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The 2018 Farm Bill: Legislative Compromise in the Trump Era

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THE 2018 FARM BILL: LEGISLATIVE COMPROMISE IN THE TRUMP ERA

*Chad G. Marzen**

I. INTRODUCTION

With the holidays approaching in 2018, the federal government proceeded into a shutdown at midnight on December 22, 2018 as an impasse over a proposed \$5.7 billion wall along the border of the United States and Mexico continued between President Donald Trump and the U.S. Congress.¹ The shutdown began just as the 115th Congress was in its twilight hours, and despite the fact Republicans were in the majority in both the U.S. House of Representatives and the U.S. Senate.² The shutdown lasted well into the 116th Congress—a Congress which features a House of Representatives where Democrats are in the majority and a Senate where Republicans have retained control.³ Lasting weeks and becoming the longest federal government

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To Laura Elizabeth Grice – yours always.

1. David Jackson, Bart Jansen & Michael Collins, *Government shutdown, day 2: White House makes 'counteroffer,' asks for less than \$5B for border wall funding*, USA TODAY (Dec. 23, 2018), <https://www.usatoday.com/story/news/politics/2018/12/23/government-shutdown-no-end-sight-lawmakers-head-home-holidays/2398875002/> [<https://perma.cc/P7XJ-7NXC>].

2. Devin Miller, *By the numbers: Introducing the 115th Congress*, AAP NEWS (Jan. 4, 2017), <http://www.aapublications.org/news/2017/01/04/Washington010417> [<https://perma.cc/L3PQ-GY3W>].

3. Lisa Mascaro, *Nancy Pelosi elected speaker of the House, sees 'new dawn' for 116th Congress*, CHI. TRIB. (Jan. 3, 2019), <https://www.chicagotribune.com/nation-world/ct-democrats-house-20190103-story.html> [<https://perma.cc/583F-N6YT>].

shutdown in United States history,⁴ the shutdown evoked words and phrases such as “broken,”⁵ “petty,”⁶ “acrimonious,”⁷ and “a renewed era of political brinkmanship”⁸ to describe politics and policymaking in the United States. The shutdown finally ended after thirty-five days.⁹

A great deal of media attention has focused on the partisan political atmosphere in Washington, D.C.¹⁰ Despite this highly partisan atmosphere, in the waning days of the 115th Congress, President Trump and Congress reached a monumental—and largely overlooked—agreement in agricultural policy with the enactment of the 2018 farm bill.¹¹

4. Clare Foran, *Current shutdown breaks record for longest government shutdown in US history*, CNN (Jan. 12, 2019), <https://www.cnn.com/2019/01/12/politics/government-shutdown-breaks-record-longest-ever/index.html> [https://perma.cc/V2CU-7VAJ].

5. Joshua Jamerson & Andrew Duehren, ‘*Washington Is Pretty Broken*’: *Shutdown Fight Rattles Freshman Lawmakers*, WALL ST. J. (Jan. 18, 2019), <https://www.wsj.com/articles/washington-is-pretty-broken-shutdown-fight-rattles-freshman-lawmakers-11547827296> [https://perma.cc/CXS5-NSQ3] (quoting Florida Republican Senator Rick Scott).

6. Amanda Sakuma, *Wky Trump and Pelosi are caught in a bitter, petty game of one-upmanship*, VOX (Jan. 19, 2019), <https://www.vox.com/2019/1/19/18189462/trump-pelosi-shutdown-travel-state-union-fight> [https://perma.cc/M5NF-UNCH] (last accessed Jan. 20, 2019).

7. Roey Hadar, *Trump to make ‘major announcement’ on shutdown, border*, ABC NEWS (Jan. 18, 2019), <https://abcnews.go.com/beta-story-container/Politics/trump-make-major-announcement-shutdown-border/story?id=60481513> [https://perma.cc/7PUP-F2W8].

8. Amanda Sakuma, *This is now the longest government shutdown in US history*, VOX (Jan. 12, 2019), <https://www.vox.com/2019/1/12/18179711/longest-government-shutdown-us-history> [https://perma.cc/UD45-S9ZC].

9. Michael Collins, Eliza Collins, David Jackson, John Fritze & Maureen Groppe, *Trump signs measure to temporarily reopen government, setting up new battle over border wall*, USA TODAY (Jan. 25, 2019), <https://www.usatoday.com/story/news/politics/2019/01/25/shutdown-senate-leaders-talk-flight-delays-reported-airports/2676022002/> [https://perma.cc/LT5L-E9RC] (last accessed Jan. 27, 2019).

10. See, e.g., Douglas Schoen, *State of American Politics is all Power Games and Partisanship*, THE HILL (Jan. 20, 2019), <https://thehill.com/opinion/white-house/426195-state-of-american-politics-is-all-power-games-and-partisanship> [https://perma.cc/M9AW-53FW].

11. Paulina Dedaj, *Trump Signs \$867 Billion Farm Bill, Tightening Rules for Food Stamp Recipients*, FOX NEWS (Dec. 20, 2018), <https://www.foxnews.com/>

Legal scholars have already furnished vigorous commentary and analysis of the Trump administration, from issues involving its use of private deals with private entities to pursue public policy objectives,¹² its relationship with international law,¹³ the rise of civil society groups,¹⁴ judicial appointments,¹⁵ antitrust law and agriculture,¹⁶ environmental policy,¹⁷ and immigration policy.¹⁸ This Article contributes to this emerging literature in contending that despite a highly partisan political atmosphere in the United States, the story of the farm bill and agricultural policy should be viewed as a shining success story in legislative compromise among Republicans and Democrats in the Trump era. Although the farm bill faced numerous headwinds, from continuing criticisms of crop insurance, the development of sharply differing bills by the House of Representatives and Senate, the midterm elections of 2018, the bill continuing into the 2018 lame duck session, and an unexpected controversial provision concerning foreign policy with Yemen, the compromise bill easily passed through the House of Representatives and the Senate. At the

politics/trump-signs-867-billion-farm-bill-tightening-rules-for-food-stamp-recipients [https://perma.cc/PWG2-6YC2].

12. See, e.g., Steven Davidoff Solomon & David Zaring, *Transactional Administration*, 106 GEO. L.J. 1097 (2018).

13. See, e.g., Catherine Amirfar & Ashika Singh, *The Trump Administration and the “Unmaking” of International Agreements*, 59 HARV. INT’L L.J. 443 (2018); Harold Koh, *The Trump Administration and International Law*, 56 WASHBURN L.J. 413 (2017).

14. See, e.g., Matthew R. Segal, *America’s Conscience: The Rise of Civil Society Groups Under President Trump*, 65 UCLA L. REV. 1574 (2018).

15. See, e.g., Carl Tobias, *President Donald Trump and Federal Bench Diversity*, 74 WASH. & LEE L. REV. ONLINE 400 (May 3, 2018); Jason Mazzone, *President Trump and the Judiciary*, 2017 U. ILL. L. REV. ONLINE 1 (Apr. 29, 2017).

16. See, e.g., Leah Douglas, *Antitrust in Food and Farming Under President Trump*, 13 J. FOOD L. & POL’Y 78 (2017).

17. See, e.g., Michael C. Blumm & Olivier Jamin, *The Trump Public Lands Revolution: Redefining “The Public” in Public Land Law*, 48 ENVTL. L. 311 (2018); Brigham Daniels, *Come Hell and High Water: Climate Change Policy in the Age of Trump*, 13 FIU L. REV. 65 (2018); Carol J. Miller, *For a Lump of Coal & a Drop of Oil: An Environmentalist’s Critique of the Trump Administration’s First Year of Energy Policies*, 36 VA. ENVTL. L.J. 185 (2018); Jessica Owley, *Taking the Public out of Public Lands: Shifts in Coal Extraction Policies in the Trump Administration*, 13 FIU L. REV. 35 (2018).

18. See, e.g., Bill Ong Hing, *Entering the Trump Ice Age: Contextualizing the New Immigration Enforcement Regime*, 5 TEX. A & M. L. REV. 253 (2018).

end of the day, policymakers from both sides of the political aisle were largely left happy with the compromise.

II. THE FARM BILL: A BRIEF OVERVIEW

A. *The Agricultural Adjustment Act of 1933*

The origins of the farm bill are found at the height of the Great Depression. In 1933, President Franklin Roosevelt signed the Agricultural Adjustment Act into law.¹⁹ The goals of the law included “limiting crop production, reducing stock numbers, and refinancing mortgages with terms more favorable to struggling farmers.”²⁰ One of the primary aims of the very first farm bill was to support depressed commodity prices during the Depression by requiring producers to cut production levels.²¹ The first farm bill, in essence, began a legislative history establishing a “safety net” for farmers through federal governmental programs and economic subsidies.²² The federal crop insurance program, a key risk management program for farmers, is one such program that began several years following the first farm bill with the passage of the Federal Crop Insurance Act (“FCIA”) of 1938.²³ The purpose of the FCIA is to “promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance.”²⁴ Other programs which have been created to support commodities over time include the Foreign Market Development Program²⁵ and

19. *Agricultural Adjustment Act (1933, Reauthorized 1938)*, THE LIVING NEW DEAL, <https://livingnewdeal.org/glossary/agricultural-adjustment-act-1933-re-authorized-1938-2/> [<https://perma.cc/33U5-N7TX>] (last accessed Jan. 21, 2019).

20. *Id.*

21. *Id.*

22. Jason Fascolo & Michael Zimmerman, *Alternative Growth: Forsaking the False Economies of Industrial Agriculture*, 25 *FORDHAM ENVTL. L. REV.* 316 (2014).

23. Steffen N. Johnson, *A Regulatory ‘Waste Land’: Defining a Justified Federal Role in Crop Insurance*, 72 *N.D. L. REV.* 505, 510 (1996).

24. 7 U.S.C. § 1502(a) (2012).

