The PRESIDENT pro tempore. We will now be led in prayer by Father Paul Lavin, St. Joseph's Catholic Church, Washington, DC.

We are pleased to have you with us.

PRAYER

The guest Chaplain, Father Paul Lavin, offered the following prayer:

In the book of Ecclesiastes we hear:

A good name is better than ointment, and the day of death than the day of birth.

It is better to harken to a wise man's rebuke than to harken to the song of fools;

For as the crackling of thorns under a pot, so is the fool's laughter.

Better is the end of speech than its beginning; better is the patient spirit than the lofty spirit.—Eccl. 7:1–8.

Let us pray:

As this session of the Senate draws to a close, let the end of our speech be better than the beginning. Let the decisions we have made and the ones we will make in these closing hours reflect Your will and be pleasing to You.

May the time we and our staffs spend with our families and with those we represent be really times of re-creation in Your Spirit, and may all of us return here safely.

May the gifts of the Father, Son, and Holy Spirit unite us in faith, hope, and love, now and forever. Amen.

PLEDGE OF ALLEGIANCE

The Honorable WAYNE ALLARD, a Senator from the State of Colorado, 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.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Mr. President, today the Senate will resume consideration of the pending Wellstone amendment with 1 hour of debate remaining under the previous agreement. After all time is used or yielded back, the Senate will proceed to a vote on the Wellstone amendment, which will be followed by a vote on the Moynihan amendment No. 2663. Therefore, Senators can expect two back-to-back votes to begin at approximately 10:30 a.m. It is hoped that further progress can be made on the appropriations process during today's session, and therefore votes can be anticipated throughout the day. It is also hoped that an agreement can be reached regarding the remaining amendments to the bankruptcy reform bill so that the Senate can complete the bill prior to the impending adjournment.

I thank my colleagues for their attention.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 1999

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The bill clerk read as follows:

A bill (S. 625) to amend title 11, United States Code, and for other purposes.

Pending:

Feingold amendment No. 2522, to provide for the expenses of long term care.

Hatch/Torricelli amendment No. 1729, to provide for domestic support obligations.

WELLSTONE amendment No. 2537, to disallow claims of certain insured depository institutions.

Wellstone amendment No. 2538, with respect to the disallowance of certain claims and to prohibit certain coercive debt collection practices.

Feinstein amendment No. 1696, to limit the amount of credit extended under an open end consumer credit plan to persons under the age of 21.

Feinstein amendment No. 2755, to discourage indiscriminate extensions of credit and resulting consumer insolvency.

Schumer/Durbin amendment No. 2759, with respect to national standards and homeowner home maintenance costs.

Schumer/Durbin amendment No. 2762, to modify the means test relating to safe harbor provisions.

Schumer amendment No. 2763, to ensure that debts incurred as a result of clinic violence are nondischargeable.

Schumer amendment No. 2764, to provide for greater accuracy in certain means testing.

Schumer amendment No. 2765, to include certain dislocated workers' expenses in the debtor's monthly expenses.

Dodd amendment No. 2531, to protect certain education savings.

Dodd amendment No. 2753, to amend the Truth in Lending Act to provide for enhanced information regarding credit card balance payment terms and conditions, and to provide for enhanced reporting of credit card solicitations to the Board of Governors of the Federal Reserve System and to Congress.

Hatch/Dodd/Gregg amendment No. 2536, to protect certain education savings.

Feingold amendment No. 2748, to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

Schumer/Santorum amendment No. 2761, to improve disclosure of the annual percentage rate for purchases applicable to credit card accounts.

Durbin amendment No. 2659, to modify certain provisions relating to pre-bankruptcy financial counseling.

Durbin amendment No. 2661, to establish parameters for presuming that the filing of a case under chapter 7 of title 11, United States Code, does not constitute an abuse of that chapter.

Torricelli amendment No. 2655, to provide for enhanced consumer credit protection.

Wellstone amendment No. 2752, to impose a moratorium on large agribusiness mergers and to establish a commission to review large agriculture mergers, concentration, and market power.

Moynihan amendment No. 2663, to make certain improvements to the bill with respect to low-income debtors.

AMENDMENT NO. 2752

The PRESIDING OFFICER. Under the previous order, there will now be 1 hour of debate on the Wellstone amendment No. 2752.

Who yields time?

Mr. GRASSLEY. Mr. President, maybe to be fair to everybody, I better suggest the absence of a quorum and that time would be equally divided.

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

The bill clerk proceeded to call the roll.

Mr. WELLSTONE. 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. WELLSTONE. Mr. President, I yield 10 minutes to Senator DORGAN.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, first of all, I commend Senator WELLSTONE for his leadership on this issue. I rise to support the amendment that he has offered. I have been involved with Senator WELLSTONE in constructing this proposal. The proposal very simply is to try to have a time out of sorts with respect to the mergers that are occurring in the agricultural processing industries. The question at the root of all of this is, What is the value of a family farm in our country and do we care about whether this country has family farmers in its future?

If we do, if we care about keeping family farmers in our country's future, then we must do something about the concentration that is occurring and plugging the arteries of the free market system in the agricultural economy. Family farmers are not able to compete in a free and open system. It is just not happening. Why? Because of these mergers and concentration in the large agricultural industries.

Let me show you with this chart what is happening to family farmers. The family farm share of the retail cereal grains dollar has gone down, down, and way down. Why? Why is the family farm share of the food dollar going down? Because as my friend from Minnesota likes to say, the big food giants have muscled their way to the dinner table. He is absolutely correct. They are grabbing more of the food dollar. The family farmer gets less. The food processors are making substantial amounts, record dollars, and the family farmers are, unfortunately, not able to make it.

The farm share of the retail pork dollar is down, down, way down. The family farm share of the retail beef dollar? Exactly the same thing.

Why is all of this occurring? Because concentration in these industries means there are fewer firms. For example, in market concentration in meat processing, in beef, the top four firms

control 80 percent of the profits; in sheep, 73 percent; pork, 57 percent. Exactly the same is true in grain. Wet corn milling, 74 percent, the top four companies.

The point is, this massive concentration is plugging the arteries of the market system. There isn't competition, or at least the kind of competition that is fair competition for family farms.

Now, our proposal is very simple. It proposes a moratorium on certain kinds of mergers. We are talking only about the largest firms. And then during that moratorium for 18 months we have a commission review the underlying statutes that determine what is competitive and what is anticompetitive.

There are people here who don't care about family farmers. They say, if the market system would decide that family farms should continue, then they will continue. And if the market system is ambivalent to it, then we won't have family farmers. But that is because the view of such people matches the view of economists, which is that you can value only that which you can measure in quantitative terms. If you can attach dollars and cents to it, then it has value. If you can't, it doesn't. The fact is, family farm enterprises have value far beyond their production of corn or wheat. Family farms in my State produce much more than their crops. They also produce a community. They have a social product as well as a material product.

Now, this product is invisible to economists and to policy experts who only see what they can count in money, but it is crucially important to our country. We tend to view our economy as a kind of Stuff Olympics: Those who produce the most stuff win. We are a country that produces more stuff than we need in many areas but much less of what we really need in other areas. And one such thing we lack is the culture and the opportunity we get when we continue a network of family farms. Europeans call this contribution ''multifunctionality.'' That is just a fancy way of saying that an enterprise can serve us in more ways than an economist can give credit for. A small town cafe is much more to that small town than its financial statement. It is the hub of the community. It is the hub of interaction, the crossroads where people meet rather than be blips on a computer screen. The same is true with family farms. It is much more important to this country than the financial receipts would show.

To those who do not care much about family farms, none of this matters. To those of us who believe a network of family farms preserved for our future enhances and strengthens this country, we believe very strongly that we must take actions to give family farmers a chance to survive.

One of those actions—only one—is to say, let us stop this massive concentration in the giant food industries that is choking the life out of family farms. Why is it that when you buy a loaf of bread, the amount of money the farmers get from that loaf of bread is now not even the heel, it is less than the heel?

Why is it that anyone in the food processing industry who touches that which farmers produce—wheat, corn, soybeans, and more—makes record profits, but the farmers are going broke?

Why is it that a farmer who gases a tractor, plows the land, and nurtures the grain all summer, combines it and harvests it in the fall, goes to the elevator only to be told the county elevator and the grain trade have described that food as worthless. Then someone gets hold of that same grain and crisps it, shreds it, flakes it, puffs it, puts it in a box and gets it on the grocer's shelf. The grain then sells for $4 or $5 a box, and all of a sudden it has great value as puffed or shredded wheat. The processor makes record profits and family farmers are making record losses.

Why is that? Because this system does not stack up. It does not stack up in a manner that allows fair, free, and open competition. When you have this kind of concentration, there is not a free market. That is true in the grain processing industry, it is true in meat, and it is true as well in the other areas I have discussed.

Family farmers are seeing record declines in their share of the cereal dollar while everyone else who handles the grain the farmer produced is making a record profit. That is the point.

