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. HARKIN. Madam President, I yield to no one, including my good friend from Missouri, in fighting for our farmers and people who live in small towns in rural America to ensure that they are not set upon by the powers of the Federal Government in any way that would act to their detriment, their safety, their security, their well-being, their ability to make a living, or their ability to live as free and independent citizens of this country.

But I have looked over this amendment. At first I thought it might be OK. I looked it over. Then it hit me that the Senator's amendment says basically that the Secretary of Agriculture may review any action proposed by any Federal agency. That is what it says here. It says: Any. It says: The Secretary may review any agency action proposed by any Federal agency. . . .

And then it says: If the Secretary determines that a proposed agency action is going to do certain things with adverse effects on agricultural producers, then the Secretary can give it to the President for review. And then the President can reverse the agency action, just like that. He can reverse it, preclude it from going into effect, or he can amend it.

Well now, I don't know. I would like to ask: Why don't we include small businesses? I know my friend from Missouri is a strong defender of small business. Why don't we include small businesses in this? Why don't we let the head of SBA review any agency action by any Federal agency to determine whether or not it is going to have an adverse effect on small business, and let the President then reverse or amend the agency action?

Mr. BOND. Madam President, may I respond?

Mr. HARKIN. Sure, I yield for a question or a response to my question.

Mr. BOND. My question is, Are you familiar with the role of the Counsel for Advocacy in Small Business? That is his job. Are you familiar with the Small Business Regulatory Enforcement Fairness Act that we have adopted in the Small Business Committee to provide teeth for that act?

Mr. HARKIN. Having served on the Small Business Committee of the Senate now for 17 years, I am fully aware of all of the acts adopted in that Committee. But there is nothing in the Small Business Administration Act that allows the SBA Administrator to review all these agencies' actions and then give them to the President for further review, and that lets the President amend an action or reverse an action by himself, with only a notification to Congress.

I ask the Senator from Missouri: Is there anything in the Small Business Administration Act, or any law passed by Congress, that gives the President that power?

Mr. BOND. The answer to that is not yet, but if the manager of the bill would like to come to the committee and offer that, I would certainly be interested in supporting it.

We are working on the farm bill here. I think most of us agree that farmers need some additional protection. They do not have a counsel for advocacy in USDA. We have not seen the Secretary of Agriculture take that role. This says specifically they should.

Mr. HARKIN. I say to my friend from Missouri, we do have a counsel at the Department of Agriculture who has every ability to do exactly what the Senator is talking about.

The Senator says, take it to committee. I say to the Senator, take this to the committee. Let's have the committee take a look at this and not do it on the floor. Just as the Senator says we ought to take it to the Small Business Committee, that is my suggestion.

And why stop with small business? Why don't we do veterans? Why don't we do the same thing for our veterans in this country, who, time and time and time again, are affected by agency decisions in other parts of the Government?

Why don't we have the Secretary of Veterans Affairs have the same power that the Senator from Missouri wants to give to the Secretary of Agriculture? Why not do the same thing for our veterans and give them that kind of protection that they need, so that the President, without even consulting Congress, could overturn, amend, reverse any agency decision if he believes it adversely affects veterans in this country? Why don't we give that power to the Secretary of Veterans Affairs?

Why stop there? Why not give the same power to the Secretary of the Interior to review any agency action that might adversely affect a public park or interfere with the enjoyment I might have in going to a public park? And

then let the President amend it, reverse it, without ever consulting with Congress?

Why stop there? Why don't we do the same thing for the Secretary of Labor? Let the Secretary of Labor have the power to review any agency action by any Federal agency? And if the Secretary of Labor thinks the action will adversely affect a working person in this country, the Secretary of Labor could give it to the President and let the President reverse it, do away with it, and then just let Congress know. That is what the amendment of the Senator from Missouri says. It says the President can do all this. He can reverse it, preclude it, amend it. All he has to do is notify Congress of the decision to reverse, preclude, or amend the action and submit to Congress a detailed justification for the decision. We don't have any power. The President can do the whole thing.

Why stop there? Let's think about other things. On the face of it, it might sound good. Then you start thinking about it and you say: Wait a second; we do could this for everything. What it means is that we would give the President of the United States the power to reverse, amend, preclude any agency decision without ever having to come to Congress.

We have an Administrative Procedure Act, a law passed by this Congress to provide the President and the Federal agencies—the executive branch of Government—with the guidelines under which it can operate. We amend it from time to time. This is where this amendment ought to go, on the Administrative Procedure Act. But there are in the Administrative Procedure Act certain things that have to be done. One of the things that is most important of all is to insist that Congress play its constitutional role and exercises its constitutional right. The President can't just do these things without letting Congress have the power to say whether he can do it or not. Otherwise, we might as well shut our doors and go home; let the White House run everything in this country.

This amendment on its face kind of sounds good. It sounds good. But I wonder if supporters of this amendment have really thought through all the implications of it and what it may mean. The farmers I talk to don't want another layer of bureaucracy from Washington. This would be yet another layer of regulatory burden when agencies are carrying out the law.

And keep in mind, it could be something that maybe a farm group or a farm organization might want but the Secretary of Agriculture or the President may not like it. This is a two-edged sword.

My friend from Missouri would say: Well, but it has to have an adverse economic impact on, or jeopardize the personal safety of, agricultural producers. That is pretty broad. I am sure any smart Secretary of Agriculture or President could say: We have this agen-

cy action out there, and we can interpret it so that it has an adverse economic impact on farmers. Therefore, we are going to reverse it willy-nilly because we, the President and the Secretary of Agriculture, have decided that it has an adverse economic impact on farmers. But the agency action may be in the best interest of farmers according to what some of us may think. Maybe some of us here may think that agency action may actually benefit farmers. Others may not think so. Maybe the President of whatever party may not think so. He can just reverse it. What power do we have?

I guess we have to go through the legislative process of having a bill and getting it through committee. We have no say-so whatsoever in the President's decision to reverse, preclude or amend the agency action.

I always say at this time of the year, when people come around with nice presents for you, that you had better unwrap the present and take a good look at it. Just because it has a fancy bow and fancy paper doesn't necessarily mean it is a gift. I say to my farmers and my friends in rural America, the amendment offered by my friend from Missouri is not a gift. This is a two-edged sword. It may help sometimes, but it may hurt. It may also open the floodgates for a lot of mischief in other Federal agencies that may adversely affect our farmers.

Unwrap this package and take a look at it. You will see it is not what it is touted to be.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Mrs. LINCOLN). The Senator from Missouri.

Mr. BOND. Madam President, I yield myself such time as I may require.

I certainly accept the manager's invitation to unwrap this package. I only wish we could do this on the southern border of Iowa and the northern border of Missouri, out where farmers live, away from the rarified atmosphere of this Chamber, and ask the farmers of Iowa and Missouri, the farmers of any other State, is this really a two-edged sword? Are you as a farmer really worried that the Fish and Wildlife Service is going to put out a regulation that would help farmers and the Secretary of Agriculture would oppose it and try to overturn it and get the President to overturn it?

That one won't meet the laugh test. That dog won't hunt in farm country. People know what is going on out there. It is not a danger to farmers that we have too much regulation. Actually, when regulations are overturned, it is usually when a regulation affects a large metropolitan area—building a bridge, something like that. Maybe if there are a lot of people around who are affected, then they can get some relief. When it is just a few farmers, when they need some irrigation water, then other things come to the fore.

Ask the farmers on the Klamath River about the sucker fish. Ask the

farmers in Texas about the Arkansas shiner. Who is being protected there? The Fish and Wildlife Service has the power, overwhelming power, to jump in and protect endangered species. Some people think it is time somebody had the power to jump in and protect endangered farmers. That is the difference.

It is time we turn around the balance of the Federal regulatory juggernaut that has been running over farmers in the name of all kinds of other interests and give the farmers some protection, give the farmers a chance to be heard.

The President has to weigh these issues carefully and find out if they protect public health or safety or the national interest before he turns it around. The Senator from Vermont said the Secretary could overturn it. That is not what this bill proposes. Only the President can issue such an order, only under the most unusual circumstances. And my friend from Iowa is not correct; the Congress does have power. The Congress does have power to overturn that action.

I can tell my colleagues with that threatened action facing a President, a President is not going to do this lightly. That is why we say it ought to be elevated to the highest level because it would only be used in the most serious of circumstances.

My friend from Iowa says there are all kinds of protections. The Administrative Procedure Act is a great protection for farmers. That is laugh line No. 2. You go to the elevators or the livestock market around my State or your State or anybody else's State and ask: How much protection are you getting from the Administrative Procedure Act? If you are lucky, they will give you a smile. They know that doesn't work for the individual farmers. If there are all these protections working for farmers, how come the farmers are not being protected?

Just ask. I urge my colleagues, if you are undecided, get on the phone and call a couple of farmers back in your home State and see how safe they feel with all these protections that my friend from Iowa says are on the books. They are not there, Madam President. They are not there.

When you unwrap it, you see that this is a very important measure to move the Secretary of Agriculture into an active advocacy role which, frankly, USDA has not provided. They may have the power, but they haven't used it. This tells the Secretary she must use that power. And I believe she will. It gives the President power in unusual circumstances—the highest level of circumstances—to make an order which has to be in the public interest and which is immediately reviewable by Congress. I think that is a protection we need.

Again, I urge the support for this amendment.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I yield myself such time as I may consume.

This is a good debate. I enjoy my friend from Missouri, south of the Iowa border. I would be glad to meet on the dividing line with Missouri and Iowa and have a debate. We will invite the farmers in and talk to them about this because this is a double-edged sword. What happens if this power goes to the Secretary of Agriculture? This is a dangerous road—say this is extended to all agencies. Then the Secretary of the Interior gets the same power. Let's say USDA makes some decision that we think is beneficial for farmers and helps farmers, and then the Secretary of the Interior says that decision affects fish and wildlife. The Secretary of Interior can just go to the President and reverse that decision. That would not be good for the farmers. He overturns it, amends it, or precludes it—those three words that the Senator has in his bill. That is the double-edged sword. We just can't chance that.

The best protection our farmers have out there right now is those of us sitting on this floor today, including my friend from Missouri and the occupant of the chair. I don't care if they are Democrats or Republicans. The best protection for our farmers and our people in rural America is the Congress of the United States, the House and Senate, Republicans and Democrats alike—not the administration. The administrations—I don't care who they are, Republican or Democrat, at the White House—and I have seen it in my 27 years here—give scant attention to rural America.

I know this amendment by my friend from Missouri is well intentioned. I know what he is trying to do. But I have to tell you, the other edge of that sword can be mightier than the edge of the sword he is trying to give to the Secretary of Agriculture. Just look at the history of past administrations and then ask: How often do they come down on the side of farmers? How often do they come down on the side of other interests? That ought to tell the tale right there.

No, this is not in the best interest of farmers. The best interest of farmers is to keep the power here in Congress and in committees, where we can fight for our rural people and our farmers and not give that power to the President of the United States.

Mr. BOND. Will my friend yield?

Mr. HARKIN. I am glad to yield.

Mr. BOND. I ask my colleague this: He said maybe the Secretary of the Interior would want to come in. Does my friend know that, under the Endangered Species Act, the Fish and Wildlife Service doesn't even have to go to the President? The Fish and Wildlife Service can shut down an agricultural operation, a road-building operation. The Fish and Wildlife Service has already, in the current law, the power we would seek to give the President, only there is no congressional review.

So would the Senator explain to us the difference between the power of the Fish and Wildlife Service and what we hope to give the President on a congressionally reviewable basis.

Mr. HARKIN. I say to my friend that the Fish and Wildlife Service has to abide by the Administrative Procedure Act and the laws passed by Congress. The Congress has every power to review and to keep the Fish and Wildlife Service—as the Senator knows, because we have done it—from doing what they want to do. We have that power. I don't see that in the amendment here. We have the power now. I don't see it in this amendment.

Mr. BOND. Madam President, this doesn't change in any way the powers of Congress. As a matter of fact, it gives Congress a new power for expedited congressional review.

Mr. HARKIN. I say to my friend, I don't see that. The President can do all this and notify Congress. We don't have any power to do anything, according to this.

Mr. BOND. I ask my colleague to read the provisions in the amendment that describe the congressional notification and congressional review, beginning on line 19 of page 4, "Reversal preclusion, or amendment of any agency action . . . shall be subject to section 802 of title 5, United States Code."

We did not spell it out there, but that is the expedited congressional review procedure. Again, I apologize for the way this is drafted. Legislative counsel has said to get to expedited congressional review on page 4, lines 19 through 22, do that job.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time will be charged to each side equally.

Mr. BOND. Madam President, I yield 5 minutes to Senator Thomas.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Madam President, I have been listening to the conversation and debate here. Although I am, frankly, not as familiar with the details of it as I might be, I am sympathetic to what the Senator from Missouri is seeking to do. I deal, of course, as most of us do, with agriculture at all time in my State, where agriculture, public lands, and grazing are very much an integral part of our economy and indeed our society.

So regulations have a great deal to do with the opportunities we have, for instance, for multiple use of public lands. They have had a great deal of impact on what we have done with clean water and nonpoint source water propositions, and so on. Regulations are put out there, quite often, without a real evaluation of what impact they have. We have been dealing with one for a long time on the endangered species. I think this species was nominated, but if someone looked at it before it was implemented, I think the conclusion was that this was not a legitimate listing.

But work as we try, we can't seem to do much about that. So it does seem to me that the congressional oversight is certainly there, but we don't get into the details of every application of every regulation. That is not the role of Congress but, rather, to deal more broadly with the authorities.