25. *Foreign Market Development Program (FMD)*, U.S.D.A., FOREIGN AGRIC. SERV., <https://www.fas.usda.gov/programs/foreign-market-development-program-fmd> [<https://perma.cc/U4XG-4HNL>] (last accessed Mar. 2, 2019). (“The Foreign Market Development Program (FMD) Program, also known as the Cooperator Program, helps create, expand and maintain long-term export markets for U.S.

commodity support programs such as the Price Loss Coverage, Agricultural Risk Coverage, and Marketing Assistance Loans.²⁶

B. Subsequent Farm Bills and Agricultural Policy

Since the Agricultural Adjustment Act of 1933, approximately every five years the farm bill is reauthorized.²⁷ Over time, the farm bill has expanded beyond commodity support programs and crop insurance to encompass other areas of agricultural and food policy. For example, the farm bill now supports conservation and the environment through federal programs such as the Conservation Stewardship Program,²⁸ the Conservation Reserve Program,²⁹ the Regional Conservation Partnership Program,³⁰ Agricultural Conservation Easement

agricultural products. Under the program, FAS partners with U.S. agricultural producers and processors, who are represented by non-profit commodity or trade associations called “cooperators,” to promote U.S. commodities overseas.”).

26. SAHAR ANGADJIVAND, CONG. RESEARCH SERV. R45165, U.S. FARM COMMODITY SUPPORT: AN OVERVIEW OF SELECTED PROGRAMS, (APR. 17, 2018).

27. Sarah J. Morath, *The Farm Bill: A Wicked Problem Seeking a Systematic Solution*, 25 DUKE ENVTL. L. & POL’Y F. 389 (2015).

28. *Conservation Stewardship Program – Payment for Performance*, U.S.D.A., NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/financial/csp/?cid=nrcs143008316> [https://perma.cc/JV7R-CYAF] (last accessed Jan. 23, 2019). (“The Conservation Stewardship Program (CSP) presents a significant shift in how the Natural Resources Conservation Service (NRCS) provides conservation program payments. CSP participants will receive an annual land use payment for operation-level environmental benefits they produce. Under CSP, participants are paid for conservation performance: the higher the operational performance, the higher their payment.”).

29. Raymond J. Watson, Jr., *Conservation Reserve Program: What Happens to the Land after the Contracts End?*, 14 N. ILL. U.L. REV. 733, 736 (1994) (Providing a comprehensive discussion of the Conservation Reserve Program (CRP), “. . . rather than threatening loss of program eligibility, encourages desirable conservation practices by offering payments to farmers who will contract to protect certain fragile lands.”).

30. *About RCPP*, U.S.D.A., NAT. RES. CONSERVATION SERV., <https://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/farmland/rcpp/?cid=nrcseprd1308280> [https://perma.cc/Q9YC-U6N8] (last accessed Jan. 23, 2019). (“The Regional Conservation Partnership Program (RCPP) encourages partners to join in efforts with producers to increase the restoration and sustainable use of soil, water, wildlife and related natural resources on regional or watershed scales Under RCPP, eligible producers and landowners of agricultural land and non-

Program,³¹ and the Environmental Quality Incentives Program.³² It also reaches into food and nutrition policy, authoring programs such as the Supplemental Nutrition Assistance Program (“SNAP”).³³

From reauthorization to reauthorization, Professor Sarah Morath has observed that the various farm bills over time reflect “fluctuations in policy preferences” and that each farm bill reflects “various goals and priorities.”³⁴ In 2008, for example, organic agriculture was on the rise,³⁵ and thus became a key priority in the farm bill through the

industrial private forestland may enter into conservation program contracts or easement agreements under the framework of a partnership agreement.”).

31. Margaret Claire Osswald, *Custom-Made Conservation: Resource-Specific Conservation Easement Implementation Unpaves the Path of Tax Abuse*, 32 J. ENVTL. L. & LITIG. 1, 19 (2016) (“ACEP facilitates the acquisition of two types of CEs: agricultural land easements and wetland reserve easements. Under the agricultural land easements component of ACEP, NRCS provides matching funds to state and local government, tribes, and qualified conservation organizations to help them purchase easements protecting agricultural lands in perpetuity. In contrast, under the wetland reserve easements component, NRCS purchases easements directly from landowners to protect the wetlands and associated lands either in perpetuity or for thirty years.”).

32. Kelsey Peterson, *Farming in the Modern Era: Feeding the World with an Environmental Conscience*, 5 SEATTLE J. ENVTL. L. 160, 160 (2015) (“The Environmental Quality Incentives Program (EQUIP) is another valuable federal program that allows farmers to enter into contracts with the government in order to utilize their land for various conservation purposes. The government offers farmers financial aid for implementing environmentally friendly conservation practices on their land under ten-year contracts. Such practices include conservation planting, water conservation, and energy conservation.”).

33. For more information on the Supplemental Assistance Nutrition Program (“SNAP”), a program which provides nutrition assistance for lower-income individuals, see Rictrell L. Pirtle, Note, *Snap to Healthier Eating: A Comprehensive Look Into How the Supplemental Nutrition Assistance Program (SNAP) Can Reduce Health Care Costs*, 7 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L. 373, 395 (2014-15).

34. Morath, *supra* note 27, at 394–95.

35. For more discussion on the rise of organic agriculture, see Sean McElwain, Note, *The Misnomer of Right to Farm: How Right-to-Farm Statutes Disadvantage Organic Farming*, 55 WASHBURN L. J. 223–24 (2015); William S. Eubanks, II, *The Future of Federal Farm Policy: Steps for Achieving a More Sustainable Food System*, 37 VT. L. REV. 957, 966 (2013); Donald T. Hornstein, *The Road Also Taken: Lessons from Organic Agriculture for Market and Risk-Based Regulation*, 56 DUKE L. J. 1541–46 (2007).

creation of a special title for organic production in the bill.³⁶ In addition, as the risk of climate change in relation to agriculture has grown,³⁷ climate change has taken on increased importance with the farm bill.³⁸

C. *The 2014 Farm Bill*

The debate over the 2014 farm bill lasted nearly three years in Congress.³⁹ Sandwiched between the start of the debate to the final passage of the bill were the 2012 elections.⁴⁰ The elections resulted in Democratic President Barack Obama winning re-election as President of the United States over Republican nominee Mitt Romney, the Democrats retaining control of the Senate, and the Republicans keeping control of the House of Representatives.⁴¹ Just as before the 2012 elections,⁴² the 2014 farm bill faced the obstacle of divided government for passage.

Two primary issues divided lawmakers during discussions surrounding the 2014 farm bill. First, the 2014 farm bill eliminated the prior system of direct payments for crop insurance subsidies (which effectively eliminated the list of subsidy recipients from public

36. McElwain, *supra* note 35, at 234.

37. Gary Baise, *GAO study: Damage to agriculture from climate change*, FARM FUTURES (Oct. 31, 2017), <https://www.farmprogress.com/commentary/gao-study-damage-agriculture-climate-change> [<https://perma.cc/6Q66-RTPC>].

38. Peter Lehrner & Sarah Saylor, *Climate Action Is a Secret Winner in the 2018 Farm Bill*, EARTHJUSTICE (Jan. 8, 2019), <https://earthjustice.org/from-the-experts/2019-january/climate-action-secret-winner-2018-farm-bill> [<https://perma.cc/XF9X-YK2Y>] (contending that “the 2018 Farm Bill is surprisingly climate-conscious”).

39. Morath, *supra* note 27, at 398.

40. *Path to the 2012 Farm Bill: Major Factors Influencing the Debate*, NAT'L SUSTAINABLE AGRIC. COAL. BLOG (Feb. 3, 2012), <http://sustainableagriculture.net/blog/path-to-2012-farm-bill-part-1/> [<https://perma.cc/K6J4-9VJ2>] (last accessed Jan. 27, 2019).

41. Tom Cohen, *Obama Takes Key Battlegrounds to Win Re-election*, CNN (Nov. 7, 2012), <https://www.cnn.com/2012/11/06/politics/election-2012/index.html> [<https://perma.cc/5HGC-VLYM>].

42. Jennifer Steinhauer, *Deal on a Farm Bill Appears Unlikely*, N.Y. TIMES (Sept. 12, 2012), <https://www.nytimes.com/2012/09/13/us/congressional-deal-on-a-farm-bill-appears-unlikely.html> [<https://perma.cc/7VKC-6CFZ>].

records).⁴³ Perhaps the most controversial aspect of the bill was proposed significant cuts to the SNAP program.⁴⁴ The future of the SNAP program evinced a sharp debate between progressives and conservatives. One ardent progressive, Representative Rosa DeLauro,⁴⁵ has argued that the SNAP program “has been highly successful in alleviating hunger, lifting people out of poverty, and supporting our economy.”⁴⁶ Conservatives, such as Oklahoma Republican Congressman Frank Lucas, have contended that reforms of the SNAP program are necessary to “ensure the integrity of the program” and to eliminate waste, fraud and abuse in the program.⁴⁷ The House of Representatives voted to cut \$40 billion from the SNAP program over 10 years in September 2013, despite strong Democratic objections.⁴⁸ The action threatened the ultimate passage of the farm bill.⁴⁹

Ultimately, a compromise was reached on SNAP and the farm bill. In the final version of the bill, approximately \$8 billion in SNAP cuts were agreed to in a compromise.⁵⁰ While cuts to conservation programs were included in the final version, the bill also increased funding for organic agriculture.⁵¹ The House of Representatives passed the final bill in a 251-166 vote,⁵² the Senate passed the final bill

43. Andrea Freeman, *The 2014 Farm Bill: Farm Subsidies and Food Oppression*, 38 SEATTLE U. L. REV. 1271, 1271–72 (2015).