I am for a free, fair, and open economy and fair competition. But our economic system today is not providing that because some are choking the life out of family farmers by clogging the marketplace with unfair competition. We have antitrust laws to deal with this. They are not very effective, frankly. When Continental and Cargill can decide to marry, and are then sufficiently large to create a further anticompetitive force in this market, then there is something wrong with the underlying antitrust laws.

This bill is not a Cargill-Continental bill, incidentally. It is not aimed at any specific company. It is aimed rather at having a timeout on the massive orgy of mergers that is occurring at the upper level of the corporate world, $100 million or more in value, and at evaluating what is happening to the market system.

If we believe in the free market, we have to nurture that free market and protect it. A free market exists when you have free, fair, and open competition.

The last antitrust buster of any great note was Teddy Roosevelt at the start of the century saying the robber barons of oil could not continue to rob the American people.

My point is that if we want to keep family farms in our future, we must take bold and aggressive action to make certain that competition is fair to family farms. Today, it is not. They are losing their shirts primarily because of the unfair competition that comes from substantial concentration.

My point, to conclude, is we lose something very significant, much more than economists can measure, when we decide we will not care about the destruction of the network of family farms in this country. Europe has 7.5 million family farms dotting the landscape because they decided long ago that these contribute much more to their culture and economy than what the balance sheet shows in numbers. They do in this country as well. It is time we take bold action to do something about it.

The first step, a modest step in my judgment, proposed by the Senator from Minnesota, myself, and others is to do something about antitrust, the concentration that is clogging the free market, taking money away from family farmers and putting us in a position where the family farm in this country is devastated.

We can stop this. This is not rocket science. Good public policy directed in the right area will give economic help and opportunity to families who are attempting to farm in America.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I rise again to oppose the Wellstone amendment. I stand here as perhaps one of the only Members of the Senate who has made his living from agribusiness, specifically as a food processor. I think I know of what I speak this morning.

I tell my colleagues, if they are listening via TV or however, this is a vote about whether or not you believe and trust in the free-market system.

I also rise as somebody who cares a great deal about farmers. I have voted consistently for farm aid in its many forms as we try to provide it in the Senate. But I am saying the Wellstone amendment will not turn around the ag economy. It does nothing to open overseas markets. It does nothing about global oversupply of grain, and it does nothing to relieve the onerous regulatory burdens placed on family farmers by the Federal Government, such as estate taxes, the unworkable H–2A program, the way the Food Quality Protection Act is being implemented, or the loss of water rights. It goes on and on.

The family farmer is more under assault by regulation by this Government than it has ever been by the food processing industry. Frankly, what we are saying is the food processor who perhaps wants to buy 100 million pounds of grain but is offered 200 million pounds because it is produced is somehow to be penalized by the Senate for participating in the free market. It is not right. It is not our system.

The Wellstone amendment implies that the Antitrust Division at the Justice Department is incapable of handling these agribusiness mergers. Yet the evidence is to the contrary. This is the same Antitrust Division that has required numerous divestitures in recent agribusiness acquisitions, such as the Cargill-Continental, Monsanto-Dekalb Genetics Corporation. This is the same Antitrust Division that rigorously pursued antitrust proceedings against Microsoft.

Antitrust policy has an important implication to American business and deserves the scrutiny of the Judiciary Committee, not posturing on the floor of the Senate. Senator HATCH, the chairman of the Judiciary Committee, has already announced there will be in his committee hearings on agribusiness concentration, as there ought to be, but not here, not this way, not this amendment.

The Wellstone amendment additionally is not evenhanded in its approach. It exempts agricultural cooperatives, some of which are large agribusinesses in their own right. I know from my own experience how to take a small company and make it big by the inefficiencies of the large companies. The Wellstone amendment will prevent mergers that are often necessary to keep plants competitive, employing people in rural and urban areas, and providing important outlets for farm products.

It does not distinguish between good mergers and bad mergers. Some of these things have to happen because there is an oversupply of food processors, in fact. The same market forces that are affecting the farmer also affect the food processor.

The WELLSTONE amendment will effectively guarantee that no medium-size agribusiness will be capable of growing large enough to rival the scale of the existing large agribusinesses. Again, I say the American dream is for the little guy to become a big guy. This says the food processor has one of two options if he is in trouble: He can either struggle and try to continue or else he can go bankrupt. I point out if you are interested in farmers, remember that more than two-thirds of the farmers of this country do not grow for the agricultural cooperatives; they grow for stock-held-owned companies.

The Wellstone amendment will not deconcentrate agribusiness, but it will ensure small- and medium-size agribusinesses are prevented from taking advantage of the same efficiencies enjoyed by their larger competitors. Frankly, the kind of distrust of the market represented by this amendment is the kind of thing we should expect from the Duma in Russia and the National Assembly of France but never from the Senate.

In conclusion, I appeal to my colleagues' common sense. This amendment is before us today in the name of saving family farmers.

I ask my colleagues to consider for a moment just who supplies the family farmer with critical crop inputs, such as seed and fertilizer. Who does the family farmer sell their production to for processing and marketing? The answer, in most cases, of course, is agribusinesses, the one sector of the economy that is being singled out today for a federally mandated merger moratorium that is certainly a counter to the free market that I believe we value in this country.

I remind my colleagues that agribusinesses and farmers are intertwined and interdependent. They are under the same market forces on both sides. When the very visible hand of government intervention in the market place is raised in an attempt to punish agribusinesses, inevitably it will punish family farmers, too.

I say again, most farmers do not grow for agricultural cooperatives. They often grow for small family food processors. So what happens to them? Ultimately, no matter the good intentions of those who are behind this amendment because I stand with them when it comes to trying to help the family farmer, I just simply say this is not the way.

I ask unanimous consent to have printed in the RECORD an editorial from not my paper but I believe it is Senator WELLSTONE's paper, the Star Tribune in Minneapolis.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Star Tribune, Nov. 15, 1999]

GIANT KILLER: WELLSTONE'S MISGUIDED AG MERGER PLAN

In the great tradition of prairie populism, Sen. Paul Wellstone has responded to the current farm recession by calling for a federal moratorium on big agribusiness mergers. As a cry of alarm for farmers, this is useful politics. But as a device to restore commodity prices, it is practically pointless, and as a tool of antitrust policy, it is exceedingly blunt.

When it resumes debate on the topic this week, the Senate should embrace Wellstone's plan for an agricultural antitrust commission, but it should reject the notion of blocking all mergers, good and bad.

Wellstone is right about one thing: Consolidation in agribusiness is perfectly real and genuinely troublesome. A series of agronomy mergers has greatly reduced the number of companies that sell seed and fertilizer to farmers. Meanwhile, the top four meatpacking companies have doubled their share of the beef and pork markets since 1980, to 80 percent and 54 percent respectively.

But that trend has nothing to do with this year's commodities collapse, which stems almost entirely from a glut of grain in world markets. Just three years ago, farmers were receiving near-record prices, yet the grain and meat industries already were highly concentrated. Milk processing is just as concentrated as grain or meat, yet dairy farmers earned huge profits last year.

Whether consolidation inflicts long-term damage is harder to know. One federal study found that large meat packers discriminate against small livestock farmers, and another found that big beef processors were able to drive down cattle prices by about 4 percent. But several other studies by the U.S. Department of Agriculture (USDA) have found that big, efficient meatpackers improve quality control and save money for consumers. One USDA study even found that livestock farmers got higher prices as the beef industry consolidated, apparently because highly efficient meatpackers passed along some of their savings in the form of higher prices to farmers.

To support an outright merger moratorium, you would have to believe that all mergers are wrong or that the current group of federal antitrust regulators is incapable of sorting good from bad.

But neither proposition holds up. The 1986 merger of Hormel Foods and Jennie-O Foods, for example, greatly expanded the state's turkey industry while improving the competitiveness of two venerable Minnesota companies. When Michael Foods of St. Louis Park bought Papetti Hygrade of New Jersey in 1997, it enabled two modest egg-processors to survive against much bigger world rivals. Nor is it clear that federal regulators are asleep at the switch. The Justice Department put Cargill Inc. through an antitrust wringer this year before downsizing its purchase of part of Continental Grain.

As usual, however, there is something smoldering when Wellstone smells smoke. The Justice Department needs more staff and more money to keep up with a tidal wave of merger applications. His proposed antitrust commission should study whether consolidation in agribusiness is reducing the diversity and independence of American farming.

Wellstone isn't grandstanding when he says that thousands of farmers are in genuine trouble this year. But that doesn't mean the populists should get whatever they want, or that what they want would be good for farmers if they got it.

Mr. SMITH of Oregon. The first paragraph states:

In the great tradition of prairie populism, Sen. Paul Wellstone has responded to the current farm [crisis] by calling for a federal moratorium on big agribusiness mergers. As a cry of alarm for farmers, this is useful politics. But as a device to restore commodity prices, it is practically pointless, and as a tool of antitrust policy, it is [an] exceedingly blunt [instrument].

I join with this editorial in saying that Senator WELLSTONE's motives are good, but his means are just simply misdirected in this case.

Ultimately, no matter the good intentions of those who are behind this amendment, it is the family farmers who will pay the greatest price for hobbling the innovation and competitiveness of small- and medium-sized agribusinesses in such a sweeping way.