I think it is so interesting sometimes to see how different people in different agencies, under the same statutes, can come up with quite different ideas. So it seems to me it would make sense to have some kind of oversight on agriculture and take a look at what is done and promoted by some of these other agencies. The lack of having that opportunity generally causes us to end up in a myriad of lawsuits. And we are more governed by lawsuits or the threat of lawsuits than we are by analysis of the impacts.

The proposal by the Senator from Missouri has a great deal of value. I suggest my colleagues favorably support his amendment.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not control time. Who yields time?

Mr. BOND. I ask the time be charged equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Madam President, I was sitting here thinking about this amendment my friend from Missouri has offered. I thought of another instance of how it might affect farmers. I forgot about the Secretary of Transportation. There are safety rules that the Department of Transportation promulgates for farm equipment on highways. There are weight limits, headlights, taillights, and other safety regulations that the Department of Transportation has mandated for farm equipment on highways.

Some may argue that those requirements are burdensome. I sympathize with you, but you understand it is for the public good that the Department of Transportation says you have to have certain restrictions, certain lights, certain warning signs on farm equipment on highways.

Taking this example of what the Senator has said, if we give this power to the Secretary of Agriculture, the Secretary of Agriculture will say: That is burdensome, that is an economic hardship on our farmers that they have may have to change some practices; therefore, the President can reverse it.

The Secretary would find it would have a significant adverse economic impact.

Mr. BOND. May I inquire—

Mr. HARKIN. I yield to my friend.

Mr. BOND. I ask my good friend from Iowa if he has read on page 4, line 13:

Limitation.—The President shall not reverse, preclude, or amend an agency action that is necessary to protect—

- (A) human health;
- (B) safety; or
- (C) national security.

The manager has raised an excellent question. I believe we have totally addressed it in this bill.

Further, the President, before he takes action, must find that it is in the public interest. I believe the protection is built in.

Mr. HARKIN. I appreciate what my friend has said. To a certain degree, again, like the rest of this, when one reads it, it sounds OK, but that is pretty vague—human health or safety or national security. It is vague. Who decides what that is?

Now I think we get to the nub of what is wrong with this amendment. Under the Administrative Procedure Act, any agency, if the agency is promulgating a rule, has to allow time and opportunity for public comment on the proposed rule. Under the Administrative Procedure Act, the public must be involved, the public must be heard on the record, and the agencies have to take the public's input into account when they are promulgating the rule.

The amendment of the Senator from Missouri does not allow for that. This says the Secretary makes these decisions, there is no public comment, and then it goes to the President. Did I miss a part of it?

Mr. BOND. Madam President, may I call the attention of my friend and colleague to the top of page 4 which says that before the President takes any action in conducting a review, "the President shall consider (A) the determination of the Secretary under subsection (c)(1)—this is on page 4—"(B) the public record."

The public record is there. The President has to consider the public record that was developed by the agency in the process of issuing the regulation. The public record must have in it all the information, and the President can only act after consideration of that public record.

Mr. HARKIN. My friend said the President ought to consider the public record, but there will be no public record of what the Secretary of Agriculture and President do under this amendment. There is nothing in here that I can find that requires the Secretary, in reviewing an agency action and determining whether to send it to the President, to do all of this in a manner consistent with the requirements of the Administrative Procedure Act. In other words, nothing in this amendment requires that these activities by the Secretary must become part of the public record, with hearings and an opportunity for members of the public to participate. Usually, with any agency action, there is a 60- or 90-day period for the public to be heard on matters before a final decision is made,

and those public comments go on the public record. That is not included in the amendment. Did I miss it?

Mr. BOND. Madam President, if I may inquire, my colleague is certainly well versed in the Administrative Procedure Act. Prior to the adoption of a regulation by some other agency that would be under review, the Administrative Procedure Act has to be followed; is that correct?

Mr. HARKIN. That is true.

Mr. BOND. The agency has to establish a public record under the APA before a regulation is issued; is that correct?

Mr. HARKIN. The Senator is right.

Mr. BOND. The President, under this law, can only act after an agency action has become final and the President is directed to take into account the public record because the agency action could not be taken under the APA without a public record. That is why we specify it must take into account the public record, the one that was developed in the issuance of the regulation which is subject to the President's discretionary review.

Mr. HARKIN. True. But, the President can still act to change a decision of the agency even if doing so goes against the underlying law that Congress passed, and the President can do this without consulting Congress. And the President will have taken this action after the agency has promulgated a rule and gone through the notice and public comment requirements of the Administrative Procedure Act.

Years later, the Secretary of Agriculture can say: That action that was taken by that agency 5 years ago is an economic hardship, it has an adverse economic impact on farmers; therefore, I am going to recommend to the President that he reverse it and do away with it.

Five years have gone by and now this action taken by the Secretary is every bit as important and vital in overturning the regulation as it was in promulgating it. Yet in overturning it under this amendment, there is no need for any public record, no need for any public hearing.

I yield to my colleague.

Mr. BOND. I understand my colleague's concern about action taken 5 years later. Will my friend look at page 3 and read lines 8 through 10?

Does that language not say:

If, after a proposed agency action is finalized, the Secretary determines that the agency action would be likely to have a significant adverse economic impact on or jeopardize the safety of agricultural producers, the President may, not later than 60 days after the date on which the agency action is finalized, review the determination of the Secretary; reverse, preclude.

I believe the language is specific, and I appreciate my colleague directing his attention to that.

Mr. HARKIN. I will consult on that because I was told the way it was written it may not, but I will check on it and see whether or not he can do it after 60 days.

Mr. BOND. Is the language not clear?

Mr. HARKIN. I do not know. We are going to find out.

Mr. BOND. Not later than 60 days.

Mr. HARKIN. We will find out whether or not the determination by the Secretary has to take place within that 60 days. I am not certain that it does.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will be charged to each side equally.

Mr. HARKIN. Madam President, the Senator from Missouri is right, and I misspoke. He is absolutely right that it is 60 days. So it cannot be 5 years. He does have to do it in 60 days. But my point is still valid that there is a hearing record for an agency decision, but then this sets up a whole new layer of bureaucracy and layer of decision-making, and there does not have to be a hearing on the President's reversal, preclusion or amendment of the agency action under this amendment.

So, therefore, the President can wipe out whatever was done, and they do not have to have a hearing based upon what he wants to do. But the Senator from Missouri is right, it has to be done within 60 days. Five years, no. I misspoke. I was wrong on that, and I am glad to correct myself on that.

Lastly, I would like to know if the Senator from Missouri could enlighten us as to the definition of agricultural producer.

For the Record, if we could, exactly what is an agricultural producer?

I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

If neither side yields time, time will be charged to each side equally.

The Senator from Iowa.

Mr. HARKIN. Madam President, I ask again my friend from Missouri, what is the definition of an agricultural producer? What is an agricultural producer? I wish the Senator from Missouri could enlighten us as to what an agricultural producer is.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. The definition of agricultural producer on page 2 is the owner or operator of a small or medium-sized farm or ranch.

Mr. HARKIN. What is medium-sized? Does the Senator have a definition for what a medium-sized farm might be, or ranch?

Mr. BOND. That would be up to the Secretary of Agriculture or the President to decide. It is not large. There are large corporate farms in the State of the Senator from Iowa, my State, and the State of the Chair.

I think the Supreme Court said it well in describing obscenity: You know one when you see one, and it is not going to be a specific farmer or rancher who comes in. This is going to have to be a judgment made by the Secretary of Agriculture who has to defend his or her judgment based on how generally it

affects small and medium-sized farms and ranches, not the large ranches, and I think that test is adequate. I do not think one needs to have the technical definition of so many acres or so many hundreds of thousand dollars.

Mr. HARKIN. Again, another vagueness in this bill. For example, an agricultural producer could be Scottie Pippen who owns a horse farm of maybe 120 acres or 100 acres and he is an agricultural producer. So, again, very vague.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time will be charged to each side equally.

Mr. HARKIN. Madam President, how much time is remaining?

The PRESIDING OFFICER. The Senator from Iowa has 9 minutes and the Senator from Missouri has 16½ minutes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCain. Madam President, I ask unanimous consent that I be allowed to speak for 1 minute as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. McCain are printed in today's RECORD under "Morning Business.")

Mr. McCain. Madam President, I thank my colleagues for their indulgence.

Mr. HARKIN. I yield 5 minutes to the Senator from Nevada.

Mr. Reid. Madam President, this amendment is too broad, too general. It violates the canon of law that exists in this country. From a constitutional perspective, it grants the President authority to overturn action by any Federal action that the Secretary of Agriculture determines may harm producers. It allows the President to ignore any law passed by Congress. This is a significant transfer of power to the President.

As I discussed yesterday, the Endangered Species Act is in existence; we have acknowledged for many years there should be action taken to change it. There was a bipartisan effort a few years ago by Senators Chafee, Baucus, Kempthorne, and Reid to change this. We entered into an agreement in the Environment and Public Works Committee to introduce legislation that we would not accept any amendments on the floor; we would vote against any of them. It was a tremendous revision of the Endangered Species Act. We had widespread support of a significant number of people in the environmental community and many people in the development community. It had the support of mayors and Governors. However, it was not brought to the floor because people were certain they could do better. Of course, the perfect got in the way of the good and nothing has happened since then.

In spite of that, the Endangered Species Act has done a great deal to sal-

vage species and prevent the wiping out of species. Threatened and endangered species are now protected.

This amendment is certainly an assault on the environmental laws of the country. It allows the President to waive the Endangered Species Act, the Clean Air Act, and the Clean Water Act in one fell swoop. It would not be one of them; he could, in fact, waive any of the three. It would set the country back at least 30 years in environmental protection.

This amendment goes far beyond environmental laws. The definition of this legislation being proposed is so vague that virtually any action can be overturned by the President, including an effort to improve the U.S. Department of Agriculture civil rights procedures, and the President can overturn laws protecting farm workers, actions to implement free trade agreements.

This is an amendment that is too broad and too general and tries to accomplish things that are so harmful from a constitutional perspective and from an environmental perspective. There should be other action taken.

I hope the activities now by staff of the Environment and Public Works Committee and others will come up with an amendment to this second-degree amendment that will more directly affect the problems that are trying to be addressed in this amendment. I hope this amendment will not become part of this bill. It would be a blow to this fine piece of legislation.

This amendment would elevate the Secretary of Agriculture and the authorities of that agency over every other Federal agency and every other law passed by Congress. That is pretty broad. It allows the Secretary to stop any agency action to protect the environment, to protect food safety, to protect workplace safety if the Secretary decides action would have a negative impact on farmers. If another agency moves forward with the action to protect the environment, to protect workers or our food supply, the Secretary of Agriculture simply will ask the President to override these procedures and it will be complete.

This is not fair. It is wrong. I hope we can come up with something that better addresses what I think the Senator is trying to do. I hope he is not trying in one fell swoop to take out of existence the Endangered Species Act, the Clean Water Act, and the Clean Air Act.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I yield myself such time as I may require.

I welcome the distinguished majority assistant leader. He came in after we had the discussions. We have clarified the issue of whether any safety regulations can be waived. Explicitly, this law says he may not waive where safety regulations are imposed. It also includes human health or national security.

Now, the distinguished majority whip has pointed out this somehow overrides



the power of agencies. We don't elect agencies, we elect a President and we elect a Congress. The power exercised in the agencies is delegated by the President to the agencies. This is Presidential power. We are seeking in this law simply to say when one of these agents of the President does something that is really stupid, that is really bad, that hurts farmers, the Secretary of Agriculture can say: Mr. President, you must look at this action. And he only has 60 day to do it. There are limitations. He cannot overturn where human health, safety, or the national security interests are involved. Then he can go back and tell the person to whom he delegated the power to make the regulation, to carry out the law in the first place: You have to do it differently.

Not only is he limited, but this law says Congress can use expedited congressional review to overturn his decision. This is strictly limited. The President does not even have the power in this provision that the Director of Fish and Wildlife has to stop things that farmers want to do or that transportation officials want to do.

Incidentally, we checked with the U.S. Department of Agriculture. There is no advocacy counsel in Agriculture as there is in SBA, for small businesses. So this is giving the Secretary of Agriculture the responsibility we think should have been there in the first place, narrowly circumscribing the powers the President has to overturn it.

As my good friend from Nevada is leaving, I might say if he wishes to offer a second-degree amendment, obviously we would vote on that. But we intend to keep coming back to get a vote on this one as well. I will be happy to work with him. If he has other ideas he wants to put up as a second-degree amendment, that is fine. But we will do our best to make sure we have an up-or-down vote on this amendment.

With that, I urge my colleagues to support this amendment. I reserve the remainder of my time.

Mr. ENZI. Madam President, I rise in support of the amendment offered by the Senator from Missouri. This amendment gives the Secretary of Agriculture the authority to review any proposed Federal agency action to determine whether the action is likely to have a "significant adverse economic impact on or [could] jeopardize the personal safety of agricultural producers."

Federal actions and regulations seriously impact the way the Wyoming agricultural producers operate. The regulations are proffered by agencies that do not often consider how their actions could harm small and medium sized agricultural operations. These are the operations that are facing the most risk in the marketplace. These are the operations that need more protection. This amendment is important because it forces accountability before the fact. The Secretary of Agriculture would have the option of consulting with the

head of the agency proposing an action and could offer advice on how to make the action less onerous to producers.