44. Morath, *supra* note 27, at 398.

45. Paul Bass, *Fellow Democrat takes on Rosa DeLauro*, THE CT MIRROR (Sept. 26, 2017), <https://ctmirror.org/2017/09/26/fellow-democrat-takes-on-rosa-delauro/> [<https://perma.cc/CP2P-DQBD>] (noting that Congresswoman DeLauro “plays a leading role in the party’s liberal wing on Capitol Hill”).

46. Rep. Rosa L. DeLauro, *Why America Should Save SNAP*, 52 HARV. J. ON LEGIS. 267, 267 (2015).

47. 159 CONG. REC. 13,990 (Sept. 19, 2013) (statement of Rep. Lucas).

48. Ron Nixon, *House Republicans Pass Deep Cuts in Food Stamps*, N.Y. TIMES (Sept. 19, 2013), <https://www.nytimes.com/2013/09/20/us/politics/house-passes-bill-cutting-40-billion-from-food-stamps.html> [<https://perma.cc/Z5MQ-RV3V>].

49. *Id.*

50. Freeman, *supra* note 43, at 1272.

51. Alicia Harvie, *The 2014 Farm Bill: The Good, the Bad and the Ugly*, FARM AID (Feb. 7, 2014), <https://www.farmaid.org/issues/farm-policy/the-2014-farm-bill-the-good-the-bad-and-the-ugly/> [<https://perma.cc/8LQA-KZCZ>].

52. Christopher Doering, *House passes five-year farm bill*, USA TODAY (Jan. 29, 2014), <https://www.usatoday.com/story/news/politics/2014/01/29/farm-bill-house/5022949/> [<https://perma.cc/KXJ5-25XN>].

in a 68-32 vote,⁵³ and President Obama signed the legislation.⁵⁴ Professor Neil Hamilton noted that Democratic Senator Debbie Stabenow of Michigan, the Chair of the Senate Agriculture Committee, was instrumental in forging a compromise on the bill.⁵⁵ However, Professor Morath observed that the reaction to the 2014 farm bill from advocacy groups was mixed – groups such as the American Farm Land Trust,⁵⁶ Fair Food Network,⁵⁷ and Farmers Market

III. THE 2018 FARM BILL: THE MANY HEADWINDS

A. *Prelude to the 2018 Farm Bill: The Fault Lines of SNAP and Crop Insurance*

In contrast to the passage of the 2014 farm bill, which was passed in an era of divided government, the commencement of consideration for the 2018 farm bill would take place with each house of Congress and the Presidency controlled by Republicans. Just like the 2014 farm bill, the future of the SNAP program presented a clear divide, primarily between Republicans and Democrats, as the debates over the 2018 farm bill approached. The other major fault line which emerged for the

53. Ron Nixon, *Senate Passes Long-Stalled Farm Bill, With Clear Winners and Losers*, N.Y. TIMES (Feb. 4, 2014), <https://www.nytimes.com/2014/02/05/us/politics/senate-passes-long-stalled-farm-bill.html?module=inline> [<https://perma.cc/4NRF-MEUP>] (last accessed Jan. 28, 2019).

54. Michael D. Shear, *In Signing Farm Bill, Obama Extols Rural Growth*, N.Y. TIMES (Feb. 7, 2014), <https://www.nytimes.com/2014/02/08/us/politics/farm-bill.html> [<https://perma.cc/5NEZ-WLTW>].

55. Neil D. Hamilton, *The 2014 Farm Bill: Lessons in Patience, Politics and Persuasion*, 19 DRAKE J. AGRIC. L. 1, 39 (2014) (“Senate Committee Chair Stabenow proved to be a powerful force and skilled negotiator. In the end, she got almost everything she and the Senate wanted, and history will prove she was the key reason why the 2014 Farm Bill was finally passed.”).

56. *Mission & History*, AM. FARMLAND TR., <https://www.farmland.org/mission-history> [<https://perma.cc/M854-QBAS>] (last accessed Jan. 28, 2019) (“The mission of American Farmland Trust is to save the land that sustains us by protecting farmland, promoting sound farming practices, and keeping farmers on the land.”).

57. *What We Do*, FAIR FOOD NETWORK, <https://fairfoodnetwork.org/what-we-do/> [<https://perma.cc/HT8Y-Z5JH>] (last accessed Jan. 28, 2019) (“At Fair Food Network, we develop solutions that work across the food system to support farmers, strengthen local economies, and increase access to healthy food – especially in low-income communities.”).

2018 farm bill was growing criticism, from both liberals and conservatives, of the federal crop insurance program.

B. Criticisms of Crop Insurance

Since the enacting of the Federal Crop Insurance Act of 1938, the federal crop insurance program has been a critical risk management program for farmers throughout the United States.⁵⁸ Today, a number of private insurance companies sell and service multi-peril crop insurance policies which are reinsured by the Federal Crop Insurance Corporation.⁵⁹ In addition, FCIC will directly issue policies in some cases.⁶⁰ Through the federal crop insurance program, the government directly subsidizes a portion of the farmer's premium cost of the crop insurance policy.⁶¹ From 2008 to 2017, the average premium subsidy benefit to farmers was 62% of the premium cost.⁶²

Although the federal crop insurance program has been active for approximately eight decades, a number of criticisms of the program have emerged in recent years. The Environmental Working Group, a non-profit organization with an environmental focus, has criticized the program.⁶³ Some reasons cited by the Environmental Working Group in support of reforming the program include the finding that some farmers receive more than \$1 million a year in crop insurance payments, that billionaires have received payments under the program,⁶⁴ and that the program encourages the planting of crops that

58. *See generally*, Chad G. Marzen, *Crop Insurance Bad Faith: Protection for America's Farmers*, 46 CREIGHTON L. REV. 619 (2013).

59. *Williams Farms of Homestead, Inc. v. Rain and Hail Ins. Serv., Inc.*, 121 F.3d 630, 633 (11th Cir. 1997).

60. *Id.*

61. ISABEL ROSA, CONG. RESEARCH SERV., IF10980, FARM BILL PRIMER: FEDERAL CROP INSURANCE, (Sept. 17, 2018), <https://fas.org/sgp/crs/misc/IF10980.pdf>.

62. *Id.*

63. *See* Anne Weir, *Crop Insurance: An Annual Disaster*, EWG, (Nov. 5, 2015), <https://www.ewg.org/research/crop-insurance> [<https://perma.cc/WC4W-Z9SU>] ("Crop insurance is not really insurance, but income support masquerading as disaster relief. Policymakers must cut through the myths spread by its champions and return crop insurance to a safety net taxpayers and the environment can afford.")

64. *See* Scott Faber, *Top 5 Reforms to Reform Crop Insurance*, EWG (June 27, 2018), <https://www.ewg.org/agmag/2018/06/top-5-reasons-reform-crop-insurance> [<https://perma.cc/8E4P-2849>].

deplete resources such as water, thus negatively affecting the environment.⁶⁵ The federal crop insurance program has also come under criticism from more conservative organizations. The Heritage Foundation, a key conservative organization, has contended the federal crop insurance program has created a “moral hazard” problem in that crop risk is transferred from agricultural producers to taxpayers and that farmers have been unduly influenced by government intervention rather than adhering to the demands of the marketplace.⁶⁶

In the wake of the 2014 farm bill, the federal crop insurance program also faced critiques from both President Barack Obama and President Donald Trump. In early 2016, President Obama sought approximately \$16 billion in cuts to the federal crop insurance program over 10 years in his proposed fiscal year 2016 budget, primarily through a 10 percent reduction in premium subsidies for crop insurance revenue protection policies that utilize “harvest price coverage.”⁶⁷ The Obama

Mr. Faber listed the following five reasons in support of his argument to reform crop insurance: “1. Some farmers collect more than \$1 million a year 2. The top-selling 10 percent of farmers receive almost 70 percent of all subsidies 3. Billionaires remain eligible for crop insurance subsidies 4. Insured farmers receive \$2 for every \$1 they spend 5. But, most farmers don’t participate, especially minority farmers.” *Id.*

65. See Don Fullerton et al., *Crop insurance is good for farmers, but not always for the environment*, THE CONVERSATION (June 29, 2018), <https://theconversation.com/crop-insurance-is-good-for-farmers-but-not-always-for-the-environment-96841> [<https://perma.cc/DJX2-CQ8F>].

66. See Gary Blaise, *Heritage claims agricultural subsidies are harmful*, FARM FUTURES (May 26, 2017), <https://www.farmprogress.com/farm-policy/heritage-claims-agricultural-subsidies-are-harmful> [<https://perma.cc/HNK6-PMAP>].

67. DENNIS A. SHIELDS, CONG. RESEARCH SERV. R43951, PROPOSALS TO REDUCE PREMIUM SUBSIDIES FOR FEDERAL CROP INSURANCE (Mar. 20, 2015), <https://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43951.pdf>.

The following is stated in the report describing revenue protection policies with “harvest price coverage:”

Unlike for other policies, the guarantee for these policies is revised upward when the harvest-time price is higher than the initial guarantee established prior to planting. This feature is available on policies for crops – such as wheat, corn and soybeans – that employ a guarantee based on the futures market. Nearly all “revenue protection” policies, representing about three-fourths of all crop insurance policies, are sold with harvest price coverage because the policy can create a larger indemnity to help cover the cost of purchasing “replacement bushels” at higher market prices if the farmer had previously signed a forward contract and cannot deliver the crop due to weather-related losses.”

administration also proposed lower yield guarantees for “prevented planting coverage.”⁶⁸ Ultimately, these cuts were rejected.⁶⁹

The Trump administration has vacillated on federal crop insurance program reforms. In May 2017, the administration surprised many by proposing deep cuts to the federal crop insurance program in a proposed budget,⁷⁰ which would have eliminated the harvest price option coverage for crop insurance, limited the total subsidy to \$40,000 per year per farmer, and prohibited farmers with an adjusted gross income in excess of \$500,000 from receiving crop insurance subsidies.⁷¹ In total, the federal crop insurance program would have been cut 36 percent over a decade.⁷²

After the release of the proposed budget in May 2017, President Trump and Republican Senator Pat Roberts, the Chair of the Senate Agriculture Committee, reportedly met to discuss the future of the crop insurance program.⁷³ In his remarks in January 2018 before the American Farm Bureau Federation National Convention, President Trump unambiguously expressed support for the federal crop insurance program, stating “I support a [farm] bill that includes crop insurance.”⁷⁴ However, just one month later, the Trump administration for the second time released a budget that proposed cuts in the

Id. at 9.

