

and Democrats will understand the merit, the value, and the worth of family farming in this country's future. I hope that we will decide to embark upon a farm policy that says to family farmers that when prices collapse and when you are ravaged by the worst crop disease of the century, we want to help you over those price valleys. We want you to be a part of this country's future.

We need a farm policy that tells family farmers that they matter from the standpoint of social and economic policy. Here we are in a country that produces the most wholesome quality food at the lowest percent of disposable income of anywhere in the world. Family farmers do matter in this country's future. I hope that will be the result of the debate we have here in the next month or two in the U.S. Senate.

Mr. President, I yield the floor.

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I ask unanimous consent that I be permitted to proceed for not to exceed 12 minutes.

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

(The remarks of Ms. COLLINS pertaining to the introduction of S. 2292 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Ms. COLLINS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PROPERTY RIGHTS IMPLEMENTATION ACT OF 1998—MOTION TO PROCEED

Mr. HATCH. Mr. President, I move to proceed to the consideration of S. 2271, the Property Rights Implementation Act.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to debate the motion to proceed to S. 2271, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to the consideration of the bill (S. 2271) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials or entities acting under color of State law, and for other purposes.

The Senate proceeded to consider the motion.

PRIVILEGE OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that Brian Day, one of my law clerks, have floor privileges during the pendency of the property rights debate.

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

Mr. HATCH. Mr. President, the people of Utah, and indeed, of all of our States, have felt the heavy hand of the government erode their right to hold and enjoy private property. I have authored and cosponsored many bills in the past that would protect private property from the jaws of the regulatory state.

Our opponents on the left and the radical, so-called environmental groups, however, have been successful so far in derailing the consideration of more needed reform measures. But I believe we have the opportunity to pass a narrower yet meaningful piece of legislation. The substitute we are considering today, S. 2271, the "Property Rights Implementation Act," narrows H.R. 1534, which passed the House of Representatives on October 23, 1997, by a 248 to 178 vote. After the House passed bill was referred to the Judiciary Committee, we met with local, environmental, and governmental groups in an effort to meet their concerns. The product of those meetings is the S. 2271 substitute.

Mr. President, I hope the Senate will allow us to proceed to consideration of this bill. How can we work to further improve this bill if your colleagues will not let us proceed to vote. This is a worthwhile bill that resolves many problems. I call on my colleagues to vote for cloture so that we may address those problems on the merits.

The purpose of S. 2271, is, at its root, primarily one of fostering fundamental fairness and simple justice for the many millions of Americans who possess or own property. Many citizens who attempt to protect their property rights guaranteed by the Fifth Amendment of the Constitution are barred from the doors of the federal courthouse.

In situations where other than Fifth Amendment property rights are sought to be enforced—such as First Amendment rights, for example—aggrieved parties generally file in a single federal forum without having to exhaust state and local procedures. This is not the case for property owners.

Often they must exhaust all state remedies with the result that they may have to wait for over a decade before their rights are allowed to be vindicated in federal court—if they get there at all. Moreover, the federal jurisdiction over property rights claims against federal agencies and Executive Branch Departments is in a muddle. In these types of cases, property owners face onerous procedural hurdles unique in federal litigation.

The Property Rights Implementation Act, if we are allowed to even consider

it, primarily addresses the problem of providing property owners fair access to federal courts to vindicate their federal constitutional rights. The bill is thus merely procedural and does not create new substantive rights.

Consequently, the bill has two purposes. The first is to provide private property owners claiming a violation of the Fifth Amendment's taking clause some certainty as to when they may file the claim in federal court. This is accomplished by addressing the procedural hurdles of the ripeness and abstention doctrines which currently prevent them from having fair and equal access to federal court. S. 2271 defines when a final agency decision has occurred for purposes of meeting the ripeness requirement and prohibits a federal judge from abstaining from or relinquishing jurisdiction when the case does not allege any violation of a state law, right, or privilege. Thus, S. 2271 serves as a vehicle for overcoming federal judicial reluctance to review takings claims based on the ripeness and abstention doctrines.

The second purpose of the bill is to clarify the jurisdiction between the Court of Federal Claims in Washington, D.C., and the regional federal district courts over federal Fifth Amendment takings claims. The Tucker Act grants the Court of Federal Claims exclusive jurisdiction over takings claims seeking compensation. Thus, property owners seeking equitable relief must file in the appropriate federal district court.

This division between law and equity is archaic and results in burdensome delays as property owners who seek both types of relief are "shuffled" from one court to the other to determine which court is the proper forum for review. S. 2271 resolves this matter by simply giving both courts concurrent jurisdiction over takings claims, thus allowing both legal and equitable relief to be granted in a single forum. I will address this conundrum of the "Tucker Act shuffle" in more detail in a later speech.

I. HOW THE BILL WORKS

Let me briefly explain how the procedural aspects of the bill, designed to assure fairness, work. One of the hurdles property owners face when trying to have their Federal claim heard on the merits is the doctrine of abstention. Federal courts routinely abstain their jurisdiction and refer the case to state court, even if there is no State or local claim alleged. This is true only for property rights cases.

The bill would clarify that a Federal court shall not abstain its jurisdiction if only Federal claims are alleged. To protect State's rights, the bill allows an unsettled question of State law that arises in the course of the Federal claim to be certified in the highest appellate court of that State, under whatever certification procedures exist in that State. Federal courts would retain their jurisdiction, but the unsettled State law question would be answered in State, not Federal court. In