Agencies realize that their actions will be scrutinized for their impact on agriculture. Actions that could have a significant adverse economic impact on or jeopardize the personal safety of agricultural producers could be overturned or amended by the President. This amendment does not place the needs of agriculture above human health, safety or national security. It merely gives agricultural producers an advocate to represent their interests. I ask that my colleagues support this most important advocacy for agricultural producers and support this amendment.

Mr. HAGEL. Madam President, I rise as a cosponsor of the Bond amendment.

This amendment would allow the Secretary of Agriculture to review the proposed actions of other Federal agencies to determine if those actions are likely to adversely impact agriculture producers. Should the Secretary find that such an action would jeopardize a producer's safety or economic well-being, the Secretary could work with other agencies to identify the alternatives least likely to cause harm.

This authority is long overdue.

For the first time, the government would be forced to determine in advance how its actions might impact America's farmers and ranchers. That is only fair. And no one within the government is better qualified to make that determination than the Secretary of Agriculture.

For too long, Federal regulators have made farmers and livestock producers bear the burden and cost of government decisions. The result has been that real people suffer. That is unfair. That is wrong.

This amendment will put some justice back into the system by reining in regulatory agencies, and giving agriculture a voice in the regulatory process.

In my State of Nebraska, we have seen the disastrous impact that Federal regulations have had on our farmers and livestock producers.

This amendment pursues some of the goals of legislation that I introduced earlier this year. My bill, the "Private Property Rights Act", would require the Federal Government to conduct an economic impact analysis before taking any action that would inhibit or restrict the use of private property.

The amendment before us today is more narrow in scope. But it will make government agencies think through the consequences before they act on rules that hinder those who work America's fields, feedlots and pastures.

It will put some balance back into the system by reining in over-reaching regulatory agencies. And most importantly, it will give agriculture producers a seat at the table when it comes to make and reviewing new regulations.

I appreciate the work done by the senior Senator from Missouri on this

issue, and support his efforts to bring some common sense and reality to the system. I urge my colleagues to support the Bond amendment.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time will be charged equally.

Mr. REID. Madam President, I conferred with Senator BOND who offered this amendment and he indicated he wants a vote on his amendment. We have indicated we have something that would be a side-by-side vote on this matter. We are going to work on that.

In the meantime, we are going to a quorum call or do some other business that will not affect the Senator's amendment. In the near future, we will try to come up to something that allows maybe a side-by-side vote or something such as that. If we can figure out some way to second-degree his amendment, we will do that, or whatever.

Mr. BOND. My friend from Nevada makes a very reasonable request. I will be happy to have side-by-side votes. I have no objection to setting this aside.

I need to check with the ranking member. But personally I have no objection so long as we can have side-by-side votes. I will defer to the ranking member.

Mr. REID. Madam President, I want to make sure my friend understood everything I said. Side-by-side would be the preferable way. We may have to do a second-degree amendment. But whatever it is, we will give the Senator plenty of notice.

Mr. BOND. Madam President, we intend to get a vote on this one way or the other. We would like to do it. I think we can save everybody a lot of trouble if the majority side has an amendment on which they wish to vote. They can get that up first. I would have no objection to doing that if they will then give us an up-or-down vote on my amendment.

Mr. REID. Whatever happens, you won't be in any worse position than you are right now. We are not preventing you from going forward. Our only other alternative would be to go into a quorum if anything happened. Neither of us thinks that would accomplish anything. We will make sure you have the opportunity to be in no worse position than you would be 5 minutes from now when the time expires on your amendment.

Mr. BOND. Being in no worse position than I am now makes me think of the eighth place Cardinal hitter who was facing Kurt Schilling. It is not a very attractive spot. But we will take our swings in any event.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BAYH). The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.



Mr. HARKIN. Mr. President, has all time expired?

The PRESIDING OFFICER. The Senator from Missouri still controls 3 minutes.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I yield whatever time I have remaining, if I have any remaining.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. When all time has expired on this amendment, I ask unanimous consent to lay the amendment aside for the purpose of taking up the amendment offered by the Senator from Wisconsin, Mr. FEINGOLD.

On the disposition of this amendment, we will set it aside for another amendment.

But this amendment will be the pending amendment.

Mr. BOND. Mr. President, I have no objection to that. We have held discussions. I believe the majority side will propound a second-degree amendment. I have personally no objection to that. But there will be a vote up or down on the amendment I have provided. Perhaps at that time, if less than 60 days have elapsed, we will ask for 2 minutes on each side so the distinguished manager from Iowa may reiterate his objection.

I thank the Chair.

Mr. HARKIN. I thank the Senator.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

AMENDMENT NO. 2522 TO AMENDMENT NO. 2471

Mr. FEINGOLD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD], for himself, Mr. GRASSLEY, and Mr. HARKIN, proposes an amendment numbered 2522 to amendment No. 2471.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To reform certain mandatory arbitration clauses)

Strike the period at the end of section 1021 and insert a period and the following:

**SEC. 10 . ARBITRATION CLAUSES.**

Title IV of the Packers and Stockyards Act, 1921, is amended by inserting after section 413 (7 U.S.C. 228b-4) the following:

**"SEC. 413A. ARBITRATION CLAUSES.**

"Notwithstanding any other provision of law, in the case of a contract for the sale or production of livestock or poultry under this Act that is entered into or renewed after the

date of enactment of this section and that includes a provision that requires arbitration of a dispute arising from the contract, a person that seeks to resolve a dispute under the contract may, notwithstanding the terms of the contract, elect—

"(1) to arbitrate the dispute in accordance with the contract; or

"(2) to resolve the dispute in accordance with any other lawful method of dispute resolution, including mediation and civil action."

Mr. FEINGOLD. Mr. President, I rise today to submit an amendment that will give farmers some options in identifying the forum to resolve disputes with agribusinesses. I, along with a number of other Members of this body, am deeply concerned that the concentration of power in the hands of a few large agribusiness firms—firms that can raise \$1 billion on Wall Street at the drop of a hat—is forcing farmers and ranchers to be placed at a competitive disadvantage in the marketplace. These large corporations are using their market power to force independent producers into what is really a position of weakness through unfair concentration and other uses of market leverage.

In some cases, the domestic marketplace has become almost noncompetitive for family farmers. Farmers have few buyers and suppliers than ever before.

One indication of their dominance is the one-sided contracts that favor agribusinesses at the expense of farmers and ranchers. It is of paramount importance that we help restore competition in rural America.

I was very disappointed when I learned that the Agriculture Committee did not approve Senator HARKIN's proposal to add a competition title to this bill.

I commend the work of the chairman, Chairman HARKIN, of the Agriculture Committee for his leadership on this issue.

When I testified at a hearing on the packers, stockyards, and processors last year, I thought a number of important reforms outlined should have been addressed in the farm bill.

Senator HARKIN's competition title would have done a lot. It would have provided a measure of fairness and transparency and equity in America's agricultural markets. I believe this proposal would have taken a huge step toward ensuring the future prosperity of our farmers and ranchers.

One important aspect of the competition title would have provided farmers with options to resolve disputes with agribusinesses by providing farmers with a choice as to the forum for resolving disputes with agribusinesses.

I want to be clear about this. I think that alternative methods of dispute resolution such as arbitration can and often do serve a useful purpose in resolving disputes between parties.

I am extremely concerned about the increasing trend of stronger parties to a contract forcing weaker parties to waive their rights in advance and agree

to arbitrate any future disputes that may arise.

It has recently come to my attention that large agribusiness companies often present producers with what is basically take-it-or-leave-it contracts which increasingly include mandatory and binding arbitration clauses as a condition of initially entering into the contract. This practice forces farmers to submit their disputes with packers and processors to arbitration.

As a result, farmers are required to waive access completely to judicial or administrative forums, substantive contract rights, and to statutorily provided protection.

In short, this practice works and deprives dealers of their fundamental due process rights and runs directly counter to basic principles of fairness.

Arbitration is also billed as an inexpensive alternative to civil action, but this is often not actually the case. Filing fees and other expenses often can result in much higher fees than actually being in a civil action. Attorney's fees, whether hourly or contingency, can be similar regardless of the forum.

For example, in a recent Mississippi case filing, fees for a poultry grower to begin an arbitration proceeding were \$11,000. This is far more than the \$150 or \$250 cost of filing a civil suit.

It makes no sense for a farmer to seek payment for wrongdoing when he or she has lost \$1,000 when it costs \$11,000 up front just to get the case into an arbitration proceeding.

The result of those mandatory arbitration clauses is that farmers often have no forum in which to bring their dispute against the company. Arbitration clauses often require farmers to waive their right to a jury trial. Since the arbitration itself is extremely costly, the farmer, who likely has a substantial debt due to low prices and a large mortgage on his farm, is basically left unable to access this costly arbitration process.

Since the litigation option is taken away by contract, and the arbitration forum can be taken away by its high cost, the grower has no forum in which to bring his dispute against the company.

If a poultry farmer suffers losses as a result of mis-weighted animals, the farmer should have the right to hold the company accountable. If farmers are hurt because they received bad feed, we must ensure that farmers have options to choose the forum through which they can resolve their concerns about this product they received.

If a farmer believes he or she has been provided a diseased animal from an agribusiness, the farmer should have at least a forum to address his or her concerns.

In short, we must give farmers a fair choice that both parties to an agricultural contract may willingly and knowingly select. This amendment, again, does not prohibit arbitration. It would ensure simply that the decision to arbitrate is truly voluntary and that

the rights and remedies provided by our judicial system are not waived under coercion.

Let me add that I believe two of the lead cosponsors of this amendment are the chairman of the committee, Senator HARKIN, and the distinguished senior Senator from Iowa, Mr. GRASSLEY. I am also pleased to inform the Chair and my colleagues that both the Farm Bureau and the Farmers Union support that. I am sure the Senator from Indiana knows that does not always happen. It is a good sign we are on the right track for America's farmers with this amendment.

I urge my colleagues to support this amendment and give farmers options to resolve disputes in the agricultural marketplace.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I am wondering if I could ask for the yeas and nays on my amendment, and I ask unanimous consent that the vote on it follow the vote on the Bond amendment.

The PRESIDING OFFICER. If the Senator will withhold, the Senator from South Dakota has the floor.

Mr. JOHNSON. Mr. President, I was unaware that the Senator from Wisconsin still had steps he needed to take relative to his amendment.

I withhold, at this point, my amendment and will allow the Senator from Wisconsin to proceed with his unanimous consent.

I ask unanimous consent that I then be in a position to offer my amendment upon the conclusion of the amendment by the Senator from Wisconsin.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there objection?

The Chair hears none, and it is so ordered.

Mr. FEINGOLD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I will take about 10 seconds.

Mr. President, I ask unanimous consent that after the Johnson amendment I be allowed to offer an amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, might I say to the two managers of the bill, I think we are now in a position to go to the original proposal to

move to table the Bond amendment. So we would like to do that now.

Mr. LUGAR. Reserving the right to object, and I will not object, my objection immediately to the Senator from Minnesota was that perhaps, as opposed to having a stacking of amendments, all on the Democratic side—and admittedly yesterday we debated Republican amendments all day—is that there are a number of Republican amendments. Could we get perhaps some alternation?

Mr. REID. If the Senator will yield, our amendments are very quick. Yours are very long. We can complete a number of ours very quickly. During the time of the vote, we will talk about that.

Mr. LUGAR. Very well. We would like to hear the Senator from Minnesota speaking on his amendment, of course, but I, on behalf of our side, thought I ought to interject this comment at this point.

Mr. REID. We will be happy to work with the manager of the bill.

Mr. LUGAR. My reservation is managed and I will support the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. What is the matter now before the Senate?

The PRESIDING OFFICER. The amendment from the Senator from Wisconsin is pending.

Mr. REID. As soon as the debate is complete on that amendment, would we return to the Bond amendment?

The PRESIDING OFFICER. We would go to the Senator from South Dakota for an amendment under the previous order.

Mr. REID. Is there a unanimous consent agreement to that effect?

The PRESIDING OFFICER. Yes, there is.

Mr. REID. I say, we would ask, then, that that be changed because there are Senators waiting around. We believe we should get to the vote on the underlying amendment. We were back watching Osama bin Laden's tape and were not in the Chamber, as we probably should have been. So I ask unanimous consent—if those in the Chamber will allow us—to proceed to a vote on a motion to table the Bond amendment as soon as the debate is completed on the Feingold amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LUGAR. Mr. President, could I raise the question: Would, then, the leader anticipate a vote on or in relation to the Feingold amendment following the rollcall vote on the Bond amendment, if it reached a conclusion at that point?

Mr. REID. That is true.

Mr. HARKIN. Yes.

Mr. LUGAR. I thank the Senators.

Mr. JOHNSON. If I may inquire, previously it was agreed to that the Johnson amendment would follow the Feingold amendment. Is that still the case?

I assure my colleague from Indiana this is not a lengthy amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. My understanding is, following the conclusion of the Feingold debate, there will be a vote on the Bond amendment, followed by a vote on the Feingold amendment, and then the Senator from South Dakota, Mr. JOHNSON, would be recognized to offer an amendment at that time.

Mr. GRASSLEY. Am I going to have an opportunity to speak on the Feingold amendment?

Mr. HARKIN. Yes.

The PRESIDING OFFICER. The understanding of the Senator from Indiana is correct, with the qualification that the votes will be with respect to the Bond amendment, not necessarily on the Bond amendment.

Mr. LUGAR. My understanding is there is still time to debate the Feingold amendment. The distinguished Senator from Iowa, Mr. GRASSLEY, wants to be heard on that amendment.