68. *Id.* Prevented planting coverage “indemnifies producers when crops cannot be planted for weather reasons.” *Id.*

69. Jackie Calmes, *Crop Insurance Subsidies Prove Cutting Budget Is Easier Said Than Done*, N.Y. TIMES (Nov. 26, 2015), <https://www.nytimes.com/2015/11/27/us/politics/crop-insurance-subsidies-prove-cutting-budget-is-easier-said-than-done.html> [<https://perma.cc/YAF8-CYET>].

70. Ryan Smith, *Trump budget proposes massive cut to crop insurance*, INS. BUS. AM. (May 24, 2017), <https://www.insurancebusinessmag.com/us/news/breaking-news/trump-budget-proposes-massive-cut-to-crop-insurance-68447.aspx> [<https://perma.cc/BR9M-33VD>].

71. *Id.*

72. *Id.*

73. See Keith Good, *In Budget Proposal, White House Seeks Cuts to Crop Insurance and SNAP*, FARM POL’Y NEWS (Feb. 13, 2018), <https://farmpolicynews.illinois.edu/2017/05/budget-proposal-white-house-seeks-cuts-agriculture/> [<https://perma.cc/3TFL-5GR5>] (last accessed Feb. 2, 2019).

74. President Donald J. Trump, Remarks at the Am. Farm Bureau Fed’n Annual Convention (Jan. 8, 2018), (transcript available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-american-farm-bureau-annual-convention-nashville-tn/>) [<https://perma.cc/RWP8-RGX4>].

premium subsidy for the crop insurance program and a bar on crop insurance subsidies for producers with an adjusted gross income of more than \$500,000 a year.⁷⁵

Despite these obstacles, the federal crop insurance program enjoyed strong bipartisan support in the days prior to the debate over the 2018 farm bill. National Crop Insurance Services (“NCIS”) has provided strong support for the program.⁷⁶ NCIS has noted the following twelve distinct reasons to support the federal crop insurance program:

1. Farmers received individualized risk management solutions;
2. Farmers can use crop insurance as collateral for loans;
3. Farmers are involved in, and take responsibility for, risk management choices;
4. Farmers can use crop insurance to improve their pre-harvesting marketing plans;
5. Farmers receive crop insurance indemnities in the timeliest way;
6. Farmers do not receive unnecessarily excessive payments;
7. Farmer indemnities are not capped by arbitrary payment limits;
8. Farmers share in the program cost;
9. Farmers benefit from the efficiencies and service of the private sector delivery system;
10. Crop insurance is comprehensive and program features can be adjusted quickly;
11. Crop insurance has already contributed to deficit reduction; and
12. Crop insurance has flexibility to meet World Trade Organization disciplines⁷⁷

In addition, the American Farm Bureau Federation—perhaps the most influential agricultural advocacy organization—has expressed strong support for the federal crop insurance program.⁷⁸

75. Good, *supra* note 73.

76. *Crop Insurance 101*, NAT’L CROP INS. SERVS., <https://cropinsuranceinamerica.org/crop-insurance-101/> [<https://perma.cc/L4KG-W5TB>] (last accessed Feb. 2, 2019).

77. *Essential Strengths*, NAT’L CROP INS. SERVS., <https://cropinsuranceinamerica.org/about-crop-insurance/why-its-essential/> [<https://perma.cc/2KBL-FUG6>] (last accessed Feb. 2, 2019).

78. *Farmers, Conservationists Call on Congress to Protect Crop Insurance*, AM. FARM BUREAU FED’N (May 1, 2018), <https://www.fb.org/news/farmers->

While there are some critics of the current federal crop insurance program in Congress,⁷⁹ the program generally has received strong congressional support.⁸⁰ In advance of the 2018 farm bill, each of the four key legislators on both the House Agriculture Committee and the Senate Agriculture Committee—Representative Mike Conaway (Republican),⁸¹ Representative Collin Peterson (Democrat),⁸² Senator

conservationists-call-on-congress-to-protect-crop-insurance [https://perma.cc/PZZ8-UJJY] (“In a letter to House members, the American Farm Bureau Federation and more than 60 other groups representing agriculture and conservation interests asked legislators to oppose amendments that would jeopardize crop insurance, including those that would reduce or limit participation, drive up insurance costs or harm private-sector delivery.”).

79. *See e.g.*, 164 CONG. REC. H3352 (daily ed. Apr. 17, 2018) (speech of Rep. DeLauro). Congresswoman Rosa DeLauro, a Democrat from Connecticut, is one member who has advocated for reform of the federal crop insurance program.

80. The support has typically come from farm-state lawmakers. *See e.g.*, 163 CONG. REC. H4655-4656 (daily ed. June, 7, 2017) (speech of Rep. Messer). Former Congressman Luke Messer, a Republican from Indiana, stated the following in remarks:

Through the crop insurance program, insurers can extend coverage to crops of all kind, providing farmers with the protections they need to do what they do best: grow food. This program is an example of the government partnering with industry to offer an exceptionally valuable service while maintaining a carefully limited Federal Government role. Frankly, it should be used as a model for other Federal reinsurance program.

Id. *See also* 162 CONG. REC. H2072-2073 (daily ed. Apr. 28, 2016) (speech of Rep. LaMalfa).

81. *See* Press Release, Rep. Mike Conaway, Conaway Hears Testimony on Crop Insurance (Apr. 26, 2006), (available at <https://conaway.house.gov/news/documentsingle.aspx?DocumentID=74809>) [https://perma.cc/75JN-3PQ7]. The press release quoted Congressman Conaway as stating the following: “The Federal Crop Insurance Program is a critical component of the safety net that America’s farmers need and deserve This program assists farmers in their risk-management assessments and planning operations so that they are protected against unforeseen crop losses. Because of the crop insurance program, farmers now have a choice of what type of affordable protection best protects their assets and income.”

82. Rep. Collin Peterson, *Standing Up for Crop Insurance*, FARM POLICY FACTS (June 15, 2015), <https://www.farmpolicyfacts.org/2015/06/standing-up-for-crop-insurance/> [https://perma.cc/6EUF-RFWD].

Pat Roberts (Republican)⁸³ and Senator Debbie Stabenow (Democrat)⁸⁴—supported a strong federal crop insurance program.

C. *The Development of Sharply Differing Bills – The House of Representatives Bill and the Senate Bill*

As the congressional debates over the 2018 farm bill began in spring 2018, the House of Representatives and Senate developed starkly different bills. Surprisingly, both bills preserved most of the federal crop insurance program, but had dramatically different approaches to the future of the SNAP program.

1. The House of Representatives Bill

On April 12, 2018, Representative Conaway introduced H.R. 2, the Agriculture Improvement Act of 2018—the House of Representatives’ version of the farm bill.⁸⁵ The bill largely kept the crop insurance program intact.⁸⁶ On conservation issues, while the bill increased the cap on Conservation Reserve Program lands from 24 million acres in the prior farm bill to 29 million acres in the current bill, the bill would have eliminated funding for the Conservation Stewardship Program.⁸⁷ The most controversial provision was the inclusion of a requirement that most adults who receive SNAP benefits must work either 20 hours per week or participate in job training activities.⁸⁸ Republican⁸⁹ and

83. *Roberts stresses crop insurance, exports, reduced regulations*, FARM FUTURES (Aug. 25, 2017), <https://www.farmprogress.com/farm-policy/roberts-stresses-crop-insurance-exports-reduced-regulations> [https://perma.cc/VN6A-CUK5].

84. Jacqui Fatka, *Stabenow Wants Strong Safety Net*, FARM FUTURES (Jan. 11, 2011), <https://www.farmprogress.com/blogs-stabenow-wants-strong-safety-net-1965> [https://perma.cc/YXH4-DZHJ].

85. Agriculture Improvement Act of 2018, H.R. 2, 115th Cong. (2018) (as introduced in H.R., Apr. 12, 2018).

86. See Jacqui Fatka, *What You Need to Know About the House Farm Bill*, FARM FUTURES (Apr. 13, 2018), <https://www.farmprogress.com/farm-bill/what-you-need-know-about-house-farm-bill> [https://perma.cc/RW4X-UJ2E].

87. *Id.*

88. See Glenn Thrush & Thomas Kaplan, *House Farm Bill Collapses Amid Republican Disarray*, N.Y. TIMES (May 18, 2018), <https://www.nytimes.com/2018/05/18/us/farm-bill-collapses.html> [https://perma.cc/YDN5-T28F].

89. See 164 CONG. REC. H4046 (daily ed. May 16, 2018) (speech of Rep. Conaway).

Democrat⁹⁰ lawmakers acknowledged that the House of Representatives farm bill did not reflect a bipartisan process at that moment.

During the initial debate on the bill in the House of Representatives, several Republican members of Congress emphasized the importance of the bill to farmers in the midst of a multi-year farm recession.⁹¹ Representative David Rouzer, a Republican from North Carolina⁹² who represents a largely agricultural district,⁹³ remarked that “America’s farm families have had to weather a 5-year recession with depressed prices resulting in a 52-percent drop in net farm income. Two-thirds of our farming operations today are in economic trouble, and chapter 12 bankruptcies have risen by 33 percent in just 2 years. So it is no secret that our Nation’s farmers and ranchers are struggling.”⁹⁴ A number of members emphasized the importance of the bill in preserving the farm “safety net.”⁹⁵

90. *SEE* 164 CONG. REC. H4048 (daily ed. May 16, 2018) (speech of Rep. Peterson).