The consequences of the Wellstone amendment run contrary to the stated objectives of its supporters. It will not spur new competition in the large agribusiness sector. It will not induce higher commodity prices for producers. It would be a vote of no confidence in the ability of the antitrust division to enforce our existing antitrust statutes.

So I plead with my colleagues, if they can hear my voice. I ask them to vote no on the Wellstone amendment. This is not the way to help the family farmer. We should trust the marketplace, unless we as a government are prepared to subsidize even more and more aspects of our agriculture in this country. We already do a great deal. We may yet need to do more. But we must

not do more in this way, in this Senate, in this time.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Will the Chair be kind enough to notify me when I have used up 10 minutes of my time?

The PRESIDING OFFICER. Yes; the Chair will do that.

Mr. WELLSTONE. I thank the Chair.

Mr. President, before we get right into the debate, I wish to also mention another debate in agriculture and say to my colleagues from some of our Midwest dairy States that I share their indignation at the way in which the extension of the Northeast Dairy Compact and the blocking of the milk marketing order reform by the Secretary of Agriculture—kind of two hits on us—has been put into a conference report. We voted on this on the floor of the Senate. This was not passed by either House. Yet it was tucked into a conference report.

I think it is an outrageous process. I think people are sick and tired of these backroom deals. I intend to be a part of every single effort that is made by Senators KOHL, FEINGOLD, GRAMS, myself, others, to raise holy heck about this.

After having said that, let me respond to some of the comments on the floor. First of all, I thank my colleague, Senator DORGAN, for offering this amendment with me. As long as my colleague from Oregon represents that tradition of populism, this is Senator DORGAN. It is who he is. Frankly, I think it is all about democracy and all about the market.

Also, I ask unanimous consent that Senators JOHNSON and FEINGOLD be added as cosponsors to this amendment.

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

Mr. WELLSTONE. I say to my colleague from Oregon and others, that as much respect as I have for the Minnesota Star Tribune, I am not all that troubled that sometimes we disagree and that there is an editorial that is in opposition to this amendment because, frankly, this amendment comes from the countryside. This comes from the heartland. This comes from the heart of our farm and rural communities. That is where this amendment comes from. I say that to all Senators, Democrats and Republicans alike.

I also say to my colleague from Oregon, actually this is all about the market. This has nothing to do with Russia or whatever country he mentioned. Quite to the contrary, this is all about putting some free enterprise back into our economy. This is about putting free enterprise back into the free enterprise system. This is about the Sherman Act and the Clayton Act and Senator Estes Kefauver and a great tradition of antitrust action. That is what this is about.

This is about making sure we have competition. This is making sure that our producers—the one, if you will, free enterprise sector in this food industry—have a chance to survive. That is what this is about. This is as old fashioned and pro-American and a part of the history of our country as you can get, from Thomas Jefferson to Andrew Jackson, right up to now.

Let me be clear about that. This is a very modest amendment. What it says is that until we develop some kind of comprehensive solution to the problem of extreme concentration in our agricultural markets, and anticompetitive practices of the few large conglomerates that have muscled their way to the dinner table, and are driving our producers out, we ought to take a ''timeout'' on these mergers and acquisitions—not of small businesses but of large agribusinesses.

This timeout could last as long as 18 months but no longer. It could also be terminated well short of 18 months by passage of some legislation, which is what I hope we will be serious about, to deal with this problem of concentration.

This is a historic debate and a historic vote because, you know what, we are going to have to deal with the whole question of monopoly power and whether or not we need to have more competition and free enterprise in our free enterprise system in a lot of sectors of this economy. That is what Viacom buying up CBS is all about. That is what the proposed merger of Exxon and Mobil is all about. That is what the rapid consolidations and mergers in all these sectors of the economy, where you have a few firms that dominate, I think to the detriment of our consumers and our small businesses, is all about.

If we pass this timeout, we are still going to need to revisit this problem of concentration within the next 18 months. We have to do so and pass legislation. What we cannot do is pass this legislation today. So what we want to do is put a hold on these colossal agribusiness mergers that are occurring on an almost daily basis. What we are saying is, let's pass legislation that puts some competition back into the food industry, that gives our family farmers, our producers a chance. But until we do that, let's take a timeout so we can put a stop to some of these colossal agribusiness mergers that are taking place at a breathtaking pace every single day.

This amendment also is intended to create an incentive for the Congress to develop a more comprehensive solution on an expedited basis.

Last week, if my colleagues need any evidence, the Wall Street Journal reported that Novartis and Monsanto, two of the largest agribusiness giants, may be merging. The Journal accurately states:

> . . . the industry landscape seems to be changing every day.

In fact, the ground is constantly shifting beneath our feet, and soon it is going to be too late to do anything about it. That is exactly why we need a timeout. These mergers build momentum for more mergers, and these large companies are all saying that we have no other choice, given what is going on right now, but to merge and get bigger and bigger and bigger. Just imagine what the effect of a merger between Monsanto and Novartis would mean. It would obviously put more pressure on more firms to join in on one of these emerging handful of food chain clusters that are poised to control our agricultural markets.

This timeout we are proposing today is intended to lessen those pressures and to arrest this trend before it is too late. That is what this is all about. This amendment is all about whether or not our producers are going to have a chance. This is an amendment that is all about whether or not rural communities are going to be able to make it. This amendment is all about whether or not farmers are going to be able to get a decent price. When you are at an auction and you are trying to sell something and you only have three buyers, you are not going to get much of a price. That is exactly what is happening in agriculture today.

This is all about competition. This is all about America. This is all about Jeffersonian tradition and whether or not Senators are on the side of family farmers or whether they are on the side of these large conglomerates. We have horizontal concentration taking place. Whether we are looking at the beef packers or at pork or grain or whether we are looking at every single sector, we have four companies that control 50, 60, 70 percent of the market. That is not competition. Economics 101: It is oligopoly, at best, when you have four firms that control over 50 percent of the market.

The scarier thing is the vertical integration. When one firm expands its control over various stages of food production, from the development of the animal or plant gene to production of fertilizer and chemical inputs, to actual production, to processing, to marketing and distribution to the supermarket shelf, is that the brave new world of agriculture we want to see? That is exactly the trend we are experiencing today.

I quote an April 1999 report by the Minnesota Land Stewardship Project. I think it is right on the mark:

> Packers' practice of acquiring captive supplies through contracts and direct ownership is reducing the number of opportunities for small- and medium-sized farmers to sell their hogs;

As a matter of fact, our hog producers are facing extinction, and these packers are in hog heaven. We want to know, who is making the money? How can it be that these corporate agribusinesses are making record profits while our producers are going under?

The Land Stewardship Project goes on to say:

> With fewer buyers and more captive supply, there is less competition for independent

farmers' hogs and insufficient market information regarding price; and lower prices result.

Leland Swensen, president of the National Farmers Union, recently testified:

The increasing level of market concentration, with the resulting lack of competition in the marketplace, is one of the top concerns of farmers and ranchers. At most farm and ranch meetings, market concentration ranks as either the first or second priority of issues of concern. Farmers and ranchers believe that lack of competition is a key factor in the low commodity prices they are receiving. So our corporate agribusinesses grow fat, and our farmers are facing lean times.

I wasn't born yesterday. I understand what has been going on since we introduced this amendment. I know the folks who have been making the calls. We are up against some of the largest agribusinesses, some of the largest multinational corporations, some of the largest conglomerates you could ever be up against.

Let us talk about this very practical and modest proposal.

The PRESIDING OFFICER (Mr. GRAMS). As requested by the Senator, he has used his first 10 minutes.

Mr. WELLSTONE. I thank the Chair.

First, the standard we use is the standard that now exists under the Clayton Act, which is whether or not a merger may be substantially to lessen competition or tend to create a monopoly. Second, we are talking about the largest mergers in which both parties have annual net revenues over $100 million. This is not small business—both parties with annual revenues over $100 million.

Third, some of my colleagues were concerned about the possibility of facing financial insolvency. We address the problem. In this amendment is language which makes it clear that the Attorney General would have the authority to waive this moratorium in extraordinary circumstances, such as financial insolvency or similar financial distress. We have another waiver authority which goes to the Secretary of Agriculture.

Some colleagues said, what about mergers and acquisitions that actually are procompetitive? What we are going to do is to say, under modification, that USDA could waive the moratorium for deals that don't increase concentration to levels that are determined to be detrimental to family farmers. This moratorium or timeout won't even take effect for 18 months because presumably we are going to act earlier.

We have to do something about this merger mania. We have to do something about getting some competition back into the food industry. We have to do something that is on the side of family farmers. This timeout, with all of the provisions we have which make it so reasonable—and we are still in negotiation with our colleague from Iowa, who I know cares fiercely about this—ought to lead to an amendment that should generate widespread support.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendment by the Senator from Minnesota that would impose an 18-month moratorium on mergers in the food processing industry. While I oppose this amendment, I understand Senator WELLSTONE's motivation in offering it. I share his concern over the rapid vertical and horizontal integration in the food processing industry and the effect this trend may have had on family farmers.