Mr. REID. When we go to the Bond amendment, which we are going to do, it is going to be a vote on that first. If the motion to table, of course, is not successful, then the Bond amendment is there naturally. All right. Everyone agrees to that. That is the parliamentary place we would be. And then we could not dispose of Feingold until we dispose of Bond.

Mr. LUGAR. May I ask a question of the distinguished Senator?

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. We would continue with debate on the Feingold amendment at this point, as I understand it, so the distinguished Senator from Wisconsin can be heard but, likewise, the Senator from Iowa could be heard, and others who may wish to debate that amendment.

Mr. REID. With respect to Feingold, that is true. And it is my understanding that debate is not going to take a long period of time. That is my understanding.

Mr. FEINGOLD. That is correct.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I am delighted the Senator from Iowa, Mr. GRASSLEY, is in the Chamber and is supportive of our amendment. I hope he will offer his remarks in support of our amendment at this point.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, our Nation's farmers and independent livestock producers are becoming increasingly subjected to vertical integration in their industry. I recall years past when family farmers had complete control over their livestock, from farrowing until marketing. Today, however, more than 80 percent of the hogs are either marketed under contract or are owned by the packer.

In my home State of Iowa, vertical integration has led to a situation in

which many farmers can't even get a bid on their livestock from packers. Instead, they are simply forced to accept a slot when they can deliver their livestock to packers at the packer's price. That kind of makes them a residual supplier of livestock, kind of puts them in the position of being last in line. It also puts them in a position economically, I believe, of getting a lower price.

When I was farming and raising pigs, it was as simple as calling up maybe an hour before you wanted to deliver your pigs, calling up the packing company in Waterloo, IA, and asking: What are you paying today for hogs? You might dicker a little bit, but you eventually reached agreement. When you wanted to sell a lot, you said: Well, I want to sell some. So you loaded up, backed up the pickup to the hog house, loaded a few pigs, and drove 15, 20 miles to deliver them. It was that simple. Today it is even worse for cattle in the sense that you might be able to have a half hour within a whole week of time to be able to sell something.

We have a terrible situation where the family farmer is kind of stuck in the sense of being a residual supplier. You can say that farmer has the option of contracting those sorts of things of which he can take advantage. There are some people who ought to have the same opportunity to get the same price other people get. We are in a position now where things are somewhat different.

Mr. JOHNSON. Will the Senator yield?

Mr. GRASSLEY. Of course, I will yield.

Mr. JOHNSON. The parliamentary circumstance under which we were taking up these amendments was a bit convoluted up until the moment the distinguished Senator from Iowa came onto the floor. I would observe that the amendment pending is the Feingold amendment.

Mr. GRASSLEY. That is the one I am speaking about, the Feingold amendment.

Mr. JOHNSON. The nature and the thrust of the comments, I thought, related to packer ownership of livestock.

Mr. GRASSLEY. It is applicable to your amendment. I will speak also to your amendment at another time.

Mr. JOHNSON. Very good. I look forward to the observations of my friend and colleague from Iowa.

Mr. GRASSLEY. Maybe my own personal experiences in the way of family farming compound this problem. I will just get to the issue and leave the personal experiences I have had out of this issue.

In the year 2001, there are farmers who are in the same situation of wanting to market the same way I did the years I had livestock, from 1959 to 1974, and again from 1984 to about 1987, even since I have been in the Senate. We have a situation where you can't deliver whenever you want to deliver. You become a residual supplier.

This is a problem Senator FEINGOLD is trying to correct. I hope I can help him. Many packers have arbitration clauses in their contracts with farmers. Arbitration clauses significantly reduce the small family farmer's ability to get a fair shot when a dispute with packers arises, such as misweighing of animals, bad feed cases, or wrongful termination of contracts.

When a dispute between a packer and a family farmer arises and the contract between the two includes an arbitration clause, the family farmer has no alternative but to accept arbitration to resolve the dispute.

I certainly recognize that arbitration has its benefits. I have promoted that as an alternative dispute resolution as a member of the Senate Judiciary Committee, and we have laws as a result of that. In certain cases, regardless of the advantage of arbitration, it can be less costly than other dispute settlement means. In certain other cases, it can remove some of the workload from our Nation's overburdened court system. For these reasons, arbitration must be an option, but it should be no more than an option.

In some cases, however, mandatory arbitration clauses create another level of litigation. State courts provide the ability for a party to challenge an arbitration clause on the basis of fraud, misrepresentation, or lack of knowing and voluntary waiver.

Farmers often must file civil actions seeking to invalidate the arbitration clauses after a dispute arises when they realize they would be placed at extreme disadvantage in arbitration in a particular case and because the arbitration fees are too high. We can learn from the experience of the poultry industry. Today nearly 100 percent of the Nation's poultry is captive. In recent years, poultry producers have been especially affected by mandatory arbitration clauses.

When one chooses arbitration, he then waives rights to access to the courts and the constitutional right to a jury trial. Certain standardized court rules are also waived, such as the right to discovery. This is important because a farmer must prove his case, the company has the relative information, and the farmer cannot prevail unless we can compel disclosure of relevant information.

Moreover, longstanding law states that a waiver of rights by a party must be knowing and voluntary. A farmer cannot waive such rights in a knowing and voluntary way when he is only bargaining about a processor-drafted contract about price and volume terms. He cannot make a knowing and voluntary waiver in a vacuum when a dispute does not exist and has not been contemplated.

I am pleased to join Senator FEINGOLD in support of this amendment to prohibit mandatory arbitration clauses from being included in contracts between packers and livestock producers. Our amendment will amend the Pack-

ers and Stockyards Act to provide that mandatory arbitration clauses in contracts between packers and livestock producers are not enforceable unless parties agree to binding arbitration after the dispute arises.

Our amendment will give farmers the opportunity to choose the best form of dispute settlement mechanism. Instead of binding arbitration, mediation or civil action may give family farmers a fighting chance to succeed in a dispute with a packer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the amendment offered by the distinguished Senator from Wisconsin is a thoughtful amendment, trying to bring equity between farmers who may be fairly small, quite apart from those who have substantial herds, in dealing with packers.

It is a close call as to where the best interests of farmers may lie. Let me suggest that it occurs, at least to this Senator, that it is usually to the advantage of a farmer, particularly a small farmer, to have an arbitration clause that at least settles the framework in which some justice might occur.

I make this point because, unfortunately, litigation tends to be expensive. There are possibilities in a court of law for discovery, for the mandating of information the distinguished Senator from Iowa has mentioned, that would be very helpful perhaps and illuminate the total field, but likewise, it is mostly the case that the company involved, the packer or whoever is the corporate dispute in this situation, is likely to have more resources, just as sometimes occurs when the resources are vastly unequal. Nevertheless, it is not something, it seems to me, the Senate ought to weigh in on.

In essence, my understanding of the Feingold amendment is that it would prohibit the use of mandatory, binding arbitrary clauses in agricultural contracts. But to adopt the language of the distinguished Senator from Iowa, this ought to be the option of the farmer or the rancher as he enters the type of contract he or she may find most desirable. In other words, the individual and the smaller entity ought not to be precluded from a means—in the event of a dispute, or if there has been a history of dispute—that could be less expensive and perhaps, therefore, more certain of a day in court.

Therefore, I won't belabor the issue because the distinguished Senator from Wisconsin and the distinguished Senator from Iowa have described the fact that arbitration is a frequently used means of resolving these disputes and, in fact, the amendment would not arise if this were not the case, and the belief on the part of the two previous speakers is that arbitration should not be a possibility in the contract.

I will argue that it ought to be a possibility, ought to be an option for the

farmer or rancher, and therefore, respectfully, I oppose the Feingold amendment.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I appreciate the remarks of the Senator from Indiana. I have always admired his manner, and specifically his candor when he indicated this was a close call. I will respond quickly because the keyword we have been using is we want to provide farmers with options. The problem is, under the mandatory arbitration regime, this is basically all the farmers are offered. That is the deal. You either agree to the mandatory arbitration provision of the contract, or you are not going to be part of the system.

We are suggesting that banning the mandatory arbitration provision is a genuine option. The farmer can still agree, of course, to a valid arbitration system—that can be in the contract—and he can go to alternative dispute resolution. And many times, as you suggested, that might be preferable. But what we are trying to do is preserve the right to also have the option, if necessary, to go to the court proceeding or administrative proceeding.

I accept the premise, which is that the farmer needs options, but the reality is that under the mandatory arbitration system that has grown so tremendously and has become so much a part of contracts, they effectively don't get any choice.

That is the spirit of the amendment. Rather than interfering, I believe it returns to us where we were a few years ago, where farmers actually had choices in these matters.

I appreciate the comments of the Senator from Indiana, and I urge my colleagues to support the Feingold-Grassley amendment.

Mr. HARKIN. Mr. President, I join my colleagues. I am a cosponsor of this amendment. I join my colleagues from Wisconsin and Iowa in supporting this amendment. This was part of the competition title we had offered in committee, which was not accepted in committee in its totality. The only part that was accepted was the country of origin labeling. So this is a part of the competition title. There will be another amendment by Senator JOHNSON, also, that will fill in the picture on competition.

This is a good amendment. In a nutshell, I think the Senator from Indiana kind of put his finger on it. Right now, more and more contracts between growers and producers have an arbitration clause in them. The grower is basically forced to accept that. Well, we had a recent case—to show how onerous this is—in Mississippi where a poultry grower, in order to file for arbitration, had to plunk down \$11,000; that was his cost of the arbitration side. To take that case to civil court would cost him \$150 to \$250. If the amount in contest or in question is \$10,000, it makes no sense for the producer to pay \$11,000 to recover \$10,000, so you just lose it.

The amendment really gives the grower the absolute right to choose. He can go to arbitration or to civil court, notwithstanding what the contract may say, and it gives that grower the right to do that. In a way, it levels the field a little between the grower and the retailer, or the processor, for example.

With that, I urge adoption of the amendment. I hope all time has expired.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, it is my understanding that debate on the Feingold amendment has ceased.

Mr. LUGAR. Reserving the right to object, I would like to make one additional comment, if I may.

Mr. President, this may not be a definitive situation, but this Senator simply notes that all 50 States of the Union have adopted contract arbitration statutes that allow a provision to be placed in a written contract. I have no idea if the occupant of the chair would have a better idea from his experience as Governor of our State as to how legislatures have dealt with this problem. But it is interesting that all 50 have, and we are on the threshold of displacing whatever judgments might have occurred in those situations. I think this is something that many Senators do not approach without some thought as to why such contract clauses may have been made an option.

I appreciate the point of the distinguished Senator from Wisconsin that he believes, as a practical matter, farmers or ranchers dealing in these contracts have no choice; that in order to sign up at least in something that appears to be favorable, because they really would not move in that direction otherwise, they must, of necessity, accept an arbitration clause. Perhaps that is so but not necessarily.

It would be the experience of this Senator, in at least a modest management of the family farm that I often describe in these debates, that I have approached or been approached by those who have offered contractual arrangements for purchase of my corn, for example. Now, I was free to either accept or reject the contract, and in most cases I have rejected the contracts. In some cases, I have accepted. I was still a free person to do this. I am not certain I see the mandatory aspects of the company that was dealing with me as having some predatory function here or ability to coerce me into this arrangement.

I get back once again to my options. We are doing this from the standpoint of the individual farmer and rancher. I accept the fact that perhaps in some markets, in some counties, and in some States this degree of freedom of choice may not, as a practical effect, be the same as it is in our State of Indiana. I caution Senators, before moving too stoutly in this direction, to examine this and think about it.

It is for these reasons I will vote against the Feingold amendment, even

as I have admitted and acknowledged that it is a close call and that the arguments are reasonable on both sides.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I want our colleagues to know that what this amendment does is exactly the same as we are doing in the case of car dealerships. We have a bill, S. 1140, which has 47 cosponsors. I am not going to read the names of the cosponsors, but it is a very bipartisan group of people, Democrats and Republicans. I hope that staff listening to this debate or Members listening to this debate will look at S. 1140 and remind their Members, or the Members themselves will be reminded, that they are cosponsoring legislation that does away with arbitration in car dealership contracts with major manufacturers. If it is OK for nonagricultural businesses, it even has to be better for the family farmer that we don't have these sorts of requirements in these contracts. I ask my colleagues to take a look at S. 1140.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. I know we want to wrap it up. I want to make two quick points. I strongly agree with the comments of the Senator from Iowa. He and I worked closely together on this same problem in the area of car dealerships. An overwhelming number of this body sees this kind of relationship between the car dealer and the manufacturer as unfair.

Even more importantly, I wish to respond to the remarks of the Senator from Indiana. He raised a new argument which is 50 States have laws about these kinds of arbitration agreements. That is true, but we are not today invading this area. This area has already been preempted by the Federal Arbitration Act (FAA). It is already the case that the States cannot under Federal law prohibit these agreements or make the rules for these agreements. It is already up to us.

This amendment does not enter a new field. This is already a field that is clearly Federal in nature, and we are merely setting the rules, as we must, under Federal law. I do not want anyone to think we are suddenly invading a new area of State authority. I have strong feelings about avoiding that wherever possible.

This is already preempted by Federal law. We need to make a decision. I think the right decision is to give the individual farmers the option they need and not be forced into a mandatory arbitration.

I yield the floor.