91. *See* 164 CONG. REC. H4046 (daily ed. May 16, 2018) (speech of Rep. Conaway); 164 CONG. REC. H4050 (speech of Rep. Rouzer); 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Austin Scott).

92. *See* *Congressman David Rouzer Wins Re-Election to U.S. House*, WECT NEWS 6 (Nov. 7, 2018), <http://www.wect.com/2018/11/07/congressman-david-rouzer-wins-re-election-us-house/> [<https://perma.cc/3EAL-XZJG>] (last accessed Feb. 14, 2019).

93. *See* Press Release, Rep. David Rouzer, Rouzer to host National Agriculture Leaders Roundtable on Nuisance Lawsuits & Their Threat to all of Agriculture and Farm Families Nationwide (Aug. 1, 2018), <https://rouzer.house.gov/media-center/press-releases/rouzer-host-national-agriculture-leaders-roundtable-nuisance-lawsuits> [<https://perma.cc/EN8N-2SSS>].

94. *See* 164 CONG. REC. H4050 (daily ed. May 16, 2018) (speech of Rep. Rouzer).

95. *See* 164 CONG. REC. H4046 (daily ed. May 16, 2018) (speech of Rep. Conaway) (“This farm bill is not a cure for all that ails rural America and our farmers and ranchers, but this farm bill does provide a safety net to see them through the hard times.”); 164 CONG. REC. H4049 (daily ed. May 16, 2018) (speech of Rep. Bost) (“The farm bill protects the farm safety net.”); 164 CONG. REC. H4050 (daily ed. May 16, 2018) (speech of Rep. Rouzer) (“This farm bill strengthens the farm safety net while making other vital improvements to current law that will benefit our farm families, rural communities, and animal agriculture sector.”); 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Emmer) (“Right now, farmers, ranchers, and agricultural workers across the country are looking to Congress for a strong farm bill that improves the farm safety net and brings certainty to producers

Improved changes to and protection of the federal crop insurance program were cited by several other members in support of the bill.⁹⁶ Two members of the House of Representatives, Martha Roby of Alabama and Austin Scott of Georgia, affirmed that the bill reflected “conservative principles.”⁹⁷ The members who spoke in favor of the bill’s controversial SNAP work requirements cited to the figure of a similar unemployment rate as 2000 but a more than doubled-figure of the number of people on SNAP since that time,⁹⁸ the importance of getting people back to work,⁹⁹ the significance of ending the cycle of poverty,¹⁰⁰ and that the new requirements would reduce fraud and abuse in the program.¹⁰¹

The opponents of the House of Representatives’ farm bill emphasized the deep cuts to the SNAP program in opposition to the bill.¹⁰² Particularly noted was that the bill would purportedly cut \$23

in uncertain times because life on the farm isn’t what it used to be.”); 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Allen) (“H.R.2 improves the current farm safety net structure.”).

96. See 164 CONG. REC. H4049 (daily ed. May 16, 2018) (speech of Rep. King); 164 CONG. REC. H4049 (daily ed. May 16, 2018) (speech of Rep. Bost); 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Roby).

97. See 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Roby) (“I’m proud that the new farm bill reflects our conservative principles.”); 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Austin Scott) (“This bill provides certainty to one of America’s largest job sectors, while also standing for our conservative principles.”).

98. See 164 CONG. REC. H4050 (daily ed. May 16, 2018) (speech of Rep. Rouzer) (“Today unemployment numbers are at 3.9 percent. In the year 2000, the last time unemployment was this low, there were 17 million people on SNAP. Today, we have more than 41 million people on SNAP yet the unemployment is exactly the same. Mr. Speaker, if that doesn’t illustrate the problem, I don’t know what does.”).

99. See 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Allen).

100. See 164 CONG. REC. H4054 (daily ed. May 16, 2018) (speech of Rep. Rodney Davis of Illinois).

101. See 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Roby).

102. See 164 CONG. REC. H4049 (daily ed. May 16, 2018) (speech of Rep. Fudge); 164 CONG. REC. H4050 (daily ed. May 16, 2018) (speech of Rep. Lujan Grisham); 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Grijalva); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. O’Halloran); 164 CONG. REC. H4054 (daily ed. May 16, 2018) (speech of Rep. Pelosi); 164 CONG. REC. H4055 (daily ed. May 16, 2018) (speech of Rep. Panetta); 164 CONG. REC. H4055 (daily ed. May 16, 2018) (speech of Rep. Blunt Rochester).

billion from the SNAP program,¹⁰³ make approximately 2 million individuals ineligible for benefits,¹⁰⁴ and reduce access to free school meals for approximately 265,000 children.¹⁰⁵ Then-Congressman Joseph Crowley of New York, former Chair of the House Democratic Caucus,¹⁰⁶ remarked the SNAP program has a key role in addressing poverty:

If my Republican colleagues looked at the facts, they would see that SNAP—or food stamps—actually work. They would see that a worker is more likely to keep a job if they can put food on the table and at the same time afford to commute to and from work; that a child is likely to do better in school if they have a full stomach to start the school day with; that calling struggling Americans complacent and lazy doesn't help America's poverty crisis, but programs like SNAP do help.¹⁰⁷

Opponents of the bill also cited the elimination of funding for rural development programs,¹⁰⁸ cuts in funding for conservation programs,¹⁰⁹ the lack of funding in the bill¹¹⁰ for 1890 land-grant

103. 164 CONG. REC. H4048 (daily ed. May 16, 2018) (speech of Rep. Peterson); 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Bustos); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. Barbara Lee).

104. 164 CONG. REC. H4048 (daily ed. May 16, 2018) (speech of Rep. Peterson); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. Adams); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. Barbara Lee).

105. 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Bobby Scott); 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Kuster); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. Adams); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. Barbara Lee).

106. Ted Johnson, *Joseph Crowley, Member of House Democratic Leadership, Defeated in Primary*, VARIETY (June 26, 2018), <https://variety.com/2018/politics/news/joseph-crowley-democrats-1202858987/> [<https://perma.cc/FJ9A-B74S>].

107. 164 CONG. REC. H4050-4051 (daily ed. May 16, 2018) (speech of Rep. Crowley).

108. *See* 164 CONG. REC. H4051 (daily ed. May 16, 2018) (speech of Rep. Bustos); 164 CONG. REC. H4053 (daily ed. May 16, 2018) (speech of Rep. O'Halleran); 164 CONG. REC. H4054 (daily ed. May 16, 2018) (speech of Rep. Pelosi).

109. *See* 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Kuster).

110. *See* 164 CONG. REC. H4049 (daily ed. May 16, 2018) (speech of Rep. David Scott).

colleges,¹¹¹ and changes to the Endangered Species Act¹¹² as reasons to vote no on the bill.

In addition to the Democratic opposition to the SNAP program reforms, a group of conservative Republicans led by House Freedom Caucus Chair Mark Meadows linked the farm bill to a vote on a measure to build a border wall between the United States – Mexico border and enhance border security.¹¹³ On May 18, 2018, thirty House Republicans voted against the bill, defeating the bill by a vote of 198 to 213.¹¹⁴

Following the bill's defeat, the Republican caucus regrouped and votes were promised on the immigration bills advocated by members of the House Freedom Caucus.¹¹⁵ Approximately one month later, on June 21, 2018, the House of Representatives passed the House farm bill on a narrow 213-211 vote.¹¹⁶ The bill included the controversial

111. See John K. Pierre, *History of De Jure Segregation in Public Higher Education in America and the State of Maryland Prior to 1954 and the Equalization Strategy*, 8 FLA. AGRIC. & MECH. U. L. REV. 81, 82-83 (2012) (“The Morrill Act of 1862 did not allow a state to discriminate against African-Americans when it established a publicly funded land grant institution. The Morrill Act was amended in 1890 to allow states to qualify for federal land-grant funds by establishing or designating all black publicly funded higher education land grant institutions in their respective states.”).

112. See 164 CONG. REC. H4052 (daily ed. May 16, 2018) (speech of Rep. Grijalva) (“It also undermines one of the Nation’s most successful and popular conservation laws, the Endangered Species Act, by removing the requirement for EPA to consult with expert wildlife agencies on the impact of pesticides to imperiled wildlife.”).

113. See Chad Pergram & Alex Pappas, *Farm Bill Fails in House, Amid Conservative Uprising Over Immigration*, FOX NEWS (May 18, 2018), <https://www.foxnews.com/politics/farm-bill-fails-in-house-amid-conservative-uprising-over-immigration> [<https://perma.cc/H5G4-PKZV>].

114. See Jacob Pramuk, *House Fails to Pass Farm Bill Amid Republican Rebellion Over Immigration*, CNBC (May 18, 2018), <https://www.cnbc.com/2018/05/18/house-farm-bill-vote-immigration-spat-sinks-legislation.html> [<https://perma.cc/L94C-8W94>].

115. See Keith Good, *House Narrowly Passes Farm Bill*, FARM POL’Y NEWS (June 21, 2018), <https://farmpolicynews.illinois.edu/2018/06/house-narrowly-passes-farm-bill/> [<https://perma.cc/5TDR-9XW7>].

116. See David Sherfinski, *House Passes 2018 Farm Bill on Second Try*, WASH. TIMES (June 21, 2018), <https://www.washingtontimes.com/news/2018/jun/21/house-passes-2018-farm-bill-second-try/> [<https://perma.cc/BM6M-XJFT>].

reforms of the SNAP program.¹¹⁷ One of the first major hurdles, getting the farm bill through a fractured House of Representatives, was accomplished by the narrowest of margins.