The livestock industry for beef cattle and hogs has experienced low prices for too long. In fact, the price for live hogs recently reached its lowest level since the Great Depression. Family farms are the backbone of our rural communities, yet family farms are failing. Farmers now receive 36 percent less for their products than they did 15 years ago. Mr. President, there are not many other honest, hardworking Americans who can say that their salaries have gone down by 36 percent over the last decade. Some farmers have complained that the concentration within the industry has restricted their choice of buyers for their products.

Many factors have contributed to the troubles farmers have faced recently—consolidation within the food processing industry may not be the sole cause of these troubles, though I recognize it could well be a cause. The recent rate of consolidation, however, is a concern to me, and for this reason I recently pledged a full and comprehensive review of this matter by the full Senate Judiciary Committee. We need to look at the entire spectrum of the food industry to explore the extent to which consolidation within the industry is adversely affecting family farmers. We also need to examine whether existing antitrust statutes are being adequately enforced and whether any changes to federal law are warranted.

While I sympathize with the amendment offered by Senator WELLSTONE, I am afraid that it does nothing to shed further light on the matter. Not only does the amendment fail to address the heart of the matter, it may even do more harm than good for our farmers. We cannot possibly understand all of the implications of placing an 18-month moratorium on agribusiness mergers. It is very likely, Mr. President, that smaller food processing plants will rely on mergers with larger processors if they are to survive. Placing a moratorium on mergers could actually cause smaller firms to go out of business. In such a case, this amendment would surely stop a merger, but putting a smaller firm out of business is a less desirable outcome than allowing mergers to go forward. Many of these smaller processors are actually owned by farmers.

We cannot afford to lose our family farms in this country, and I think everyone recognizes that. Let us deal with this issue pragmatically. Let us get to the bottom of this problem. I urge my colleagues to vote against this amendment. We should first allow the Judiciary Committee to fully examine these issues and prudently determine what effect, if any, consolidation in the industry has on the plight of the family farmer. The type of market interference proposed by this amendment is simply wrong and I urge my colleagues to reject it.

Mr. President, I would like to make some additional remarks regarding concentration in the food processing industry. I have been as concerned about concentration in the food processing industry as any Member of this body. My concern over the concentration in the food processing industry led me to break the logjam on the Livestock Concentration Report Act in the 104th Congress and get it through the Senate Judiciary Committee and the full Senate.

My concern over concentration in the processing industry led me to introduce the Interstate Distribution of State-Inspected Meat Act of 1997 in the 105th Congress. This bill would have helped to shore up and enhance competition in the meatpacking industry.

My concern over this issue led me to pass an amendment in the fiscal year 1999 Agriculture appropriations bill that required the USDA to produce a proposal with regard to the interstate distribution issue. I am also considering legislation, along with Senator DASCHLE, to codify the USDA's proposal, which goes even further toward shoring up competition in the meatpacking industry.

Finally, I have recently unveiled my plan for the Judiciary Committee to provide a full and comprehensive review of the concentration issue. So far, we have had some excellent studies on this issue. Here is just a small sampling of the many studies already completed with regard to consolidation in the food processing industry:

(1) A GAO Report entitled: ''Packers and Stockyards Administration: Oversight of Livestock Market Competitiveness Needs to Be Enhanced'' (October 1991).

(2) ''Concentration in Agriculture: A Report of the USDA Advisory Committee on Agricultural Concentration'' (June 1996).

(3) A USDA report entitled: ''Concentration in the Red Meat Packing Industry'' (February 1996).

(4) A GAO report entitled: ''Packers and Stockyards Program: USDA's Response to Studies on Concentration in the Livestock Industry'' (April 1997).

(5) A report of the USDA Officer of Inspector General entitled: ''Grain Inspection, Packers and Stockyards Administration: Evaluation of Agency Efforts to Monitor and Investigate Anticompetitive Practices in the Meatpacking Industry'' (February 1997).

I believe the next step is not another study. The next step is to examine whether existing antitrust statutes are being adequately enforced and whether

any changes to Federal law are warranted to help remedy the situation. I suggest that a moratorium on mergers has the potential for causing more harm than good. A moratorium is not an issue that has been studied, and frankly, the unintended consequences could be that some processors are forced to go out of business due to the ban on mergers. This would have exactly the opposite effect that we are hoping for. I might add, that farmers from my State who have been very concerned about the concentration issue have also expressed their opposition to the Wellstone amendment, for this reason.

Mr. KOHL. Mr. President, I rise today to support the amendment offered by my friend Senator WELLSTONE. Let me explain both why I support this amendment and why my support is somewhat qualified.

On the one hand, I agree that agricultural concentration is a problem which increasingly undermines the viability of family farms and negatively affects the well-being of our agricultural communities. On our Antitrust Subcommittee, we have watched with growing concern the wave of agricultural mergers and joint ventures in agriculture that have reduced the marketing options available to producers, and which may ultimately reduce—or may already have reduced—the prices they receive from the marketplace. While these merging corporations often contend that the mergers will result in better service for farmers and cost-savings for consumers, it's unclear whether that is true. And farmers face continued pressures from giant conglomerates against whom they have little bargaining power.

But, on the other hand, I am concerned that a blanket ban against all agricultural mergers would prevent those mergers that are pro-competitive as well as those that are undesirable. In addition, singling out a particular industry for merger moratoria, I fear, will lead to other calls for similar ''carve-outs.''

Perhaps a better way to address the problem of consolidation in the agricultural industry is do what the administration has already promised. The Antitrust Division of the Justice Department has given me a commitment that it will appoint a Special Counsel for agricultural antitrust issues—and it should do so expeditiously. This official will help ensure that agribusiness mergers no longer are a poor stepsister to mergers in the computer, telecom, finance, and media industries.

Mr. President, in moving a measure such as this one, we need to take care that we do not harm the very people we are trying to help. But until we see real signs that the administration is prepared to seriously scrutinize concentration in the agricultural industry, this approach is preferable to no action at all.

Mr. BINGAMAN. Mr. President, I will vote against the Wellstone-Dorgan agribusiness merger moratorium because I believe the solution to this problem is not a temporary moratorium. Instead, the Department of Justice should enforce the anti-trust laws that now exist to prevent the problems arising from industry concentration. That's why, last February, I signed a letter to the President, along with 22 of my colleagues, urging the administration to conduct a full-scale detailed examination of the impacts of market concentration on our nation's family farmers and ranchers. We requested that the study be completed within six months and the findings reported to Congress. We have yet to receive that study. I will continue to press the Department of Justice to exercise particular diligence in reviewing proposed mergers or acquisitions involving major agribusiness firms.

Our family farmers and ranchers need and deserve our full support. I have worked hard to provide emergency funding in times of natural disaster, and to address the economic disasters created by trade and world economic conditions. I am working to reform the federal crop insurance program to address the needs of specialty crop producers. And I will continue to advocate for full adherence to existing anti-trust laws, and the procedures for investigating market concentration in agriculture.

Mr. HUTCHINSON. Mr. President, I rise today in opposition to Senator WELLSTONE's amendment. I know that my friend and colleague from Minnesota is proposing this amendment with the welfare of America's family farmer in mind. I, too, think of America's family farmer, but I have concerns that placing a moratorium on agribusiness mergers and acquisitions now may do more harm in my State than good. This is an important issue and I commend Senator HATCH's willingness to hold hearings on this matter in the Antitrust Subcommittee. We need to have the time to carefully consider how agribusiness mergers and acquisitions affect America's producers.

I am very proud of the farmers in my State. Arkansas ranks in the top 10 rice, chicken, catfish, turkey, cotton, sorghum, eggs, and soybean producing States in America. Despite their productivity, there are fewer this season than last season. An ailing national agriculture economy has pushed many farmers to the breaking point. I visited 27 counties in Arkansas over the August recess and saw the strain on their faces and heard the frustration in their voices. Their deep concern for the future of farming comes from knowing that agriculture is the lifeblood of my State's economy.

Arkansas is dominated by small farms and cooperatives, but Arkansas is also home to national processors like Tyson Foods. I do not believe that we should trade the interests of one for another. Instead, we must develop a balanced policy that will help small farmers and not penalize those companies which are helping drive my State's agriculture recovery. In many communities, these cooperatives and agribusinesses are the foundation of the farm economy in that area. Right now, many of those communities are still hurting. That is why I am more concerned about the overall survivability of the cooperatives and agribusinesses in Arkansas than the possibility that some of them may someday decide to merge with a larger entity. In reality, if an agribusiness in Arkansas is struggling to stay alive, and Senator WELLSTONE's moratorium on agribusiness mergers and acquisitions is imposed, that greatly limits an ailing business' ability to sell to survive. In other words, if the owners of an agribusiness have only two choices to survive—either sell or declare bankruptcy—and the option to sell is denied, then their going out of business doesn't help anyone.