Mr. LEVIN. Mr. President, I have been reluctant to put the Federal Government in the position of judging the appropriateness of a binding arbitration clause in a private contract. However, I will support the amendment because I believe that in the case, the relative ability of parties to negotiate contract provisions are particularly uneven. My vote should not be interpreted as an indication of my position

on future legislation that may be offered on the subject of the Federal Government overriding binding arbitration clauses.

I would like to ask the sponsor of the amendment, my colleague from Wisconsin, whether, under this amendment, either party to a contract that contains a binding arbitration clause can choose alternatively to go to court to resolve the dispute.

Mr. FEINGOLD. Yes. Under my amendment, either party would have that option.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, my understanding is all debate on the Feingold amendment has been completed; is that right?

The PRESIDING OFFICER. Is there further debate on the amendment? Hearing none, the Senator is correct.

#### AMENDMENT NO. 2513

Mr. REID. Mr. President, it is my understanding we are now on the Bond amendment; is that right?

The PRESIDING OFFICER. Under the order, we vote in relation to the Bond amendment at this time.

The majority leader.

Mr. DASCHLE. Mr. President, will the Chair inform us, are we under a time agreement at this time?

The PRESIDING OFFICER. We are not.

Mr. DASCHLE. Mr. President, I want to take a couple of minutes to speak to the Bond amendment. As I understand it, we are going to be voting on it shortly.

I heard Senator BOND describe his amendment a little while ago. My immediate reaction was that I was very supportive. I thought it sounded like a reasonable amendment. Certainly we have to be concerned about the frustrations that many of our farmers have experienced with regard to the regulatory problems they face, the frustrations they experience in attempting to participate in agriculture today, as complicated as it is. I am very sympathetic. I hear many of these complaints when I go home as well.

I think to whatever extent we can moderate their frustration by finding ways to reduce the regulatory anxiety, reduce the tremendous amount of paperwork they have to endure, we ought to do it. There have been efforts over the years to attempt to do it, and I think we have to continue to try to do it.

Looking carefully at the Bond amendment, what I have come to realize is this amendment really makes the President not just a friend of the farmer but king. I do not know if there is any other word for it. This would provide powers we do not give the President under any circumstances today. Only a monarch has the powers that the Senator intends to provide the President in situations such as this.

Basically, the Bond amendment grants the President authority to overturn any action by any Federal agency

that he simply determines may harm producers. He can wipe out virtually any law of the land without question, without challenge. This is an extraordinary delegation of power, not only to a President but to anybody. This would make a monarch of the President.

This amendment, needless to say, is a real assault on the environmental laws of this country. It would allow the President to waive the Endangered Species Act completely, the Clean Air Act completely, and the Clean Water Act completely. Frankly, it would set this country back at least 30 years in environmental protection, but it goes way beyond environmental laws.

The definition of harm written into the Bond amendment is so vague that virtually any action by any Federal agency—it could even be a foreign action, for that matter—could be overturned by the President, but certainly efforts involving the USDA civil rights procedures, efforts involving laws protecting farm workers, actions to implement free trade agreements—all of those—without any consultation with Congress, without any respect for due process, without any appreciation of the protections we have built in for an appreciation of the real sensitivity we must show in regulatory and statutory frameworks, all are thrown out the window with this amendment.

As I said a moment ago, should we be sensitive to the needs of farmers and ranchers as we consider their frustration in dealing with the regulatory headaches they must address? The answer is absolutely yes. Absolutely we have to find ways of doing that. We have to continue to work with the President and with the Department of Agriculture to make sure this happens. But do we want, really, to give the President unbelievable constitutional and statutory authority in this context? Do we want to say to the President: Look, if you do not like a law, just repeal it unilaterally, no votes in the Congress, no consideration, no public comment. You just go do it. That is what the Bond amendment says we can do.

Frankly, we do not want to go that far. I hope people will think very carefully, as well intended as the Bond amendment is, about whether we are willing to make a President a monarch in this case, to give him the authority of fiat. Not in this democracy, not in this Republic, not in this Senate, not now, not ever. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I move to table the Bond amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KEN-

NEDY), and the Senator from Massachusetts (Mr. KERRY), are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY), would each vote "aye."

Mr. NICKLES, I announce that the Senator from New Mexico (Mr. DOMENICI), is necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

#### [Rollcall Vote No. 365 Leg.]

##### YEAS—54

Akaka	Dorgan	Mikulski
Baucus	Durbin	Murray
Bayh	Edwards	Nelson (FL)
Biden	Ensign	Nelson (NE)
Bingaman	Feingold	Reed
Boxer	Feinstein	Reid
Byrd	Graham	Rockefeller
Cantwell	Gregg	Sarbanes
Carper	Harkin	Schumer
Chafee	Hollings	Smith (NH)
Cleland	Inouye	Snowe
Clinton	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kohl	Thompson
Corzine	Leahy	Torricelli
Daschle	Levin	Warner
Dayton	Lieberman	Wellstone
Dodd	McCain	Wyden

##### NAYS—43

Allard	Fitzgerald	McConnell
Allen	Frist	Miller
Bennett	Gramm	Murkowski
Bond	Grassley	Nickles
Breaux	Hagel	Roberts
Brownback	Hatch	Santorum
Bunning	Helms	Sessions
Burns	Hutchinson	Shelby
Campbell	Hutchison	Smith (OR)
Carnahan	Inhofe	Stevens
Cochran	Kyl	Thomas
Craig	Landrieu	Thurmond
Crapo	Lincoln	Voinovich
DeWine	Lott	
Enzi	Lugar	

##### NOT VOTING—3

Domenici	Kennedy	Kerry
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The motion was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### VOTE ON AMENDMENT NO. 2522

The PRESIDING OFFICER (Ms. CANTWELL). Under the previous order, the question is on agreeing to the Feingold amendment.

Mr. FEINGOLD. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SMITH of Oregon (when his name was called). Present.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) would each vote "aye."

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 31, as follows:

(Rollcall Vote No. 366 Leg.)

YEAS—64

Akaka	Dodd	Lincoln
Baucus	Dorgan	Mikulski
Bayh	Durbin	Murray
Biden	Edwards	Nelson (FL)
Bingaman	Enzi	Nelson (NE)
Boxer	Feingold	Reed
Breaux	Feinstein	Reid
Brownback	Graham	Roberts
Burns	Grassley	Rockefeller
Byrd	Gregg	Sarbanes
Campbell	Hagel	Schumer
Cantwell	Harkin	Shelby
Carnahan	Hatch	Snowe
Carper	Hollings	Specter
Chafee	Inouye	Stabenow
Clinton	Jeffords	Thomas
Collins	Johnson	Torricelli
Conrad	Kohl	Warner
Corzine	Landrieu	Wellstone
Daschle	Leahy	Wyden
Dayton	Levin	
DeWine	Lieberman	

NAYS—31

Allard	Gramm	Murkowski
Allen	Helms	Nickles
Bond	Hutchinson	Santorum
Bunning	Hutchison	Sessions
Cleland	Inhofe	Smith (NH)
Cochran	Kyl	Stevens
Craig	Lott	Thompson
Crapo	Lugar	Thurmond
Ensign	McCain	Voinovich
Fitzgerald	McConnell	
Frist	Miller	

ANSWERED "PRESENT"—1

Smith (OR)

NOT VOTING—4

Bennett	Kennedy
Domenici	Kerry

The amendment (No. 2522) was agreed to.

Mr. DASCHLE. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I have been in consultation this morning with the distinguished Republican leader, and we have reached an agreement with regard to how the Senate may proceed over the course of the next several days. I appreciate as always his cooperation and his interest in accommodating Senators. I would like to propound a unanimous consent request, but let me explain the request briefly to Senators and then I will specifically read the unanimous consent request.

Basically, what I am about to propose is that we have a cloture vote this afternoon at 4 o'clock. While it is not in this particular unanimous consent

request, we will also attempt to take up the defense authorization conference report sometime later today. That is the subject of a separate request. We would then be in session on Friday, but we would not entertain any rollcall votes.

It would be my expectation that regardless of how the cloture vote turns out this afternoon, we would remain on agriculture.

On Monday, if we can, if our colleagues will agree, we will take up the conference report on education for the entire day and evening, whatever length of time it takes. We would have a vote on the conference report on education on Tuesday morning. There would be additional nominations to consider on Tuesday morning, and we would also have a cloture vote if it were required on the farm bill Tuesday morning as well.

That is the essence of the request I am about to read. I will do so at this time.

Mr. LOTT. Madam President, if Senator DASCHLE would yield before he propounds the request, I don't intend to object. I want to make the record clear, if he would yield.

Mr. DASCHLE. I am happy to yield to the Senator from Mississippi.

Mr. LOTT. So Senators understand what has happened here and that we have had a consultation, I have discussed this schedule with Senator LUGAR, the ranking member on Agriculture, and Senators COCHRAN and ROBERTS and others, to make sure there is agreement that we could and should go ahead and go forward with this vote on cloture at 4 o'clock. We could object and insist that it occur on Friday. We don't believe anything positive would be achieved by that. This would make it possible for us to go forward and deal with other issues, hopefully the defense authorization and intelligence authorization, and then next Monday do the education conference report. That is very important.

There is a time agreement included here about how we would get to a vote on that conference report with a vote scheduled at 11.

Mr. DASCHLE. The Senator is correct.

Mr. LOTT. We are obviously still very concerned about this bill. We want to have the opportunity to offer additional amendments and substitutes. We saw no reason not to have the cloture vote at this time. I wanted to get that in the RECORD before the UC was propounded.

Mr. NICKLES. Will the majority leader yield?

Mr. DASCHLE. I am happy to yield to the Senator from Oklahoma.

Mr. NICKLES. Under the agreement you are about to propound, we will have a cloture vote at 4 o'clock. I am assuming we will still consider agriculture-related amendments until 4 o'clock.

Mr. DASCHLE. The Senator is correct.

Mr. NICKLES. May we have an agreement that we will alternate? We only have 3 hours to do amendments. I don't know if cloture will be invoked, but if it is invoked, that will preclude a great number of amendments. May we have an understanding that we will alternate between Democrats and Republicans?

Mr. REID. Will the majority leader yield?

Mr. DASCHLE. Let me just say to the distinguished Senator from Oklahoma, I have no reservations about suggesting that we alternate Republican and Democratic amendments.

I am happy to yield to the Senator from Nevada.

Mr. REID. That was the decision made earlier—not the decision, but Senator LUGAR and Harkin and I entered into a dialog. That would be the case. The next amendment will be offered by the Senator from South Dakota. Then we would wait for someone on your side to offer an amendment, and then we would go back and forth. That was talked about earlier today.

Mr. NICKLES. Fair enough.

Mr. DASCHLE. I would also note that if cloture is invoked, this agreement also will provide that the Cochran-Roberts amendment still will be in order. It accommodates the germaneness question regarding Cochran-Roberts.

Mr. NICKLES. Before the majority leader propounds a request, would you also amend that to include the Dorgan amendment to make sure it would be available, if cloture is invoked?

Mr. DASCHLE. Senator DORGAN is not on the floor.

Mr. NICKLES. I am concerned if we get cloture, there are a lot of amendments that will fall. The Dorgan amendment happens to deal with payment limitations. I am concerned that it might fall. I have an amendment dealing with payment limitations. That is my concern. I am not a big fan of cloture, as I am sure the majority leader knows. But there may be others. I make mention of the Dorgan amendment because I am interested in that subject. If you include that, I would appreciate it.

Mr. DASCHLE. I am happy to include that.

Mr. NICKLES. I thank the majority leader.

UNANIMOUS CONSENT AGREEMENT

Mr. DASCHLE. Madam President, I ask unanimous consent that the cloture vote on the pending substitute amendment occur at 4 p.m. today; that Members have until 11 a.m. tomorrow to file second-degree amendments; that notwithstanding rule XXII, the alternate amendment by Senators COCHRAN and ROBERTS, and the amendment offered by Senator DORGAN regarding payment limits, still be in order if cloture is invoked on the substitute amendment; that following the cloture vote, regardless of the outcome, the Senate proceed to executive session to consider executive Calendar Nos. 589, 590, and 592; that upon the disposition



of those nominations, the President be immediately notified of the Senate's action; that any statements thereon appear in the RECORD, and the Senate return to legislative session.

I further ask unanimous consent that on Monday, December 17, at 1 p.m. the Senate proceed to the conference report on H.R. 1 for debate only, and that on Tuesday, December 18, there be 90 minutes remaining for debate, 60 minutes equally divided between the chairman and ranking member of the Health, Education, and Labor Committee, or their designees, and 15 minutes each for Senators WELLSTONE and JEFFORDS; that the Senate vote on the conference report at 11 o'clock on that day, with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH of Oregon. Madam President, reserving the right to object, I don't intend to object, but I wonder if I may be included on two amendments that are very important in my State with respect to crop insurance and the Klamath Falls.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Madam President, I will accommodate the Senator from Oregon on his request and ask that they be included in the unanimous consent agreement.

Mr. SMITH of Oregon. I thank the leader.

The PRESIDING OFFICER. Would the Senator restate the subject matter of the amendments?

Mr. SMITH of Oregon. I have two amendments. One deals with a change in crop insurance to include farmers for coverage under crop insurance when the disaster is not natural, but Government-made.

The second one is just simply as to policy with respect to a long-term plan that Senator WYDEN and I are working on that includes as one of its goals the economic viability of the agricultural community of Klamath Falls.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized.

AMENDMENT NO. 2534

Mr. JOHNSON. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. JOHNSON], for himself, Mr. GRASSLEY, Mr. WELLSTONE, Mr. HARKIN, Mr. THOMAS, Mr. DORGAN, Mr. FEINGOLD, and Mr. DASCHLE, proposes an amendment numbered 2534.