2. The Senate Bill

Senator Roberts introduced the Senate's version of the Agriculture Improvement Act of 2018 (S. 3042) on June 11, 2018.¹¹⁸ In contrast to the farm bill approved by the House of Representatives, the Senate version of the farm bill did not include any significant changes to the SNAP program.¹¹⁹ Also, while the Senate farm bill only raised the total acreage limitations on the Conservation Reservation Program from 24 to 25 million acres, it did not include the elimination of funding for the Conservation Stewardship Program (which the House farm bill included).¹²⁰ In addition, the Senate bill did not include amendments to expedite approvals of pesticides by allowing the Environmental Protection Agency to avoid the Endangered Species Act's consultation process, while the House bill included these provisions.¹²¹ With the Senate farm bill's conservation provisions, "many conservation and environmental groups praised the measure."¹²²

A group of senators, led by Republican Senators John Kennedy of Louisiana,¹²³ Ted Cruz of Texas,¹²⁴ and Mike Lee of Utah,¹²⁵

117. *Id.*

118. *See* Agriculture Improvement Act of 2018, S. 3042, 115th Cong. (2018).

119. Philip Brasher, *Bipartisan Farm Bill Sails Through Senate After Crop Insurance, Cuba Drama*, *AGRI PULSE* (June 28, 2018), <https://www.agri-pulse.com/articles/11177-bipartisan-farm-bill-sails-through-senate-86-11> [<https://perma.cc/GT5R-PGVT>].

120. *Id.*

121. *Id.*

122. *Id.*

123. Matt Flegenheimer, *Senator John Kennedy (No, Not That One) Embraces Anonymity*, *N.Y. TIMES* (May 26, 2017), <https://www.nytimes.com/2017/05/26/us/politics/senator-john-kennedy-louisiana.html> [<https://perma.cc/93AG-XGGB>].

124. Manny Fernandez & Mitchell Ferman, *In Texas, Ted Cruz Has a 'Dogfight on His Hands,' Some Republicans Admit*, *N.Y. TIMES* (Sept. 11, 2018), <https://www.nytimes.com/2018/09/11/us/texas-ted-cruz-beto-orourke.html> [<https://perma.cc/V7YB-CPDB>].

125. Jennifer Steinhauer, *A Republican Agitator in the Senate Makes Friends Across the Aisle*, *N.Y. TIMES* (Aug. 10, 2015), <https://www.nytimes.com/2015/08/10/us/politics/senator-john-kennedy-louisiana.html>.

introduced an amendment¹²⁶ that included not only work requirements for SNAP recipients (similar to the House farm bill version) but also would have required recipients to present photo identification cards when utilizing their SNAP cards at food retailers.¹²⁷ This amendment was overwhelmingly tabled by a 68-30 vote.¹²⁸

The Senate's bipartisan farm bill led a number of Senators to speak in support of the bill the day of the vote, including Republican Senate Majority Leader Mitch McConnell of Kentucky,¹²⁹ Republican Senate Agriculture Committee Chair Senator Pat Roberts of Kansas,¹³⁰ Democratic Senate Agriculture Committee Ranking Member Senator Debbie Stabenow of Michigan,¹³¹ Republican Senator David Perdue of Georgia,¹³² Democratic Senator Maria Cantwell of Washington,¹³³ Democratic Senator Tina Smith of Minnesota,¹³⁴ Republican Senator Mike Rounds of South Dakota,¹³⁵ Republican Senator Joni Ernst of Iowa,¹³⁶ Democratic Senator Patrick Leahy of Vermont,¹³⁷ Democratic

com/2015/08/11/us/politics/senator-mike-lee-republican-utah.html [https://perma.cc/JV2B-D96D].

126. Amendment No. 3383, Agriculture Improvement Act of 2018, S. 3042, 115th Cong. (2018) (Purpose: To provide for certain work requirements for able-bodied adults without dependents and to require State agencies to operate a work activation program for eligible participants in the supplemental nutrition assistance program).

127. Press Release, James D. Weill, President of Food Research & Action Ctr., Senate Farm Bill Passes, Protects the Supplemental Nutrition Assistance Program, FOOD RESEARCH & ACTION CTR. (June 28, 2018), <http://frac.org/news/5355> [https://perma.cc/KMF7-32XH].

128. 164 CONG. REC. S4708 (daily ed. June 28, 2018) (Roll Call Vote No. 141 Leg.).

129. 164 CONG. REC. S4690 (daily ed. June 28, 2018) (speech of Sen. McConnell).

130. 164 CONG. REC. S4692 (daily ed. June 28, 2018) (speech of Sen. Roberts).

131. 164 CONG. REC. S4692-4693 (daily ed. June 28, 2018) (speech of Sen. Stabenow).

132. 164 CONG. REC. S4693-4694 (daily ed. June 28, 2018) (speech of Sen. Perdue).

133. 164 CONG. REC. S4698-4699 (daily ed. June 28, 2018) (speech of Sen. Cantwell).

134. 164 CONG. REC. S4699-4700 (daily ed. June 28, 2018) (speech of Sen. Smith).

135. 164 CONG. REC. S4701-4702 (daily ed. June 28, 2018) (speech of Sen. Rounds).

136. 164 CONG. REC. S4702-4703 (daily ed. June 28, 2018) (speech of Sen. Ernst).

137. 164 CONG. REC. S4704 (daily ed. June 28, 2018) (speech of Sen. Leahy).

Senator Amy Klobuchar of Minnesota,¹³⁸ and Democratic Senator Heidi Heitkamp of North Dakota.¹³⁹ Just like supporters of the farm bill in the House of Representatives, several Senators cited to the importance of the farm bill in providing a safety net for farmers¹⁴⁰ as well as protecting the federal crop insurance program.¹⁴¹ The spirit of bipartisanship was exemplified by the following remarks of Senator Stabenow in support of the bill:

Here is what we know right now: We have a strong, bipartisan bill that helps every single region of this country. We have a big, diverse country, and we help all of our farmers and ranchers. We address conservation in every part of our country. We address food access and create integrity in

138. 164 CONG. REC. S4707 (daily ed. June 28, 2018) (speech of Sen. Klobuchar).

139. 164 CONG. REC. S4711-4713 (daily ed. June 28, 2018) (speech of Sen. Heitkamp).

140. *See* 164 CONG. REC. S4690 (daily ed. June 28, 2018) (speech of Sen. McConnell) (“That is why I am pleased to support this bill, which will bolster the safety net programs for our producers.”); 164 CONG. REC. S4692 (daily ed. June 28, 2018) (speech of Sen. Stabenow) (“This bill, really, is a bill that provides a safety net for farmers and a safety net for families.”); 164 CONG. REC. S4699 (daily ed. June 28, 2018) (speech of Sen. Smith) (“This farm bill also expands gains made in the dairy safety net earlier this year.”); 164 CONG. REC. S4701 (daily ed. June 28, 2018) (speech of Sen. Rounds) (“Sometimes I don’t think we emphasize that this [federal crop insurance program] is one of those safety net items for which farmers and ranchers actually pay premiums to participate.”).

141. *See* 164 CONG. REC. S4692 (daily ed. June 28, 2018) (speech of Sen. Roberts) (“I can see a farmer who had planned on harvesting this week, but, perhaps, due to a hail storm, he is in a bad situation. Luckily for him, he has crop insurance, and luckily for him, we have been able to preserve crop insurance after going through several iterations of attempts to cut it—or, as some people say, reform it.”); 164 CONG. REC. S4701 (daily ed. June 28, 2018) (speech of Sen. Rounds) (“I am pleased that this legislation also strengthens the crop insurance program with outlays projected to be approximately \$7.6 billion annually. Crop insurance is a highly effective public – private safety net that helps farmers customize protection for their individual operations.”); 164 CONG. REC. S4707 (daily ed. June 28, 2018) (speech of Sen. Klobuchar) (“The improvements included in the commodity title will ensure more consistent payments across counties in the Agricultural Risk Coverage Program and more access to risk management tools, such as crop insurance.”); 164 CONG. REC. S4711 (daily ed. June 28, 2018) (speech of Sen. Heitkamp) (“A key component of any farm bill is the safety net for farmers and ranchers during tough times, like crop insurance.”).

programs that are very important to have, and we do all of that in a bill we can be proud to pass on a bipartisan basis.¹⁴²

With overwhelming bipartisan support, the Senate farm bill passed the Senate on June 28, 2018 by an 86-11 vote.¹⁴³ The only negative votes were from eleven Republican Senators.¹⁴⁴ The bills then proceeded to a conference committee for negotiation.¹⁴⁵

D. The Midterm Elections of 2018—Tariffs and Politics on the Farm

Although the House of Representatives as well as Senate passed farm bills in mid-2018, both versions had substantial differences as one was crafted in a bipartisan fashion and the other was not. Approval of a comprehensive farm bill also appeared unlikely in the near term following passage of the Senate farm bill as President Trump signaled his support of the House farm bill with its work requirements for SNAP recipients in an August 2, 2018 tweet.¹⁴⁶

Another major headwind working against the farm bill in 2018 was the presence of the 2018 midterm elections, in which agricultural politics would have a more significant than usual role. In the wake of the imposition of approximately \$50 billion in tariffs on Chinese goods

142. 164 CONG. REC. S4693 (daily ed. June 28, 2018) (speech of Sen. Stabenow).

143. 164 CONG. REC. S4717 (daily ed. June 28, 2018) (Roll Call Vote No. 143 Leg.).

144. Ed Kilgore, *Senate Clears Farm Bill, Setting Up Fight With House GOP Over SNAP*, INTELLIGENCER (June 28, 2018), <http://nymag.com/intelligencer/2018/06/senate-clears-farm-bill-setting-up-snap-fight-with-house.html?utm=bottom&utm=bottom> [<https://perma.cc/X4FA-54ZH>].

145. See Keith Good, *Farm Bill Conference Committee Convenes*, FARM POL'Y NEWS (Sept. 6, 2018), <https://farmpolicynews.illinois.edu/2018/09/farm-bill-conference-committee-convenes/> [<https://perma.cc/LG3V-RKS6>].