While America's farmers are slowly recovering from low commodity prices, high production costs and poor trade, I believe now is not the time to destabilize agribusinesses in Arkansas. On the other hand, I know that producers in many farm states have serious concerns about the impact larger agribusinesses, especially the meat processing industry, have on their ability to recover from poor prices. Let me be clear, I do not advocate inaction, but I am concerned that producers and processors in my state, both large and small, may be unintentionally harmed by the Wellstone amendment.

Many meat processing agribusinesses in Arkansas provide stability for producers and have good working relationships with them. Because most of their producers work under contract, both the agribusinesses and producers suffer when prices are low. Tyson Foods, known for their poultry processing, is involved in raising hogs. As the price for hogs began to fall, Tyson felt the financial strain of production without the ability to process. In the mind of Tyson's contract pork producers, the company's situation had reached a critical level when they received letters telling them that sustained low hog prices were forcing Tyson to only offer 30-day contracts. Producers were left wondering how they would pay off debt and survive if Tyson could not renew their contracts. Recently, Smithfield announced that it will be taking over Tyson's Pork Group, effectively stabilizing the future of Tyson's contract producers. Unlike Tyson who only raised hogs, Smithfield has the capacity to both raise and process their livestock.

Clearly, if Senator WELLSTONE's moratorium on mergers and acquisitions was in pace at the time of the Smithfield acquistion of Tyson's Pork Group, contract producers would still be living under a cloud of uncertainty in an ailing hog market. With that in mind, I encourage my colleagues to vote against the Wellstone amendment so that Senator HATCH may be afforded

the time to thoroughly address the impact agribusiness mergers and acquisitions are having on the American family farmer.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides.

Mr. WELLSTONE. Mr. President, I yield 2 minutes to my colleague.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 2 minutes.

Mr. DORGAN. Mr. President, we only have 20 additional minutes to debate this. There will be a vote this morning.

I have always had the greatest respect for my colleague from Oregon. I think he is a really excellent Senator and a good thinker. On this issue, the purpose of our being here is about competition. I don't think anyone can dispute that family farmers have been squeezed by a system in which highly concentrated industries are taking more of the profits, saying we want more of the profits and we want to give family farmers less profits. That is not a sign of good competition; it happens because these industries have the economic power to do it.

I taught economics briefly. Some would suggest you are not fit for other work when you have done that. But I have gone on nonetheless. Economists will argue this both ways. I understand that. But there is a commonsense aspect to this.

Harry Truman used to say that nobody should be President who first doesn't know about hogs. The Senator from Minnesota talked about hogs and concentration in the hog industry. Hogs are just one. Beef, grains—in every single area, industries are more and more concentrated, choking the economic life out of the little guy, out of the little producer. Why? Because they can. They want to increase their profits, increase their size, and choke the life out of family farmers. Our point is, that is not free, fair, and open competition. That is not a marketplace that is working.

Mr. SMITH of Oregon. Will the Senator yield?

Mr. DORGAN. I will yield on the Senator's time.

Mr. SMITH of Oregon. Of course.

For the record, no one should be President who doesn't know something about green peas either.

In all seriousness, I understand what the Senator is saying. I think what the Wellstone amendment, hopefully, is doing—if it does not pass today, I hope it has the Justice Department going to work on this issue. In my view, what we don't need is more layers of second-guessing the marketplace from the Department of Agriculture.

We already have a system of antitrust laws. They need to enforce them, and there are serious problems of too heavy a concentration. I just simply tell you that I have seen, in my own experience, when these companies get too big, they create companies coming up behind them. It happens time and time again—for the little guy to become a big guy. It happens also on the farm, as a small family farm. Now you have huge corporate farms.

It is a process of the marketplace working. Usually, when we intervene in these ways, we do it incorrectly, bluntly, ineffectively, and we end up hurting the people we are trying to help. I believe we have laws that ought to be employed and, if they are employed, the concerns of the Senators from the Great Plains will be addressed, and they should be addressed.

Mr. DORGAN. This little guy/big guy notion of economics reminds me of the old parable that the lion and lamb may lie down together but the lamb isn't going to get much sleep. That is also true in economics. It is certainly true in this economy. The little interests are disappearing. That is true of agriculture. Family farmers are having the life choked out of them by the concentration in industries which they have the muscle to say: We want more of our food dollar coming from that bread, and we want you to have less. That is what they are saying to family farmers.

Mr. WELLSTONE. Will the Senator yield?

Mr. SMITH of Oregon. Yes.

Mr. WELLSTONE. I ask unanimous consent that I have 5 minutes at the very end to summarize this because we may make some changes.

The PRESIDING OFFICER. We will watch the time.

Mr. WELLSTONE. May I have 5 minutes at the end? Otherwise, my time will burn off.

Mr. SMITH of Oregon. Mr. President, the leadership has suggested to me they want an up-or-down vote on this. If there are amendments that the Senator has, he would very much like those to be a part of the hearing that Senator HATCH already announced will be occurring in the next session of this Congress.

Mr. WELLSTONE. I would like that. I don't want to have all my time burned up. I would like to have 5 minutes at the end.

Mr. DORGAN. Mr. President, in my concluding 30 seconds, I will say that the Jeffersonian notion of how this system ought to work is broad-based economic ownership. That is what Thomas Jefferson envisioned—broad-based economic ownership in this country which not only guarantees economic freedom but political freedom as well.

The point is, the concentration that is occurring is unhealthy, especially in agriculture, because it is choking the life out of family farmers. We are talking simply about a timeout here.

When I talked about Harry Truman's description of hogs, incidentally, that would have lost its luster had he said that nobody should become President without first knowing about green peas. He was talking about hogs because he was talking about broad-based economic ownership on America's family farms. He had it just right. That is what we are trying to get back to with this amendment.

The PRESIDING OFFICER. The Senator from Minnesota has 4 minutes 59 seconds remaining on his time.

Who yields time?

If no one yields time, it will have to be subtracted from both sides of the debate.

Mr. WELLSTONE. Mr. President, the unanimous consent I am asking for is whether or not, if the other side is not going to use the time, I could reserve for the end when we run out of time the final 4 minutes 59 seconds to summarize this because I am waiting for Senator GRASSLEY. We have been involved in negotiations. I would like to summarize where we are.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SMITH of Oregon. Mr. President, I want to say, in a larger sense, if we can single out agribusiness in this way for sort of super-antitrust treatment, if you will, we can single out any industry. I have noticed, in my 3 years as a Senator, we have sort of a merry-go-round of unpopular businesses in this country and we pick them off one at a time. I am very concerned about this process of intervening in a marketplace that works because there are winners and losers in the marketplace. Agriculture is a very difficult industry. I don't know the profits of these big food processors. I, frankly, don't know most of these kinds of industries. Most of the food processors I think of may actually have revenues of $100 million. But that is sales; that doesn't mean profit. They may have losses of $110 million. I don't know. I don't see their books.

Mr. WELLSTONE. Will the Senator yield?

Mr. SMITH of Oregon. Yes, I am happy to yield.

Mr. WELLSTONE. First of all, let me be clear again. I want to tell the Senator that there are two very important, if you will, safety valves. One has to do with the very point he just made. If, in fact, a business says, look, we will be insolvent if we don't do this acquisition or merger, then they will get a waiver to do that. I want to make that clear, as to what this is and is not. That might get you support. I think there are provisions in here that are important.

Second, this is just a timeout; that is all this is. This comes from some pretty solid empirical evidence about the wave of mergers. And, again, three or four firms dominate well over 50 percent of the market and its effect on producers.

Finally, I do believe that, again, if USDA uses this criterion, it can also be a second safety valve that says, look, in this particular case, this acquisition or merger would be procompetitive given the situation. That would be another way.

So we are trying to deal with the most extreme of circumstances. This is

eminently reasonable. It is a cooling off; it is a message from the Senate that we care about what is going on out there. We want to have more free enterprise built into the system. This is pro-free enterprise, pro-competition. We don't have the competition now.

Mr. SMITH of Oregon. Will the Senator yield?

Mr. WELLSTONE. Yes, I will.

Mr. SMITH of Oregon. Mr. President, I appreciate the chance to talk so the American people can hear this. The problem we are talking about is that, for agriculture, we are not going to create just an antitrust division that ought to be going to work every day evaluating these things, but now we are going to create a whole new role for USDA to make judgments about the marketplace. I don't trust Government to make those judgments about the marketplace; I really don't. I think we mess it up more than we help it. So I really don't think that satisfies my concern.

Mr. WELLSTONE. If the Senator will yield again, let me be clear about this on two issues. First of all, if it weren't for the wave of mergers and this breathtaking consolidation of power—and then we look at the Sherman Act and the Clayton Act and wonder what is going on here—we would not even be talking about a timeout. That is the only reason we are doing this. I don't think anybody can deny the reality of what happened.

Second, the USDA would only be involved if a company said: Listen, we would like to get a waiver from this timeout period. It is only if a company makes the request or a company says: Look, we would like to get a waiver from this timeout period. We are big, but we need to be involved in this acquisition or merger and it will actually be procompetitive. We are just trying to give a company a place to go.