Mr. JOHNSON. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make it unlawful for a packer to own, feed, or control livestock intended for slaughter)

On page 886, strike line 5 and insert the following:

#### Subtitle C—General Provisions

#### SEC. 1021. PROHIBITION ON PACKERS OWNING, FEEDING, OR CONTROLLING LIVESTOCK.

(a) IN GENERAL.—Section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192), is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively;

(2) by inserting after subsection (e) the following:

“(f) Own, feed, or control livestock intended for slaughter (for more than 14 days prior to slaughter and acting through the packer or a person that directly or indirectly controls, or is controlled by or under common control with, the packer), except that this subsection shall not apply to—

“(1) a cooperative or entity owned by a cooperative, if a majority of the ownership interest in the cooperative is held by active cooperative members that—

“(A) own, feed, or control livestock; and

“(B) provide the livestock to the cooperative for slaughter; or

“(2) a packer that is owned or controlled by producers of a type of livestock, if during a calendar year the packer slaughters less than 2 percent of the head of that type of livestock slaughtered in the United States; or”; and

(3) in subsection (h) (as so redesignated), by striking “or (e)” and inserting “(e), or (f)”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsection (a) take effect on the date of enactment of this Act.

(2) TRANSITION RULES.—In the case of a packer that on the date of enactment of this Act owns, feeds, or controls livestock intended for slaughter in violation of section 202(f) of the Packers and Stockyards Act, 1921 (as amended by subsection (a)), the amendments made by subsection (a) apply to the packer—

(A) in the case of a packer of swine, beginning on the date that is 18 months after the date of enactment of this Act; and

(B) in the case of a packer of any other type of livestock, beginning as soon as practicable, but not later than 180 days, after the date of enactment of this Act, as determined by the Secretary of Agriculture.

Mr. JOHNSON. Madam President, the amendment pending aims to protect America's livestock producers from the overwhelming market domination of a few meatpackers.

My amendment is based upon bipartisan legislation I introduced earlier this year, S. 142, which strengthens the Packers and Stockyards Act of 1921, by prohibiting large meatpackers from owning livestock prior to slaughter.

This amendment is cosponsored by my friend Senator GRASSLEY, as well as Senator WELLSTONE, the Agriculture Committee chairman, Senator HARKIN, Senator THOMAS, Senator DASCHLE, and Senator DORGAN. All of these Senators have cosponsored my bill, which enjoys bipartisan support. I applaud my colleagues for their leadership on this issue, and especially thank Senator WELLSTONE for offering this amendment in the Agriculture Committee. Unfortunately, it was defeated, but with more information about what our

amendment does, and doesn't do, I believe we'll gain much more support here on the floor.

Mr. President, let me address specifically what our amendment does; First, it bans large meatpackers from owning slaughter cattle, hogs, and lambs for more than 14 days prior to the time in which these livestock are slaughtered. Second, it exempts producer-owned cooperatives engaged in slaughter and meatpacking. Therefore, many of the innovative, start-up projects operating and being formed to give producers greater bargaining power in the market will not be affected by our amendment. There are a number of these cooperative projects Mr. President, that I would like to highlight as examples;

For instance, our amendment would exempt the United States Premium Beef packing plant. U.S. Premium Beef is located in Kansas and is the first value-added meatpacking plant owned by a farmer-controlled cooperative in the nation. U.S. Premium Beef works with Farmland Industries in this project. The facility processes cattle owned by ranchers. In a value-added twist, the ranchers also own the processing facility itself, in conjunction with Farmland Industries, a cooperative. This is the kind of innovative project that our amendment does not impact.

The amendment also looks forward to many similar projects breaking ground in the future, and exempts any farmer-owned co-op aiming to process cattle in South Dakota, North Dakota, Iowa, and other portions of the country. Our amendment also exempts the “Pork America” cooperative working to finalize plans for the Nation's first major pork packing cooperative, and the amendment exempts a number of modest-sized co-op lamb slaughtering projects in the Northern Plains and West. But co-ops are not the only businesses exempt from the ownership ban. Small, producer owned packing and processing facilities handling less than 2 percent of the national, annual slaughter are also exempt under our amendment, whether or not they are a co-op.

Therefore, if a farmer rancher owned facility slaughters less than 1,960,000 hogs, 724,000 beef cattle, or 69,200 lambs, they are exempt from the ownership ban under our amendment. For instance, “Harris Ranch” in California is a producer-owned beef packing plant, not formed as a cooperative, which handles less than 724,000 head of beef cattle per year. As a partnership of cattlemen who own a packing plant, this facility will be exempt according to my amendment. We don't want to stifle or inhibit these new ventures from making a real, bottom-line difference for American livestock producers, so my amendment exempts “Harris Ranch” and all other non-cooperative, producer owned processing and packing plants that slaughter less than 2 percent of the overall domestic slaughter of beef cattle, lamb, and hogs.



That's the substance of our amendment. Here is why we need our amendment. Our amendment would take on a growing problem in livestock marketing—that of packer ownership of livestock and captive supplies of livestock that allow packers to manipulate cash prices paid to producers. This amendment would strengthen the 80 year-old Packers and Stockyards Act, to make it unlawful for a packer to own, feed, or control livestock intended for slaughter.

Our amendment also addresses a glaring deficiency in the Packers and Stockyards Act of 1921, because it has failed to prevent packers from squeezing independent producers out of the market.

Here are a few cases in point where current law—written 80 some years ago—has failed to promote competition in livestock markets. The poultry industry has been almost entirely vertically integrated for many years, and the pork industry is becoming more so. The hog industry especially has been consolidating rapidly in recent years. At the packer level, the 4 largest firms' share of hog slaughter reached 56 percent in 1999, compared with 40 percent in 1990. In 1997, 64 percent of all hogs were marketed through some form of forward sales arrangement between producers and packers, and approximately 10 percent of all market hogs involved entire or partial packer ownership.

According to USDA's Economic Research Service, larger producers—5,000+ head—most often aligned with large integrators and meatpackers currently account for nearly three-fourths of the hog production, compared with just over one-fourth in 1994. In the cattle sector, the 4 largest beef packers accounted for 80 percent of all steers and heifers—beef cattle—slaughtered in 1999, compared with 36 percent in 1980. According to the Federal Reserve Bank of Kansas City, the number of U.S. packing houses for beef cattle and hogs has declined by two-thirds since 1980.

Smithfield Foods has made 17 acquisitions during this time, giving Smithfield 20 percent of the domestic processing market for pork. A recent column in the "Economist" stated Smithfield would like to increase that share to 30 percent, and hopes its hiring of former Clinton administration DOJ Anti-Trust Chief Joel Klein as a Smithfield attorney may help them in that process. These are the facts about consolidation and market power. These are the hard cold facts that frustrate every independent farmer and rancher in the United States. The frustration grows when one considers recent profits made by agribusinesses:

Cargill increased profits by 67 percent in the last quarter, Hormel increased profits by 57 percent, and Smithfield increased profits nearly 30 percent. Finally, Tyson, now the single largest meat processor in the world with its purchase of IBP, tripled profits in its most recent quarter. Conversely,

crop prices took a nose dive so severe in September that it marked the worst one-month drop in crop prices since USDA has been keeping records over the past 90 years. We must inject some real competition, access, transparency, and fairness into the marketplace if we are to see these tragic circumstances change. Instead, agribusiness is vigorously lobbying Congress to ensure the market is noncompetitive, closed off, veiled, and unfair.

Packer ownership of livestock is a function of captive supplies. Captive supplies are livestock that are controlled by packers either through contractual arrangements with producers or outright ownership. In other words, captive supplies are all cattle and swine that are not negotiated and priced within seven days of slaughter. The trend towards captive supplies and packer ownership has dramatically increased the market power of meat packers far beyond the control they previously had in the marketplace even 10 years ago.

Banning major meatpackers from owning livestock prior to slaughter is not a radical idea, there is a basis for what we are trying to do. The Packers and Stockyards Act, and its regulations, currently prohibit sale barns or auction markets from vertically integrating. Specifically, stockyards may not own or control buying stations, packing plants, or livestock feeding operations. The rationale is that such ownership or control creates conflicts of interest, access problems for other producers, and opportunities for self-dealing which distort the market.

Because meatpackers are similarly situated to stockyards as a market creator and market forum, the same rules should apply to them, but, unfortunately, the rules do not apply to the packers. Moreover, similar marketplace protections exist in other industries. For example, film production and movie companies cannot own local movie theaters by law. Broadcasting companies are prohibited from owning local television and radio stations. Why can't similar protections apply to the family farmers and ranchers raising livestock in the United States?

Here are some of the harmful effects of the packer ownership/captive supply trend: A stark increase of packer market power by allowing packers to stay out of the cash market for extended periods of time, thus reducing farm gate demand and driving down price; a severe reduction, or even elimination, of the ability of small and medium-sized producers to even access the market. An increase of packer market power by allowing packers to go to the cash market only during narrow "bid windows" or time periods each week rather than bidding all week, thus resulting in panic selling by producers; a distortion of public markets because captive supply livestock are not priced at the time of the commitment to deliver them. Rather they are priced after delivery.

This means that transactions concerning these packer-owned livestock

are not part of the publicly reported daily cash market. Narrowing the volume in the market makes it more subject to manipulation. Less cash market volume also increases the likelihood for reduced competition, fewer competitors, and a lower price.

In conclusion, not only must we strengthen the law, but we must also call on USDA and the Department of Justice to better enforce it. Enforcement of the Packers and Stockyards Act has been dismal, no matter who sits at the Secretary of Agriculture's desk. We must call upon USDA and DOJ to better enforce our laws. Yet, ensuring free and fair markets is not a one-way street. The fault is not solely with USDA. We must pass stronger laws in Congress as well. Therefore, while Congress has not been successful in trying to urge our Cabinet leaders, regardless of party, to protect the market, I believe we must enact stronger laws to prevent further erosion of competition in livestock markets.

Our amendment would essentially update and strengthen the Packers and Stockyards Act, which is supposed to prevent any preference and Stockyards Act, which is supposed to prevent any preference in packer procurements of livestock. The 80-year-old act was also supposed to guarantee a well functioning marketplace on fair terms for all farmers and all ranchers. Packer ownership of livestock is inherently preferential and anticompetitive. But with USDA either asleep or in the packers' pockets, this bill is desperately needed. Considering where the industry currently stands, with the world's largest poultry processor buying the world's largest beef packer, as well as a number of other proposed mergers in the last year, I believe this amendment is critically important to halt what is an unfair move toward vertical integration.

A ban on packer ownership of livestock would not drive packers out of business because most of their earnings are generated from branded products and companies marketing directly to consumers. Conversely, livestock ownership by packers and further concentration in the livestock industry could drive independent livestock producers out of business because they are at the mercy of these large corporations.

Our Nation's farmers and ranchers want competition in the marketplace, but when a meatpacker owns livestock, that actually reduces competition. If allowed to grow unchecked, packer ownership of livestock will put a stranglehold on the Nation's family farmers and ranchers and eventually will drive those operations out of business. This farm bill needs to combat marketplace concentration so that family-size farmers and ranchers are not squeezed out of business by multinational corporations.

I urge all of my colleagues to support this very important amendment that will preserve family farmers and ranchers by putting a stop to concentration

in the livestock industry and preserve the level of competition that has made our free market economy over the years the greatest success story economically in the world.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I rise to support my colleague from South Dakota. Before I continue, it is my understanding that after this amendment, we will go to the Smith amendment on the Republican side. Senators WYDEN and BROWBACK have an amendment they say will be accepted. I ask unanimous consent I then be allowed to offer my amendment after that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I say to my colleague from South Dakota, I so appreciate his work. What we are saying with this amendment—and it is hard for people not in farm country to understand. The truth is, this is vitally important to consumers. We are saying a packer cannot own a supply of livestock during the 14 days prior to slaughter. Why? Because what is happening is these big packers are buying when prices are low, and then they hold on to the livestock which is ready for slaughter for the purpose of dumping it on the market when prices start to go up.

The IBPs or Tysons of this world are basically controlling the market. Frankly, they are jacking the independent producers around. That is exactly what is happening, I say to Senator JOHNSON. I am very proud to join him with this amendment.

Minnesota family farmers tell me the issue they are most in agreement on—whether it is Farm Bureau or Farmers Union—is this whole problem of concentration, these conglomerates that have muscled their way to the dinner table and are shoving family farmers off the land.

There was a recent poll done by the Nebraska Institute of Agriculture: 72 percent of farm households agree that packer ownership should be prohibited.

To save time, because there are other Senators who want to offer amendments and they are worried about this cloture vote, although I certainly hope we will get cloture, I will not go through the statistics on concentration. Whether it is pork, whether it is beef packers, whether it is turkey processors, chicken broilers, over and over, Economics 101, we have at best an oligopoly—three or four firms that dominate 50 percent of the market—and at worst we have a monopoly.

Everywhere farmers work, whether they buy from or sell to, they are up against large conglomerates. It is like an auction: If you have a lot of buyers, you are going to get a decent price. If you have just two people you can bid to, you are not likely to do very well.

So what this amendment is all about is trying to give some opportunities to

our independent producers. These packers practice acquiring captive supplies through contracts, and then they use their ownership to reduce the number of opportunities for the small and medium-sized farmers to sell their hogs. With fewer buyers and more captive supply, there is less competition for independent farmers' hogs, and, frankly, it is a scam. This is all about lower prices.