146. Nathaniel Weixel, *Trump Calls For Food Stamp Work Requirements in Farm Bill*, THE HILL (Aug. 2, 2018), <https://thehill.com/homenews/administration/400134-trump-calls-for-food-stamp-work-requirements-in-farm-bill> [<https://perma.cc/SHW7-SPRC>] (“President Trump on Thursday urged House and Senate lawmakers to adopt strict work requirements for food stamps when they craft a merged farm bill. “When the House and Senate meet on the very important Farm Bill – we love our farmers – hopefully they will be able to leave the WORK REQUIREMENTS FOR FOOD STAMPS PROVISION that the House approved;” Trump tweeted. “Senate should go to 51 votes!”).

by the Trump administration in June 2018, the Chinese government responded with the imposition of tariffs on American products, including agricultural commodities.¹⁴⁷ The presence of a “trade war” with China¹⁴⁸ progressed alongside falling corn and soybean prices prior to the 2018 midterm elections.¹⁴⁹

In a number of close races, tariffs became an issue that Democrats utilized against incumbent Republicans.¹⁵⁰ Democrats sought to connect Republicans to tariffs in close races such as the Iowa governor’s race, where Democrat Fred Hubbell challenged incumbent Republican Governor Kim Reynolds,¹⁵¹ the Tennessee Senate race between Democrat Phil Bredesen and Republican Congresswoman Marsha Blackburn,¹⁵² the North Dakota Senate race between Republican Kevin Cramer and incumbent Democratic Senator Heidi Heitkamp,¹⁵³ and the Missouri Senate race between Republican Josh Hawley and incumbent Democratic Senator Claire McCaskill.¹⁵⁴

147. See Ana Swanson, *U.S. and China Expand Trade War as Beijing Matches Trump’s Tariffs*, N.Y. TIMES (June 15, 2018), <https://www.nytimes.com/2018/06/15/us/politics/us-china-tariffs-trade.html> [<https://perma.cc/74P8-YFMY>].

148. *Id.*

149. See Mark Weinraub, *Trump’s Tariff War Threatens to Erode Support of Farmers*, REUTERS (June 18, 2018), <https://www.reuters.com/article/us-usa-trade-agriculture/trumps-tariff-war-threatens-to-erode-support-of-farmers-idUSKBN1JE2X2> [<https://perma.cc/Q4C4-S2UL>].

150. Michael Collins, *In the farm Belt and Manufacturing Hubs, Tariffs and Trade Turn into Election Issues*, USA TODAY (Oct. 9, 2018), <https://www.usatoday.com/story/news/politics/elections/2018/10/09/trade-wars-tariffs-become-election-issues-farm-belt-manufacturing-hubs/1564501002/> [<https://perma.cc/LWJ9-7JG7>].

151. Bret Hayworth, *Hubbell, Reynolds Debate Tariffs in Sioux City*, SIOUX CITY J. (Oct. 17, 2018), https://siouxcityjournal.com/news/local/govt-and-politics/hubbell-reynolds-debate-tariffs-in-sioux-city/article_10ee58f1-8632-53c6-ad1b-28c2a6d76d11.html [<https://perma.cc/6XB5-GZ7U>].

152. Jonathan Mattise & Steve Peoples, *In Tennessee, Trump’s Tariffs, Trade Wars Become an Election-Year Political Issues*, TENNESSEAN (Jul. 11, 2018), <https://www.tennessean.com/story/news/2018/07/09/tariffs-blackburn-bredesen-tennessee-senate-trump/768486002/> [<https://perma.cc/QTV7-L6SF>].

153. James MacPherson, *North Dakota’s Heitkamp Attacks Cramer In New Ad On Tariffs*, AP NEWS (Sept. 14, 2018), <https://www.apnews.com/7cb04db86f26453ab2daa27fbab2464b> [<https://perma.cc/68XA-EJT7>].

154. Jo Mannies, *McCaskill And Hawley Talk Tariffs, Taxes And Trump*, ST. LOUIS PUBLIC RADIO (Sept. 14, 2018), <https://news.stlpublicradio.org/post/mccaskill-and-hawley-talk-tariffs-taxes-and-trump#stream/0> [<https://perma.cc/K9CN-U3G9>].

Despite the Democratic Party taking control of the House of Representatives in the 2018 midterm elections,¹⁵⁵ the election certainly could not be characterized as a landslide.¹⁵⁶ While Democrats utilized the tariffs issue in some close races, Republicans won a number of key races in the farm belt, including the Iowa governor race,¹⁵⁷ and actually picked up seats in the Senate with victories in states such as Missouri,¹⁵⁸ Indiana,¹⁵⁹ and North Dakota.¹⁶⁰ While the 2018 midterm elections did not bring sweeping, widespread change in the electoral landscape, the farm bill also had the obstacle of making it through a lame-duck Congress at a time when transitions occupied much time in Washington.

E. *The 2018 Congressional Lame-Duck Session*

In the wake of the 2018 midterm elections, the farm bill also faced the hurdle of making it through a lame-duck Congress. Historically,

155. See Deirdre Shesgreen, Eliza Collins & Nicole Gaudiano, *U.S. House: Democrats Win Control, Ending Unified GOP Rule of Washington*, USA TODAY (Nov. 7, 2018), <https://www.usatoday.com/story/news/politics/2018/11/06/house-midterms-results/1830966002/> [<https://perma.cc/878K-SQVP>].

156. See Richard Wolffe, *Donald Trump's Unchecked Hold on Power Has Come to an End*, THE GUARDIAN (Nov. 7, 2018), <https://www.theguardian.com/commentisfree/2018/nov/07/trump-unchecked-power-end-midterms> [<https://perma.cc/S9RQ-CAJW>].

157. See Brienne Pfannenstiel, Kim Norvell & Kevin Hardy, *Iowa Election 2018: Kim Reynolds Wins Full Term, a Validation of the Republican Policies She Has Led*, DES MOINES REGISTER (Nov. 7, 2018), <https://www.desmoinesregister.com/story/news/politics/elections/2018/11/05/iowa-election-2018-results-governor-republican-kim-reynolds-democrat-fred-hubbell-jake-porter-vote/1732343002/> [<https://perma.cc/YTT9-M9DG>].

158. Nicholas Fandos, *Josh Hawley Defeats Claire McCaskill in Missouri Senate Race*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/us/politics/josh-hawley-claire-mccaskill-missouri.html> [<https://perma.cc/W93D-Q7FV>].

159. Chris Sikich, Marisa Kwiatkowski & Tim Evans, *Republican Mike Braun Unseats Incumbent Democrat Joe Donnelly in Indiana Senate Race*, INDIANAPOLIS STAR (Nov. 7, 2018), <https://www.indystar.com/story/news/politics/elections/2018/11/06/indiana-senate-race-donnelly-braun-results/1750048002/> [<https://perma.cc/HH6R-R8CM>].

160. Catie Edmondson, *Heidi Heitkamp Ousted by Republican Kevin Cramer From North Dakota Senate Seat*, N.Y. TIMES (Nov. 6, 2018), <https://www.nytimes.com/2018/11/06/us/politics/heidi-heitkamp-kevin-cramer-north-dakota.html> [<https://perma.cc/3TB7-LJHZ>].

major legislation has often been difficult to pass during lame-duck sessions for several reasons. First, many transitions occur in Washington during a lame-duck congressional session. For example, in the House of Representatives, outgoing members vacate their offices soon after the elections and then receive only limited space in the basement of one of the House of Representatives' buildings.¹⁶¹ A number of departing congressional members, particularly in the House, also often do not show up for votes during lame-duck congressional sessions, making the passage of legislation sometimes difficult.¹⁶² Finally, the presence of the Thanksgiving and Christmas holidays during a lame-duck congressional session limit the actual number of days the House of Representatives and Senate can meet, making passage of major legislation a challenge.¹⁶³

Despite these potential obstacles, immediately following the election there was a desire among both Democrats and Republicans to pass the farm bill prior to 2019.¹⁶⁴ In addition, President Trump placed the bill as a key priority for the lame-duck session.¹⁶⁵ However, several analysts gave less than a fifty percent chance of passage during the lame-duck session.¹⁶⁶ On November 29, 2018, just over three weeks following the 2018 midterm elections, an agreement in principle

161. See Alex Brown, *Departing Members of Congress Find Their Perks Already Gone*, THE ATLANTIC (Dec. 10, 2014), <https://www.theatlantic.com/politics/archive/2014/12/departing-members-of-congress-find-their-perks-already-gone/441207/> [<https://perma.cc/Z2SP-ZXYF>].

162. See Lindsey McPherson, *Here Are the House Members Who Have Skipped Votes This Lame-Duck Session*, ROLL CALL (Dec. 19, 2018), <https://www.rollcall.com/news/politics/members-who-ve-skipping-votes-lame-duck-session> [<https://perma.cc/CUL5-GNZZ>].

163. See Burgess Everett, *Republicans Fear They're Squandering Lame Duck*, POLITICO (Nov. 28, 2018), <https://www.politico.com/story/2018/11/28/senate-republicans-lame-duck-mueller-criminal-justice-reform-farm-bill-1019810> [<https://perma.cc/U298-DNY3>].

164. See Jacqui Fatka, *Lame-Duck Farm Bill Within Reach*, FARM FUTURES (Nov. 8, 2018), <https://www.farmprogress.com/farm-bill/lame-duck-farm-bill-within-reach> [<https://perma.cc/SJ5J-9UYW>].

165. See Chuck Abbott, *Trump and McConnell Discuss Farm Bill as Part of Lame-Duck Agenda*, SUCCESSFUL FARMING (Nov. 19, 2018), <https://www.agriculture.com/news/business/trump-and-mcconnell-discuss-farm-bill-as-part-of-lame-duck-agenda> [<https://perma.cc/S9SW-HVZW>].