So, with all due respect, it is not the kind of Government involvement my colleague fears. There does come a point in time in the rich history of our country where public power is there. Where is Teddy Roosevelt when we need him today? That is all this is, a cooling-off period to give us incentive, I say to my colleague from Oregon, to write some laws and do something that will put the competition back in place, so our producers have a chance.

Mr. SMITH of Oregon. Mr. President, if the Senator will yield, I am all for the rules Teddy Roosevelt created. If they were enforced, we would not need to develop more Government.

I guess I would understand the Senator's amendment more if he didn't exempt agricultural cooperatives. I don't understand that. It is a different forum of how you do agribusiness. It is farmer-owned. But, frankly, it is unfair to other farmers who do not process for nonfarmer cooperatives. I just think if it is good for the goose, it is good for the gander. But it is not in this amendment. It is unfair, and it isn't right. Treat them all the same or, frankly, let's defeat this amendment. I sincerely hope the Senate will not interfere in the marketplace as proposed by this amendment. Allow the Judiciary Committee to go forward and hold its hearings, and let's ask the antitrust department and Justice Department to go to work and enforce the laws we already have.

Mr. LEAHY. Will the Senator yield for a unanimous consent request?

Mr. WELLSTONE. Yes.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be allowed to proceed for 3 minutes, not to come out of the time that has been established for this bill, realizing that would make the vote 3 minutes later—just to let people know where we are on the bill.

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

Mr. LEAHY. Mr. President, just so that colleagues on both sides will know, last week, and again yesterday for that matter, we made more progress on this bill.

We have been able to clear 27 amendments to improve the Bankruptcy Reform Act. Those are amendments offered by both Republicans and Democrats.

Senator TORRICELLI, Senator HARRY REID, and I have been working in good faith with Senator GRASSLEY and Senator HATCH to clear amendments. We have been able to do that, and we will try to clear even more.

I am pleased, on a personal point, that the majority accepted my amendment regarding the mandate to file tax returns under the bill. That will save $24 million over the next 5 years. But there are a lot of amendments similar to this that have improved it.

Senator TORRICELLI and I are working together with the deputy Democratic leader, and we are preparing to enter a unanimous consent request to limit the remaining Democratic amendments to 27 amendments. Fifteen of these have already been offered to the bill and are the pending business. All 27 were filed by November 5. Most of these are going to have very short time agreements. Many will be accepted. From a total of 320 amendments that were filed by both Republicans and Democrats on November 5, the managers of the bill on both sides have boiled down the remaining Democratic and Republican amendments to about 35—from 320 to 35.

Many of them are going to be acceptable either with modifications or in the present form. The remaining ones are critical to the debate on this bill.

Remember that for the first time in our Nation's history this bill would restrict the rights of Americans to file for bankruptcy based on the debtor's income. If we are going to adopt a means-tested bankruptcy law, we should have a full and fair debate on that. The American people would ask for nothing more.

The credit card industry is going to get billions out of this and should have to bear some responsibilities for its lax lending practices. We have heard a lot of stories about 5-year-olds getting credit cards in the mail with a multi-thousand-dollar limit.

Then we have the Truth in Lending Act on here.

I would like to get as close to a fair and balanced bill as we passed last year.

But we have come to the floor to offer amendments. We had only 4 hours of debate on Monday, and a disrupted day yesterday with caucuses and other things. But we have moved very quickly on this. We have disposed of 35 amendments with only 8 rollcalls.

I urge Senators to move forward. The leaders are trying to move forward.

I thank my colleagues for allowing me to break in to bring people up to date.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I send a modification to my amendment to the desk and ask unanimous consent that the amendment be modified. I will explain the two provisions.

The PRESIDING OFFICER. It takes unanimous consent.

Is there objection?

Mr. SMITH of Oregon. Reserving the right to object, I certainly don't mind the Senator offering an explanation of the amendment. But I have been asked by the majority leader and Senator HATCH to object.

The PRESIDING OFFICER. Objection is heard.

Mr. WELLSTONE. Mr. President, I would appreciate it before we have this vote. My colleagues were with Senator LOTT when I was very involved in the unanimous consent agreement as to which amendments were going to come up and how we were going to deal with nonrelevant amendments.

Senator DASCHLE asked Senator LOTT. I was right out here on the floor. In fact, I had made the request that if, in fact, we weren't changing the meaning or the scope of our amendment, but we were going to make a correction, we would be able to do that. Senator LOTT said if this didn't change the meaning of the amendment, or the scope of it, then, of course, that would be all right.

This is not a different amendment. This is in violation, or I would never have agreed to this unanimous consent agreement. All we are doing is listening to colleagues who have said there should be $10 million to $100 million on both parties. We think that would make a big difference from the point of view of small businesses, and at least give businesses another place where they can go if they believe their merger or acquisition is not procompetitive.

Those are the two changes. I cannot believe that now I am being told I can't do this. This was a part of the unanimous consent agreement. I was on the floor. I will get the CONGRESSIONAL RECORD out of the exchange.

Mr. SMITH of Oregon. If the Senator will yield, I was not a part of that

agreement. I know what I have been told by the majority leader and by Senator HATCH. Whether the scope is narrowed or not, the principle is the same. If there is an invasion of the free enterprise system, it potentially penalizes all the farmers who rely upon the stock-owned companies in advantage of a few others.

I think that is the wrong way to do it. We have some laws. I think they need to be enforced. But this is too blunt of an instrument. If you want to help farmers, this is not the way to do it. If you want to help farmers, you go after the regulations that are strangling them. You open up the international markets. And, yes, you enforce antitrust laws. But you don't create a regulation that interferes in a very blunt fashion with the free enterprise system.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, let me try this again. My colleague can object to the amendment. But that is a different issue. That is a different issue. I now come to the floor with a modification. When we came up with this original unanimous consent agreement, the majority leader made it crystal clear in an exchange with the minority leader—I was out here on the floor—if we wanted to have a technical correction in our bill and it was not changing the scope or meaning, that it would, of course, be all right. Now you are denying me my right to make that modification. Why are you afraid of a modification? I am just a little bit outraged by this. I was here. I was on the floor. I know what was discussed. I know what the majority leader said.

I also believe if my colleagues want to have an up-or-down vote, fine. But you ought to give me the right to make a modification to my amendment that I think would make this a stronger and a better amendment.

I want to send the amendment to the desk again. Did I send it? Do you already have it?

I appeal to the Senator to please not object to my unanimous consent request to modify my amendment with what I have sent to the desk.

The PRESIDING OFFICER. A modification is not in order without unanimous consent.

Objection has been heard.

Mr. WELLSTONE. I ask unanimous consent that I be allowed to modify my amendment, which is exactly what we agreed to in terms of how we deal with these amendments.

The PRESIDING OFFICER. Is there objection?

Mr. SMITH of Oregon. I object.

Mr. WELLSTONE. Mr. President, my colleagues are afraid to have a vote and an honest debate on what we are talking about, and this is a violation of the agreement that we made when we talked about how to proceed.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I am in no way questioning what the Senator was saying. I wasn't a party to the agreement he was talking about. What I am objecting to is the principle, whether it is a little or a lot. What I am saying is we have the laws to fix these kinds of problems. The Justice Department ought to go to work, and we ought not to be intervening in the agricultural marketplace in this way.

If you want to help farmers, help them with their water rights, help them with their labor problems, help them with closed international markets, help them with subsidies, and help them with a whole range of things we do in great abundance around here. But, frankly, get off their air hose when it comes to regulation. They are being strangled by regulation. This is not the way to help farmers; therefore, I object on my own basis—not on the basis of Senator LOTT or any other leader.

The PRESIDING OFFICER. Under regular order, the amendment cannot be modified without unanimous consent.

Mr. DORGAN. Mr. President, might I ask the Senator for 1 minute for the purpose of making an inquiry?

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I understand the point made by the Senator from Oregon.

First of all, I was not here during the discussion on the floor. So I am not someone who can describe what happened during that discussion. But if the Senator from Minnesota is correct—and he may well be—that, in fact, the majority leader made representations, I think he would not want to abridge them at this point. I think it is a matter of finding the record; the majority leader has always acted in good faith to honor an agreement he made on the floor.

Before denying the opportunity to the Senator from Minnesota, we ought to get that record and find out to what the majority leader agreed. I am certain what he agreed to then he would agree to today. If he agreed to allow a modification, the Senator from Minnesota should be allowed to pursue that modification.

I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I don't want to deny the Senator from Minnesota his chance to modify his amendment on the basis of an agreement he had with the leader. I don't want to not pursue an issue this important today.

The PRESIDING OFFICER. Will the Senator suspend?

The Senator from North Dakota made a point of order that a quorum is not present.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SMITH of Oregon. I ask unanimous consent that the order for the quorum call be rescinded.

Mr. WELLSTONE. I object.

The PRESIDING OFFICER. The objection is heard. The clerk will continue to call the roll.

The legislative clerk continued the call of the roll.

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

Mr. WELLSTONE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

The legislative assistant continued the call of the roll.

Mr. WELLSTONE. 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. WELLSTONE. Mr. President, parliamentary inquiry: I want to find out from the Chair whether or not I can amend, provide direction to my amendment without requiring unanimous consent; whether I have a right to do that.