My colleague from South Dakota already said this, but what we are seeing is a breathtaking amount of consolidation taking place in the food industry. We learned this summer that Tyson's Foods has finalized its agreement to purchase IBP. The deal has merged the country's largest poultry producer with the country's largest processor of red meat.

We asked the Department of Justice to investigate, but I do not think the laws are strong enough, and I do not expect this Department of Justice to really take this on.

We can at least say: Look, we do not want to have these packers acting to stifle competition, and that is exactly what this amendment is all about. Some are saying we are trying to stifle competition. This amendment does precisely the opposite. We want to restore competition in the livestock markets, and we want to put some freedom back into the free market system. We want to put free enterprise back into the free enterprise system. That is what this amendment is all about.

Some say this concentration leads to cheaper prices for consumers, but, frankly, the farm retail spread grows wider and wider. That is the difference between what our producers make and what consumers actually pay at the grocery store.

This amendment has the support of a broad base of family farm organizations. This amendment sides with family farmers and ranchers over these agriculture conglomerates, and it boils down to whether or not we want to have independent livestock producers in agriculture or we are going to yield to concentration and see farmers and ranchers become low-wage employees on their own land.

That is the trend. That is where we are going. This amendment is an effort to try to fight that. If we continue to stand idle and watch control of the world's food supply fall into the hands of the few, consumers are going to be the real losers. So I say to my colleague from Indiana, I really could talk for hours on this, but I am trying to be brief because I know other Senators have amendments.

I will simply say two things: No. 1, this is all about assuring competition. This is an amendment for our independent livestock producers. It is a question of whether we side with them or whether we side with these huge conglomerates who have a tremendous amount of power. This whole manipulation of the market is, from my point of view, outrageous. These conglomerates

buy when prices are low and then they dump—basically they keep the prices low by going back to the slaughterhouse and dumping it on the market. It is absolutely outrageous, and I think that is why there is so much support for this amendment in the countryside.

Let me say one final thing. Since so many Senators are trying to bring amendments before cloture, I certainly hope we will vote cloture. I do not think this farm bill ought to be stopped. We are talking about a \$3 billion increase of net income for our producers in this country. Time is not neutral. I think the Freedom to Farm bill became the "freedom to fail" bill. It is time to change this farm policy, and I hope Senators will vote for cloture and we will not see a filibuster and a blocking of this bill.

People in the countryside are pretty impatient about this. Time is not on their side. They would like to see a change in agriculture policy.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, may I inquire of the distinguished Senator from Minnesota, I understand the Senator asked unanimous consent that his amendment might be debated immediately following the Johnson amendment.

Mr. WELLSTONE. No, not at all. I heard the Senator from Indiana earlier. I said my understanding was that following the Johnson amendment, we would move to the Republican side and that Senator SMITH would then submit an amendment. I was trying to accommodate the Senator from Oregon. My understanding is Senator WYDEN and Senator BROWBACK had an amendment that was going to be taken up and they needed just a few minutes, and then I asked to follow that. That is all.

Mr. LUGAR. I thank the Senator, and I apologize for my misunderstanding because I recall we had a colloquy in which the Senator was involved earlier on.

Mr. WELLSTONE. I say to my colleague from Indiana, would I ever do that?

Mr. LUGAR. No, and the Senator has not. I appreciate it.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there any objection to setting aside the pending amendment?

Mr. SMITH of New Hampshire. I ask unanimous consent that the Johnson amendment be set aside for the purpose of offering an additional amendment.

The PRESIDING OFFICER. Is there objection?

Mr. JOHNSON. Reserving the right to object, if there is no further debate on the Johnson amendment, I ask for the yeas and nays on the amendment and that we proceed to the Smith amendment.

Mr. SMITH of New Hampshire. Mr. President, I did not realize there were Members who wished to speak in opposition to the Johnson amendment, so I will withdraw my request at this time.

The PRESIDING OFFICER. The Senator has the right to do that.

Mr. LUGAR. Reserving the right to object, what was the request from the distinguished Senator from South Dakota?

The PRESIDING OFFICER. The Senator from South Dakota called for the yeas and nays to be in order prior to setting aside the amendment.

Mr. JOHNSON. I withdraw that request if there is additional debate pro or con on the amendment.

Mr. LUGAR. Mr. President, there is a request for further debate.

Mr. JOHNSON. I was simply suggesting we take care of the Johnson amendment before we moved on to the Smith amendment. That was my only goal.

Mr. LUGAR. In response to the distinguished Senator, we have additional debaters.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, parliamentary inquiry. Are we on the Johnson amendment now?

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. Is there a time limit on the Johnson amendment?

The PRESIDING OFFICER. There is not.

Mr. HARKIN. Mr. President, how long have we debated the Johnson amendment to this point? I ask that there be one half-hour remaining on the Johnson amendment divided evenly.

The PRESIDING OFFICER. Is there objection?

Mr. LUGAR. I object.

The PRESIDING OFFICER. The objection is heard.

Mr. HARKIN. Is there any time limit the Senator will agree on?

Mr. LUGAR. Not until Senator BURNS, who wishes to be heard, comes to the Chamber to speak.

Mr. HARKIN. I think it is becoming clear what is going on.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise in opposition to the Johnson amendment. There may be some understandable sympathy with respect to the amendment of Senator JOHNSON and Senator GRASSLEY. We all claim concern for the small farm and for reducing consumer prices. We are in the process of voting on numerous amendments to protect the viability of the family farm and the farmer's ability to provide for his or her family.

Personally, Virginians have been working on a peanut provision to protect small Virginia peanut farmers from the untenable, devastating, and radical changes proposed in this farm bill. I have heard the statistics that have been quoted by the Agriculture

Committee ranking member, Senator LUGAR, in which Senator LUGAR pointed out that a large percentage of Federal farm subsidies go to a relatively small percentage of our farms. These are oftentimes larger farms, and I certainly understand his concern.

The situation being addressed by this amendment is not the same type of issue. The Johnson amendment will actually harm the small farm it intends to protect.

This amendment will prevent entrepreneurial and creative companies from achieving operational quality, efficiency, and economies of scale. This amendment will drive up consumer prices. This amendment will make the U.S. products less competitive in world markets. This amendment will drive small farmers out of the market. Here is how.

If packers are prohibited from growing their own livestock, they will see an immediate decline in futures prices. Packers who currently run both operations will have to sell their livestock, thereby, of course, driving down market prices. When prices for hogs or cattle go down, we know what the return will be. It will shrink, making it—especially for the farmer—much tougher or difficult for especially the smaller farmers with less profitmaking room to continue in business.

Now, this is obviously not the way to protect the small family farm. When prices go down, it will be too late in the longer run—say, the season or two after. The small farms will not have been able to withstand an immediate and drastic fall in prices, and they will already have been shut down and will hardly be in a position to buy more livestock.

Excessive Federal Government regulations already threaten our farming community's declining profit margins due to more Federal interference in the marketplace, and that will hurt our hard-working farmers.

Now, the long-term effect of this amendment would be to drive up costs for the processors and packers and ultimately drive up the costs for consumers. Our American farmers and packers would lose market share to international competition that isn't restricted by their foreign governments. Indeed, many foreign governments greatly subsidize and protect their agricultural interests.

In the economic wealth of Virginia, we hold an inventory in the private sector of about 500,000 heads of hogs and pigs, making it a significant producer. We are also a large producer of cattle and calves. We enjoy a great mix of traditional farms that sell their livestock to processors and packers who also grow their own livestock. The predictability of supply experienced by these multifaceted packers results in an efficiency that is achieved by larger operations. These well-managed pork processing companies are able to offer high-quality, specialized items, quality, low-priced products to consumers

as a result of this efficiency, as well as quality assurance of the methods of raising the hogs and cattle. We understand that in some of the specialized parts of the marketplace, in the way cattle are fed, they will then be able to label that as kosher or some other method of product that some consumers may desire.

We are eager to finish the business of the Senate and go home to visit our families for the holiday season. Many will get a Virginia ham. They may get pork loin. They may get some beef roast or who knows what. But this amendment, unfortunately, will limit the ability of the efficient companies to offer these high-quality, competitively priced products.

While I applaud the intent of this amendment to protect both the family farm and the consumer, I disagree with the methods of achieving this goal. Efficient companies that offer high-quality and low-priced products to consumers ought to be applauded and encouraged in their efforts. Congress should be saying yes to high-quality, U.S.-produced consumer goods. We ought to be saying yes to enabling long-term viability of family farms, and we ought to be saying yes to allowing strong and efficient businesses to succeed in the United States as well as internationally.

I will conclude by saying I cannot see the logic of the Federal Government telling a legitimate company in this country or even a hometown butcher shop that you can't own a pig or you can't own a hog or you can't own a cow. I don't think it is the business of the Federal Government to tell someone who can own a pig, a cow, or a calf. Therefore, I oppose this amendment and hope my colleagues will as well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, simply stated, this amendment would curtail the ability of packers to ensure a continuous supply of meat products. Without a certain supply, packers cannot operate, as the Senator from Virginia has pointed out, in a most efficient way. Margins for packers are already tight. They would be forced to run fewer shifts and close processing lines. This would force meat prices for consumers to rise, adversely affecting the poorest Americans who spend a higher percentage of income on food.

We could amplify each of these points, but they are, I believe, essential to the debate. The reason that packers attempt to make certain they have a certain supply through control of that supply is to make certain that a continuous flow of production occurs.

I appreciate the point being made by the sponsor of this amendment because, clearly, in years gone by competition in the stockyards of America made for a very lively market.

My family was involved in that business. My dad was a livestock commission man at the Indianapolis stockyards, handling the hogs while my

grandfather handled the cattle. At 4:30 in the morning he went to the yards and did the best he could for the farmers he represented. Those stockyards long since have left our city, as they have left almost all cities of my State. It is in large part because those who are hog farmers and cattle farmers arrive at contractual arrangements that are favorable to them.

The intent of this amendment, well meaning as it may be, is to roll back two decades of history in the business. The rollback will not necessarily be helpful to most Americans. It certainly will not be helpful for the price of meat or jobs of those employed by the meatpackers. These considerations have to be weighed as we evaluate the Johnson amendment.

It is for these reasons, recognizing the point my colleague is making, that I oppose his amendment. I am hopeful Senators will carefully consider each of these factors as they come to a vote on this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, what is the parliamentary procedure at this time?

The PRESIDING OFFICER. The pending business is the Johnson amendment No. 2534.

Mr. McCAIN. Are there amendments made in order following the disposition of the Johnson amendment?

The PRESIDING OFFICER. Yes. In order are the Smith amendment, a Wyden-Brownback amendment, and a Wellstone amendment—in that order at the present time.

Mr. McCAIN. I ask unanimous consent that the McCain amendment be made in order after the last amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I join my colleagues today in offering this amendment to help increase smart competition in the livestock sector. I think for a number of years we have observed changes that have taken place in agriculture.

In my State, agriculture is largely livestock, beef, and we feel strongly about that. We have more producers and fewer processing. This can cause problems. Increasingly apparent is the difference between the cost the producers receive and the retail costs. There is a great differential. One wonders if some of the prices that go to producers from processors are where they ought to be.

Additional regulation becomes necessary because of a loophole that has been there for some time. My colleagues and I have been concerned about that. The Packers and Stockyards Act of 1921 does not clearly define or address packers owning livestock for slaughter.

This amendment would prohibit packers, meatpacking companies, from owning and feeding livestock—with the exception of producer-owned cooperatives and small meatpacking companies. An exemption for cooperatives is included as recognition and reward to producers who have invested their resources to enhance their own market niche. I think we will see more of this—I hope that, indeed, we do—where producers are more involved in processing and moving their products on to the retail area.

By placing a prohibition on meatpacking companies, our efforts today will be branded as anticompetitive, in support of big Government versus free market. The intentions are obviously just the opposite. Our goal is to restore competition in livestock markets. Reform, I believe, is long overdue.

Livestock markets have become increasingly concentrated. Producers have fewer options for selling their products. Four top meatpacking firms control roughly 80 percent of today's slaughter market. Less than 20 years ago, four top firms controlled only 36 percent of the market. So times have changed. Some of the rules need to change. This is an opportunity to look at that.

We saw examples where the on-farm price of commodities goes down at the same time retail prices go up or remain constant. The problem of price disparity, I believe, is somewhat, at least, attributable to market concentration and that is what this amendment addresses. This amendment should be our first step toward making fair markets for our producers.

I certainly urge support for this amendment and I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank my ranking member on the Agriculture Committee for protecting me for just a little time here. I will not take too much time on this particular issue. I do have a couple of questions, though, for the Senator from South Dakota.

How does this deal with contracts? In other words, there are some people who forward-contract, under a pricing system, on a grid or whatever. How does this affect that?

Mr. JOHNSON. I appreciate the inquiry from my friend from Montana. This legislation does not prohibit forward contracts at all. There are some who suggest maybe we should, but we chose not to go down that road. So forward-contracting remains an option for both the producers and the livestock packers.

Mr. BURNS. Do you deal with futures and options?

Mr. JOHNSON. This legislation does not deal with futures and options.

Mr. BURNS. Mr. President, I am supportive of what the Senator from South Dakota is trying to do. I associate myself with the remarks made by my good friend from Wyoming. Unless

we deal with contracts, this matters not because, in other words, they will just contract the cattle. They will contract the cattle right from the cow/calf producer before they even go into the feedlot.

I don't want to get caught in the same quagmire we have had with market reporting. That has turned out to be a beast. I do not know if it has helped out in any way. But what our intent was on market reporting was that the infrastructure of the USDA Market Reporting Service was already there and sales had to be reported. But OMB got in the middle of it and said, if only one guy was bidding on the livestock, then they can't report that because that is a violation of privacy in business or—I don't know, lawyers have some fancy word for it. I am not a lawyer. I have never been hinged with that title. So the OMB got in the middle of it, and they had a working sheet on why we could not have true transparency in the livestock marketing business. It was that thick. It was just—it would just blind you.

I have nothing against cooperatives either, but I have yet to see one that is managed all that well. What they are trying to do with prime beef is a venture—and we have producers in Montana who have cattle on feed in that program. But we must not take away a producer's right to do business with whomever he wants to do business, if he wants to do it on a private party basis. So I have some reservations about this amendment.

I appreciate the work that has been done. I don't know of any other way. We have not been able to attract any kind of sympathy or notice from the Justice Department when it comes to antitrust in the agricultural markets, other than ADM. That is about the only one, over in soybeans.

So if we do not do anything about contracts nor the use of futures to hedge your cattle or hogs—the same is not true in sheep. I have been looking at the sheep industry. I am still very much interested in it because we have a situation there that is completely intolerable to the lamb industry in this country. The excuses they give for a market that dips so fast—I mean it went down something like \$20, \$30 per hundredweight on lambs in less than 2 weeks, and there was no reason for it other than the principal processor and slaughterer and importer in this country has that big lever and they can do it.

So I haven't made up my mind on this, but I did want to say if there is no treatment of contracts or futures or options, then I don't know how we close all the loopholes of packer-owned cattle. Right now packers can't own stockyards, and there was a good reason for that. That law is being enforced. But one of these days I think those of us who have an interest in the livestock industry—and there are a lot of us in this body who do and some probably know more about it than I

do—we are going to have to take a look at packers and stockyards and maybe do some reforms in that respect. I think the total law will probably need redoing.

I just wanted to bring that to the attention of the Senator from South Dakota and to the attention of others in this body. I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, just so Members understand, we are going to arrange a vote on this at about 1:50, so everyone should be advised. When the Senator completes his statement, I will be back and propound a unanimous consent request.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. I think we have had a good debate on this legislation. I think Senator BURNS, my colleague from Montana, is correct on our issues about foreign contracting and markets that need examination. You can only do so much at one time, however. This addresses the most egregious of the concentration issues. That is the outright ownership of livestock on the part of the packers. That is our attempt here.

There are some who say this bill goes too far. There are some who say the bill doesn't go far enough. I appreciate that. But I think it is a very solid piece of legislation. I hope it will go forward.

The only other observation I have is it was noted we should not be in the business of telling someone whether or not they can own a pig. This legislation doesn't tell anybody whether or not they can own a pig. It does place some limitations on some kinds of packing companies that wish to own 2 million pigs. But it does not tell anybody whether or not they can own a pig. I think it is solid, bipartisan legislation, and I urge my colleagues to support it.

I will ask, consistent with the request made by the Senator from Nevada, the ayes and nays at the appropriate time. I believe he indicated at about 10 minutes until 2. I will ask at that time for the yeas and nays.

Mr. LUGAR. Mr. President, I rise to raise a question with the distinguished Senator from Nevada. As I understand it, the debate is concluded. My question to the Senator is, as we do not have a vote ordered, what can we do between now and 10 minutes until 2?

Mr. REID. We have 10 minutes. I am sure you and Senator HARKIN can talk about the bill. I am sure we can do a little more talking.

We are going to vote on the Johnson amendment at 10 until 2.

Mr. HARKIN. Mr. President, I believe Senator SMITH has an amendment. Maybe we could take up his amendment.

Mr. REID. That is fine. We now have less than 10 minutes.

Mr. President, have the yeas and nays been requested by the Senator?

The PRESIDING OFFICER. No. They have not.

Mr. HARKIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. REID. Mr. President, will that vote begin at 10 until 2 o'clock today?

The PRESIDING OFFICER. That is correct.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHNSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSON. Mr. President, we have before the Senate today the Senate farm bill. It is certainly my hope that a cloture vote will be reached at 4 o'clock so that we may wind down the debate and go to final passage. I think this is an incredible urgency that the Senate pass the farm bill during these closing days of the first session of the 107th Congress for a number of reasons.

One is the abject failure of the existing underlying farm bill. It needs replacement.

Second, our farmers, our lenders, and our rural communities all want to know what the underlying rules are going to be in this coming crop-year.

Third, there is concern about whether there will be an erosion of the budget baseline currently afforded for agriculture.

I applaud my colleague, Senator HARKIN, for his extraordinary leadership on this farm bill. It was taken up during the tumultuous times of the 107th Congress when we had a change of power midyear from one party to the other—a change of all the chairmen and a change of leadership. Under those circumstances, Senator HARKIN took up this issue. I think he has put together an excellent bill. I think there is a need to go forward.

The bill contains several provisions that are of particular importance to me. One is that unlike the bill in the House of Representatives, and the bill on the other side, this legislation contains a bioenergy title. I think that is essential.

As a member of the Energy Committee, I want to do all that I can in the coming year to move energy legislation which would incorporate incentives for greater utilization of agriculturally based renewable fuels. But it is also important that the farm bill, as well, contain efforts in that direction.

I am pleased that Senator HARKIN's farm bill, unlike the House bill, contains incentives for ethanol, for soybean-based biodiesel, and places agriculture at the center of our energy debate that this Nation needs to have.

Second, the bill contains my legislation on country of origin labeling of meat, as well as fruit and vegetables.

I think for too long the American consumers have been denied the ability to know the origins of the products they feed their families. I believe it is an outrage at a time when consumers have the opportunity to know the origins of most items they buy that for some reason they have been denied the ability to know the origin of the meat, fruit, and vegetables they serve their families.

This is not a trade limitation. If people choose to buy foreign meat products or food products, it is certainly their prerogative. But this would make those decisions a knowing decision.

I think this is helpful to a lot of American agricultural producers because I happen to believe a lot of Americans, if they have the choice, will choose an American product. It is more of a consumer issue than a producer issue because the consumers ultimately are the greatest in need of this additional information.

I applaud Senator HARKIN for including the competition title in the farm bill. Although that title was stricken in committee, it is my hope that at least components of it will find its way back into the farm bill as we engage in these debates today and this week.

This bill provides significant benefits for producers. It is not perfect legislation. No legislation we ever consider on this floor is perfect. There are amendments that I would add. There is going to be one coming up not long from now having to do with the targeting of farm program payments—one that I will support, with Senator DORGAN and others—that I think is bipartisan; that I think will allow us to better utilize and more carefully target the benefits that flow from the farm legislation.

But I think the biggest error of all would be for us to be allowed to be bogged down to the point where we cannot reach a final conclusion of this farm bill. I know there are those who want to delay this debate into next year. It would be well into the springtime before we would be able to get back and finish this, no doubt. I think that would be a mistake. I think there is a real urgency.

I applaud Senator HARKIN for his extraordinary leadership and for bringing this along as quickly as he has.

But it is certainly my hope that later on today we will be able to reach cloture so that an adequate number of amendments are allowed to be considered, but that the bill is not, frankly, talked to death to the point where we are unable to give our producers, our rural communities, our lenders, or anyone else reliable knowledge about the shape of next year's agricultural economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, in behalf of the distinguished Senator from Arizona, Mr. MCCAIN, I request unanimous consent that in the event cloture is invoked and Senator MCCAIN has not

been able to offer his amendment before that time, he be allowed to go ahead and offer his amendment, and that it be considered germane.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object, Senator MCCAIN wants an exemption from the cloture in case cloture is invoked?

Mr. LUGAR. Yes. Senator MCCAIN has requested essentially the same privilege that was accorded to Senators ROBERTS and COCHRAN and to Senator GORDON SMITH by the majority leader when he made his original unanimous consent request.

Mr. HARKIN. Reserving the right to object, I am going to object for right now. I may OK it later. But for right now, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LUGAR. Mr. President, in the moments before our rollcall vote, let me respond briefly to the distinguished Senator from South Dakota.

I observed during the past 48 hours that Senators have had an opportunity to offer amendments to the farm bill. I believe all witnesses to the debate would understand it has been spirited and vigorous. As a matter of fact, all of the amendments offered have been very relevant to agriculture. There were obviously many more amendments that Senators wished to offer that would be relevant to agriculture. We have compiled a list of 44 such amendments.

In relation to the colloquy I just enjoyed with the distinguished chairman, two of those amendments—one to be offered by Senators COCHRAN and ROBERTS, and one to be offered by Senator GORDON SMITH—have been deemed germane by the majority leader's unanimous consent request, even if cloture is invoked. Those Senators have asked for

this privilege simply because cloture would mean the possibility that very relevant amendments would be deemed nongermane.

The problem for many Senators is that the agriculture bill has gone through several rewritings, including the bill offered by the distinguished chairman, Senator HARKIN, but then supplanted by a complete substitute offered by the distinguished majority leader, Senator DASCHLE, with over 1,000 pages. Many Senators have found this situation difficult, although they are researching precisely where their amendments are, in a parliamentary situation, in order. In any event, they would like to have the opportunity to offer them.

Very clearly, the invoking of cloture today would limit those Senators' ability to offer the pertinent amendments and, in some cases, completely eliminate it. Therefore, knowing there are many Senators on both sides of the aisle who have those amendments that we believe would perfect this bill, I am very hopeful that cloture will not be invoked when that time of vote comes at about 4 o'clock this afternoon.

I thank the Chair and yield the floor. The PRESIDING OFFICER. The hour of 1:50 having arrived, the question now is on agreeing to the Johnson amendment No. 2534. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY), are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Massachusetts (Mr. KERRY), would each vote "aye."

Mr. NICKLES. I announce that the Senator from New Mexico (Mr. DOMENICI), is necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 367 Leg.]

#### YEAS—51

Akaka	Craig	Johnson
Baucus	Crapo	Kohl
Biden	Daschle	Landrieu
Bingaman	Dayton	Leahy
Boxer	DeWine	Levin
Breaux	Dodd	Lieberman
Burns	Dorgan	Mikulski
Byrd	Enzi	Murray
Campbell	Feingold	Nelson (FL)
Cantwell	Feinstein	Nelson (NE)
Carnahan	Graham	Reed
Carper	Grassley	Reid
Chafee	Hagel	Rockefeller
Cleland	Harkin	Sarbanes
Clinton	Hollings	Thomas
Collins	Inouye	Wellstone
Conrad	Jeffords	Wyden

#### NAYS—46

Allard	Hatch	Schumer
Allen	Helms	Sessions
Bayh	Hutchinson	Shelby
Bennett	Hutchison	Smith (NH)
Bond	Inhofe	Smith (OR)
Brownback	Kyl	Snowe
Bunning	Lincoln	Specter
Cochran	Lott	Stabenow
Corzine	Lugar	Stevens
Durbin	McCain	Thompson
Edwards	McConnell	Thurmond
Ensign	Miller	Torricelli
Fitzgerald	Murkowski	Voinovich
Frist	Nickles	Warner
Gramm	Roberts	
Gregg	Santorum	

#### NOT VOTING—3

Domenici	Kennedy	Kerry
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The amendment (No. 2534) was agreed to.

Mr. HARKIN. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

### NOTICE

***Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.***

#### NOMINATIONS

Executive nominations received by the Senate December 13, 2001:

##### DEPARTMENT OF TRANSPORTATION

JOHN MAGAW, OF MARYLAND, TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY FOR A TERM OF FIVE YEARS. (NEW POSITION)

##### INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

ROBERT B. HOLLAND, III, OF TEXAS, TO BE UNITED STATES ALTERNATE EXECUTIVE DIRECTOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF TWO YEARS, VICE MICHAEL MAREK, TERM EXPIRED.

##### EXECUTIVE OFFICE OF THE PRESIDENT

ANDREA G. BARTHWELL, OF ILLINOIS, TO BE DEPUTY DIRECTOR FOR DEMAND REDUCTION, OFFICE OF NA-

TIONAL DRUG CONTROL POLICY, VICE FRED W. GARCIA, RESIGNED.

##### DEPARTMENT OF JUSTICE

NEHEMIAH FLOWERS, OF MISSISSIPPI, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF FOUR YEARS, VICE EISENHOWER DURR.

ARTHUR JEFFREY HEDDEN, OF TENNESSEE, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF TENNESSEE, FOR THE TERM OF FOUR YEARS, VICE JOSEPH CLYDE FOWLER, JR.

DAVID GLENN JOLLEY, OF TENNESSEE, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS, VICE WESLEY JOE WOOD.

DENNIS CLUFF MERRILL, OF OREGON, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF OREGON FOR THE TERM OF FOUR YEARS, VICE REGINALD B. MADSEN, RESIGNED.

MICHAEL WADE ROACH, OF OKLAHOMA, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF OKLAHOMA FOR THE TERM OF FOUR YEARS, VICE PATRICK J. WILKERSON.

ERIC EUGENE ROBERTSON, OF WASHINGTON, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF WASHINGTON FOR THE TERM OF FOUR YEARS, VICE ROSA MARIA MELENDEZ, RESIGNED.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate December 13, 2001:

##### THE JUDICIARY

WILLIAM P. JOHNSON, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO.

FREDERICK J. MARTONE, OF ARIZONA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA.

CLAY D. LAND, OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF GEORGIA.