The PRESIDING OFFICER. Under the Senate rules, the Senator cannot do that.

Mr. WELLSTONE. Mr. President, I have how much time left?

The PRESIDING OFFICER. The Senator has 4 minutes 45 seconds.

Mr. WELLSTONE. Mr. President, I have said it all, along with Senator DORGAN, about the why of this amendment and how important it is for our producers, how important it is to take a timeout so we can have some competition, how important it is to farmers and rural communities. Given the ruling of the Chair, I want to be crystal clear as to what has now happened.

I wanted to come to the floor of the Senate—it was my understanding I would be able to do so, but I have been told I would not be able to do so—and improve upon this amendment in the spirit of compromise.

Some colleagues are concerned about this timeout and they said: Why don't we have companies with $100 million. And the other threshold for an acquisition merger would be $100 million as well. They would be more comfortable with that. I wanted to provide this direction to my amendment to improve upon it. I wanted to compromise.

I was also told by some colleagues they are a little worried that during this cooling off period, maybe some of the acquisitions and mergers would be procompetitive. I worked very hard to have some very specific language which would enable such a company to go to USDA and say: Listen, this would be procompetitive. And USDA, based upon clear criteria, would say: You are right.

I come to the floor of the Senate today as a Senator from the State of Minnesota to try to modify my amendment. It is very clear what the modification would be. Based upon discussions with other Senators, in the spirit of compromise, so we can at least move

this forward and provide a message to our producers that we care, so that some Senators who may now have to vote against this because of their concerns would be able to support it so we can actually adopt something that will make a difference, I am told I do not have the right to modify my amendment.

Also—this is my final point because I cannot help but be a little bit angry about this—the majority leader came to me last week when Senators wanted to leave. We were scheduled to have a debate, and we were scheduled to have a vote. The idea was, to enable people to leave, we would hold this over, and I said yes. It is not as if I have waited to the last minute. We could have had negotiations then. We have just come back to this.

I must say to my colleague from Oregon and others, I am skeptical about this. It is pretty rare that a Senator cannot come to the floor and modify his amendment. Whatever the procedural ruling is, it seems to me it is crystal clear what is going on. I wanted to modify it. I wanted to compromise. I wanted to make an amendment that would generate more support, maybe even adopt it, and I have been denied the opportunity to do so. That is very unfortunate.

It is about time my colleagues gave some serious thought to being on the side of some of the interests in our country that do not have all the money and are not so well connected and such big investors and do not have such power. When my colleagues start with that, think about the producers and the people who live in our rural communities because right now we are seeing merger mania. We are seeing a lack of competition. We need to go back, I guess, to Teddy Roosevelt politics. It is a shame I have been denied the right to provide direction to my amendment or a modification to my amendment which would have been a good compromise.

How much time do I have?

The PRESIDING OFFICER. The Senator has 25 seconds remaining.

Mr. WELLSTONE. Mr. President, other than I do not have strong feelings about any of it, I will not take the last 25 seconds. I feel too strongly to say anything more in the last 25 seconds. It is rare that a Senator cannot modify his amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 2752. The yeas and nays have been ordered. The clerk will call the roll.

The legislative assistant called the roll.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

The result was announced—yeas 27, nays 71, as follows:

[Rollcall Vote No. 366 Leg.]

YEAS—27

Akaka	Feingold	Kohl
Baucus	Grassley	Lautenberg
Boxer	Harkin	Leahy
Bryan	Hollings	Levin
Byrd	Inouye	Moynihan
Conrad	Johnson	Reid
Daschle	Kennedy	Rockefeller
Dodd	Kerrey	Sarbanes
Dorgan	Kerry	Wellstone

NAYS—71

Abraham	Enzi	Mikulski
Allard	Feinstein	Murkowski
Ashcroft	Fitzgerald	Murray
Bayh	Frist	Nickles
Bennett	Gorton	Reed
Biden	Graham	Robb
Bingaman	Gramm	Roberts
Bond	Grams	Roth
Breaux	Gregg	Santorum
Brownback	Hagel	Schumer
Bunning	Hatch	Sessions
Burns	Helms	Shelby
Campbell	Hutchinson	Smith (NH)
Chafee, L.	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Cochran	Jeffords	Specter
Collins	Kyl	Stevens
Coverdell	Landrieu	Thomas
Craig	Lieberman	Thompson
Crapo	Lincoln	Thurmond
DeWine	Lott	Torricelli
Domenici	Lugar	Warner
Durbin	Mack	Wyden
Edwards	McConnell	

NOT VOTING—2

McCain	Voinovich

The amendment (No. 2752) was rejected.

AMENDMENT NO. 2663

The PRESIDING OFFICER. Under the previous order, there will now be 4 minutes of debate on amendment No. 2663.

Mr. MOYNIHAN. Mr. President, this amendment retains existing bankruptcy law for low-income persons. A feature of the law as it now exists and which is perfectly sensible is the presumption that people who incur debt shortly before declaring bankruptcy have acted fraudulently. Clearly, this can be the case, is often the case, and is proven so.

However, the bill presently before the Senate extends the time (from 60 days to 90 days for consumer debts, for instance) in which this presumption of fraudulent activity takes place, and it changes the dollar amounts. We propose to keep the law as it is for low-income persons—people below the median income level, who already live hand-to-mouth, who often find themselves in a bind, with no intent to defraud, and keep borrowing until they are in bankruptcy situations. They won't have lawyers and can't defend against presumptions.

We simply keep the existing law. Deal with true fraud and important bankruptcies as the bill proposes to do but leave the small and hapless folk to their small and hapless fortunes.

The administration supports this measure, as does my friend, the senior Senator from Vermont, Mr. LEAHY, and his associate in these matters, Ms. LANDRIEU of Louisiana.

Mr. HATCH. Mr. President, in its current form, the bankruptcy reform bill attempts to resolve a major area of bankruptcy abuse, known as ''load up.'' In plain terms, load up occurs when a debtor goes on a spending spree shortly before filing for bankruptcy.

Under S. 625, limits are placed on a debtor's ability to buy luxury goods and take out large cash advances on the eve of bankruptcy. The bill accomplishes this by creating a rebuttable presumption that certain debts are not dischargeable. Specifically, the bill provides that debts of more than $250 per credit card for luxury goods, that are incurred within 3 months of bankruptcy, and cash advances of more than $750, incurred within 70 days of bankruptcy, are presumed to be fraudulent and are non-dischargeable.

These provisions, while an improvement over current law, are by no means a solution to the load up problem. Debtors still essentially are free to take out a cash advance of $750 and buy luxury goods valued at $250 on each of their credit cards before even the presumption of nondischargeability kicks in. It also is important to note that under the bill, luxury goods specifically exclude ''goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''

Many have complained that these provisions do not go far enough to close the load up loophole. The amendment by the Senator from New York, in contrast, undermines the bill's modest anti-load up provisions by applying them only to those with income above the national median. Simply stated, the amendment would create an unjustified double standard, with those who fall under the national median income being permitted to load up on luxury goods and cash advances before filing for bankruptcy, as permitted by current law.

If we seriously intend to reform our bankruptcy laws and eliminate fraud in the system, we cannot let this major loophole continue without any reasonable limits.

Mr. GRASSLEY. Mr. President, I oppose this amendment because it sets up a double standard which lets below median-income bankrupts load up on debt on the eve of bankruptcy and then get those debts wiped away without judicial scrutiny. I know the Senator from New York is well-intentioned, but this amendment is a very bad idea.

Last night, the Senator from New York, in proposing his amendment, correctly noted that there is no evidence whatever that below median-income debtors could ever pay a significant amount of their debts. We have taken care of the problem the Senator from New York has raised by totally exempting below median-income debtors from the means test. I think that is fair and reasonable. It is a fact of life. It means the poor won't be forced into repayment plans they could never complete.

However, this amendment raises an entirely different question. This amendment isn't about whether the poor should be given a pass in terms of being forced to repay their debts. This amendment says people below the median income can purchase over $1,000 in luxury goods, such as Gucci loafers, and get over $1,000 in cash advances just minutes before declaring bankruptcy and they won't have to justify their debts to a bankruptcy judge.

This is not good bankruptcy policy. Anybody who loads up on debt on the eve of bankruptcy should have to justify their debts. When it comes to suspicious and perhaps fraudulent behavior, we should treat everyone the same, below median income or above median income. Anybody who loads up on debt right before filing for bankruptcy should have to explain themselves; otherwise, we open the door to an obvious abuse.

Last week, we defeated the Dodd amendment which contained very similar provisions. I ask my colleagues to defeat this amendment.

Mr. MOYNIHAN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. MOYNIHAN. Is it in order for me to offer a second-degree amendment that would preclude any purchase of Gucci loafers?

The PRESIDING OFFICER. It would be in order.

Mr. MOYNIHAN. I so move.

The PRESIDING OFFICER. Would the Senator send the amendment to the desk?

Mr. MOYNIHAN. I made my point.

I withdraw my request.

Mr. GRASSLEY. I move to table the amendment, and 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment No. 2663. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. MCCAIN) and the Senator from Ohio (Mr. VOINOVICH) are necessarily absent.

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

[Rollcall Vote No. 367 Leg.]

YEAS—54

Abraham	Coverdell	Hagel
Allard	Craig	Hatch
Ashcroft	Crapo	Helms
Bennett	DeWine	Hutchinson
Biden	Domenici	Hutchison
Bond	Enzi	Inhofe
Brownback	Frist	Jeffords
Bunning	Gorton	Johnson
Burns	Gramm	Kyl
Campbell	Grams	Lott
Cochran	Grassley	Lugar
Collins	Gregg	Mack
McConnell	Santorum	Stevens
Murkowski	Sessions	Thomas
Nickles	Shelby	Thompson
Robb	Smith (NH)	Thurmond
Roberts	Smith (OR)	Torricelli
Roth	Specter	Warner

NAYS—43

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Breaux	Hollings	Reed
Bryan	Inouye	Reid
Byrd	Kennedy	Rockefeller
Chafee, L.	Kerrey	Sarbanes
Cleland	Kerry	Schumer
Conrad	Kohl	Snowe
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Dorgan	Leahy	
Durbin	Levin	

ANSWERED "PRESENT"—1

Fitzgerald

NOT VOTING—2

McCain Voinovich

The motion was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

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

The bill clerk proceeded to call the roll.

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

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

CHANGE OF VOTE

Mr. L. CHAFEE. Mr. President, on rollcall No. 367, I voted "aye." It was my intention to vote "no." Therefore, I ask unanimous consent that I be permitted to change my vote. It would in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

AMENDMENT NOS. 1695, AS MODIFIED; 2520; 2746, AS MODIFIED; AND 2522, AS MODIFIED, EN BLOC

Mr. GRASSLEY. Mr. President, I ask unanimous consent on the consideration of these amendments: 1695, as modified; 2520; 2746, as modified; 2522, as modified. I send the modifications to the desk and ask for their immediate consideration, that they be adopted, and the motions to reconsider be laid upon the table en bloc.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, is 2520 the McConnell amendment?

Mr. GRASSLEY. Yes.

Mr. REID. No objection.

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

The amendments (Nos. 1695, as modified; 2520; 2746, as modified; and 2522, as modified) were agreed to as follows:

AMENDMENT NO. 1695, AS MODIFIED

(Purpose: To increase bankruptcy filing fees, increase funds for the United States Trustee System Fund, and for other purposes)

On page 124, between lines 14 and 15, insert the following:

SEC. 322. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2) by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4) by striking "one-half" and inserting "100 percent".

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking "pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931" and inserting "under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title".

AMENDMENT NO. 2520

(Purpose: To amend section 326 of title 11, United States Code, to provide for compensation of trustees in certain cases under chapter 7 of that title)

At the appropriate place in title III, insert the following:

SEC. 3___. COMPENSATION OF TRUSTEES IN CERTAIN CASES UNDER CHAPTER 7 OF TITLE 11, UNITED STATES CODE.

Section 326 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a case that has been converted under section 706, or after a case has been converted or dismissed under section 707 or the debtor has been denied a discharge under section 727—

"(1) the court may allow reasonable compensation under section 330 for the trustee's services rendered, payable after the trustee renders services; and

"(2) any allowance made by a court under paragraph (1) shall not be subject to the limitations under subsection (a).".

AMENDMENT NO. 2746, AS MODIFIED

(Purpose: To change the definition of family farmer)

At the appropriate place in the bill, insert the following:

SEC. . DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A) by—

(A) striking '$1,500,000'' and inserting ''3,000,000''; and

(B) striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii) by

striking ''$1,500,000'' and inserting ''$3,000,000''.

AMENDMENT NO. 2522, AS MODIFIED

(Purpose: To provide for the expenses of long term care)

On page 7, line 15, strike ''(ii)'' and insert ''(ii)(I)''

On page 7, between lines 21 and 22, insert the following:

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonably and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

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

PRIVILEGE OF THE FLOOR

Mr. INHOFE. Mr. President, I ask unanimous consent that Glen Powell be given floor privileges for the duration of the day.

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

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as if in morning business.

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

RECESS APPOINTMENTS

Mr. INHOFE. Mr. President, I wish to have a brief word about the issue of recess appointments.

For quite some number of years, Presidents—Democrats and Republicans—have, in my opinion, violated the Constitution by making recess appointments. The Constitution is very explicit when it says that recess appointments can only be made in the event the vacancy occurs during the recess. There is a reason for this, historically.

Back in the days when we were on horses and we had legislative sessions that might have lasted 1, 2, or 3 months, we found ourselves in recess more than we were in session. Therefore, on occasion it would be necessary for the Secretary of State, who may have died in office—or when vacancies had occurred while we were in recess—to have to reappoint somebody. So we did. It made sense. But since that time—over the last several years—that privilege has been abused. As I say, this is not just an abuse that takes place by Republican or Democrat Presidents; it is both of them equally.

Consequently, the Constitution, which says that the Senate has the prerogative of advice and consent, has been violated. It was put there for checks and balances. It was put there for a very good reason. That reason is just as legitimate today as it was when our Founding Fathers put it in there; that is, the Senate should advise and consent to these appointments. It means we should actually be in on the discussion as well as consenting to the decision the President has made by virtue of his nomination.

In 1985, President Reagan was making a number of recess appointments that, in my opinion, and in the opinion of most of the Democrats and Republicans, was not in keeping with the Constitution. And certainly the majority leader at that time—who was Senator BOB BYRD from West Virginia, the very distinguished Senator—made a request of the President not to make recess appointments. He extracted from him a commitment in writing that he would not make recess appointments and, if it should become necessary because of extraordinary circumstances to make recess appointments, that he would have to give the list to the majority leader—who was, of course, BOB BYRD—in sufficient time in advance that they could prepare for it either by agreeing in advance to the confirmation of that appointment or by not going into recess and staying in pro forma so the recess appointments could not take place.

In order to add some leverage to this, the majority leader, Senator BYRD, said he would hold up all Presidential appointments until such time as President Reagan would give him a letter agreeing to those conditions. The President did give him a letter. President Reagan gave him a letter.

I will quote for you from within this letter. This was on October 18, 1985. He said:

. . . prior to any recess breaks, the White House would inform the Majority Leader and [the Minority Leader] of any recess appointment which might be contemplated during such recess. They would do so in advance sufficiently to allow the leadership on both sides to perhaps take action to fill whatever vacancies that might be imperative during such a break.

This is exactly what we talked about. This is the reason President Reagan agreed to this. He gave a letter to Senator BYRD. Senator BYRD was satisfied.

Along came a recess last May or June, and the President did in fact appoint someone he had nominated long before the recess occurred—in fact, not just months but even more than a year before that—and who had not complied with the necessary information in order to come up for confirmation. In that case, President Clinton did in fact violate the intent of the appointment process in the advice and consent provision found in the Constitution.

I wrote a letter to President Bill Clinton. My letter said exactly the same thing the letter said from BOB BYRD to President Reagan in 1985. It was worded the same way President Reagan's letter was worded. It said: Unless you will give us a letter, I am going to personally put a hold on all recess appointments.

The President started appointing people. And I put a hold on all of them—it didn't make any difference; I put a hold on all nonmilitary appointments—until finally, I remember one time somebody said: Well, we have a really serious problem because we can't get confirmation on the President's nominee for Secretary of the Treasury. This could have a dramatic adverse effect on the economy. The value of the dollar could go down. All these things came into the picture. What are you going to do about that? I said: I am not going to do anything, but you had better tell the President about that because it is serious. Finally, he agreed to it.

Mr. President, I ask unanimous consent that all of these documents be printed in the RECORD immediately following my remarks.

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

(See Exhibit 1.)

Mr. INHOFE. The letter finally came on June 15, 1999. I will read one sentence out of that letter.

I share your opinion that the understanding reached in 1985 between President Reagan and Senator BYRD cited in your letter remains a fair and constructive framework which my Administration will follow.

Once again, what is he following? He is saying, prior to any recess, the White House will inform the majority leader and the minority leader of any recess appointments which might be contemplated during such recess? Would they do so in advance sufficiently to allow leadership on both sides to perhaps take action to fill whatever vacancies might be imperative during such break? He agreed to it.

I have not seen such a document, but I think in anticipation of the recess we are going in, it is my understanding that the President merely sent a list of some 150 nominees he has. Again, I didn't see it. It was never officially received by the majority leader. It was sent back to the White House.

If he thinks this is a loophole in the commitment he made, it certainly is not a loophole.

Anticipating that this President—who quite often does things he doesn't say he is going to do and who quite often says things that aren't true—is going to in fact have recess appointments, we wrote a letter. It is not just on my letterhead signed by me, but also I believe there are 16 other Senators saying that if you make recess appointments during the upcoming recess, which violates the spirit of your agreement, we will respond by placing holds on all judicial nominees.

The result would be a complete breakdown in cooperation between our two branches of government on this issue which could prevent the confirmation of any such nominees next year.