166. *Id.*

between the House and Senate was reached on the farm bill.¹⁶⁷ Key to the compromise was the elimination of the changes to the SNAP program included in the House bill.¹⁶⁸ While the SNAP reform issue was addressed and resolved in the conference committee, a last-minute procedural hurdle relating to United States foreign policy with Yemen threatened to scuttle the 2018 farm bill.

F. Unexpected Provision Concerning Foreign Policy with Yemen

As the compromise farm bill proceeded toward a final vote in the House of Representatives, a provision was inserted into the rule for the bill that would block any consideration of resolutions relating to ending United States military involvement in the conflict in Yemen.¹⁶⁹ Since 2014, the government of Yemen has been engaged in a civil war¹⁷⁰ with Houthi rebels.¹⁷¹ The United States military currently provides logistical support for the government of Yemen, which is supported by Saudi Arabia.¹⁷² The conflict in Yemen is sometimes

167. Joshua Lott, *U.S. Lawmakers Seal Farm Bill Agreement in Principle*, REUTERS (Nov. 29, 2018), <https://www.reuters.com/article/us-usa-farmbill/u-s-lawmakers-seal-farm-bill-agreement-in-principle-idUSKCN1NY21M> [<https://perma.cc/UVQ3-HNXQ>].

168. Ellyn Ferguson, *Final Farm Bill Would Make Hemp Legal, Other Details Revealed*, ROLL CALL (Dec. 5, 2018), <https://www.rollcall.com/news/politics/final-farm-bill-make-hemp-legal-details-revealed> [<https://perma.cc/6GRB-V9RY>].

169. Cayla Bamberger, *House Passes Farm Bill Rule with Buried Provision that Blocks Yemen Vote for this Congress*, PASTE (Dec. 12, 2018), <https://www.pastemagazine.com/articles/2018/12/house-passes-farm-bill-rule-with-buried-provision.html> [<https://perma.cc/L7TW-78SZ>].

170. Caitlin Foster, *Yemen civil war: Who's Fighting the Brutal Conflict That's Left Millions on the Brink of Famine*, BUS. INSIDER (Feb. 21, 2019), <https://www.businessinsider.com/yemen-conflict-explained-2019-2> [<https://perma.cc/6ZTU-Y8PE>].

171. Babak Ghafarzade, Note, *Yemen: Post-Conflict Federalism to Avoid Disintegration*, 48 N.Y.U. J. INT'L L. & POL'Y 933, 959 (2016) (describing the Houthi religious movement in general).

172. Leo Shane III & Joe Gould, *Should U.S. Troops Be Involved In The Yemen Civil War?*, MILITARY TIMES (Feb. 13, 2019), <https://www.militarytimes.com/news/pentagon-congress/2019/02/13/should-us-forces-be-involved-in-the-yemen-civil-war/> [<https://perma.cc/6YS2-VUHS>] (last accessed Feb. 23, 2019) (“Military commands in recent years have provided aircraft refueling services as well as other logistical support in the Yemen conflict – but no troops on the ground.”).

viewed as a proxy battle between the Saudi Arabia and Iran, which supports the Houthi rebels.¹⁷³

The controversial rule for the farm bill was brought forward in the House of Representatives on December 12, 2018.¹⁷⁴ A number of House Democrats in opposition noted their desire to address policy regarding the conflict in Yemen.¹⁷⁵ Surprisingly, the rule narrowly passed by a 206-203 margin.¹⁷⁶ Five Democrats supported the rule.¹⁷⁷ One such Democrat, Congressman Dutch Ruppersberger of Maryland,¹⁷⁸ wrote in an editorial that although he supported withdrawing United States military support for the war in Yemen, the underlying farm bill would not have had a vote: “without a rule, the vote would not have taken place. Many Americans could have gone hungry. And the war in Yemen could have still continued.”¹⁷⁹

With the rule for the compromise farm bill passed, the last major hurdle for passage was effectively cleared, producing a historic, bipartisan compromise.

173. See Foster, *supra* note 170.

174. 164 CONG. REC. H10115 (daily ed. Dec. 12, 2018) (H. Res. 1176).

175. 164 CONG. REC. H10115 (daily ed. Dec. 12, 2018) (speech of Rep. McGovern) (“We should not be sitting idly by, waiting for the start of the next Congress, as this conflict rages on. We should be doing something today.”); 164 CONG. REC. H10119 (daily ed. Dec. 12, 2018) (speech of Rep. Khanna) (“I don’t think this is a partisan issue. This is an American issue. Let’s stop the killing in Yemen. Let’s end the famine. Let’s have a vote in this House so we can stop the civil war in Yemen and save lives.”); 164 CONG. REC. H10120 (daily ed. Dec. 12, 2018) (speech of Rep. Doggett).

176. 164 CONG. REC. H10127 (daily ed. Dec. 12, 2018) (Roll No. 432).

177. Tara Golshan, *The bizarre story of Democrats helping Republicans stall action on Yemen*, VOX (Dec. 15, 2018), <https://www.vox.com/policy-and-politics/2018/12/15/18138308/democrat-yemen-resolution-house-saudi> [<https://perma.cc/3363-PGMM>].

178. *Full Biography*, Rep. Dutch Ruppersberger, <https://ruppersberger.house.gov/about-dutch/full-biography> [<https://perma.cc/B3ZF-FJWM>] (last accessed Feb. 23, 2019).

179. Rep. Dutch Ruppersberger, *Ruppersberger: Farm Bill vote broke my heart*, BALTIMORE SUN (Feb. 23, 2019), <https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-1215-ruppersberger-20181214-story.html> [<https://perma.cc/5W7S-7T6M>].

IV. THE 2018 FARM BILL: MONUMENTAL LEGISLATIVE COMPROMISE
IN THE TRUMP ERA

A. *The Compromise Farm Bill*

With numerous headwinds facing the farm bill in 2018, the passage of a comprehensive \$867 billion legislative package in 2018 can be described as truly monumental.¹⁸⁰ In fact, passage of such legislation was highly unlikely in 2018, with such long odds that Democratic Congressman Collin Peterson, the then-ranking member of the House Agriculture Committee, called passage of it in 2018 a “miracle.”¹⁸¹

1. The U.S. Senate’s Approval and the U.S. House of
Representative’s Approval

The U.S. Senate quickly considered the compromise farm bill on December 11, 2018.¹⁸² The bill passed the Senate that day by an 87-13 margin, with only 13 Republican Senators voting no.¹⁸³

Following passage of the controversial farm bill rule,¹⁸⁴ the U.S. House of Representatives considered the compromise farm bill on December 12, 2018.¹⁸⁵ During the debate on the floor of the House of Representatives, a chorus of both Republican¹⁸⁶ and Democratic¹⁸⁷

180. *See* Dedaj, *supra* note 11.

181. Michelle Rook, *Congress passes farm bill; Peterson calls it ‘a miracle,’* AGWEEK (Dec. 17, 2018), <https://www.agweek.com/business/agriculture/4544642-congress-passes-farm-bill-peterson-calls-it-miracle> [<https://perma.cc/254M-X63X>].

182. 164 CONG. REC. S7411-7412 (daily ed. Dec. 11, 2018).

183. *Id.* (Roll Call Vote No. 259 Leg).

184. 164 CONG. REC. H10127 (daily ed. Dec. 12, 2018) (Roll No. 432).

185. 164 CONG. REC. H10142-10152 (daily ed. Dec. 12, 2018).

186. 164 CONG. REC. H10142-10143 (daily ed. Dec. 12, 2018) (speech of Rep. Conaway); 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. Lucas); 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. Austin Scott); 164 CONG. REC. H10145 (daily ed. Dec. 12, 2018) (speech of Rep. Adrian Smith); 164 CONG. REC. H10145 (daily ed. Dec. 12, 2018) (speech of Rep. LaMalfa); 164 CONG. REC. H10146 (daily ed. Dec. 12, 2018) (speech of Rep. Allen).

187. 164 CONG. REC. H10143-10144 (daily ed. Dec. 12, 2018) (speech of Rep. Peterson); 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. David Scott); 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. Fudge); 164 CONG. REC. H10145 (daily ed. Dec. 12, 2018) (speech of Rep. Costa); 164 CONG. REC. H10146 (daily ed. Dec. 12, 2018) (speech of Rep. Blunt Rochester); 164

lawmakers spoke in support of the compromise bill. Only one lawmaker, Democratic Congressman Earl Blumenauer of Oregon,¹⁸⁸ spoke in opposition, contending that the current federal crop insurance program “is not just wasteful, but fails most farmers and ranchers.”¹⁸⁹ The House of Representatives passed the compromise bill on a 369-47 vote,¹⁹⁰ sending the bill to President Trump for his consideration.

2. President Trump’s Approval

Despite the compromise bill not including any major changes to the SNAP program, President Trump signed the compromise farm bill into law on December 20, 2018.¹⁹¹ President Trump expressed the sentiment that the bill is a “really tremendous victory for the American farmer.”¹⁹² Several weeks later, President Trump mentioned the compromise farm bill in his 2019 State of the Union address as an example of “bipartisan action.”¹⁹³

CONG. REC. H10146 (daily ed. Dec. 12, 2018) (speech of Rep. Adams); 164 CONG. REC. H10146 (daily ed. Dec. 12, 2018) (speech of Rep. Panetta); 164 CONG. REC. H10147 (daily ed. Dec. 12, 2018) (speech of Rep. Evans); 164 CONG. REC. H10147 (daily ed. Dec. 12, 2018) (speech of Rep. Jackson Lee); 164 CONG. REC. H10147 (daily ed. Dec. 12, 2018) (speech of Rep. Soto); 164 CONG. REC. H10148 (daily ed. Dec. 12, 2018) (speech of Rep. Al Lawson of Florida).

188. Carl Hulse, *Frustrated Liberal Lawmaker Balances Beliefs and Politics*, N.Y. TIMES (Oct. 17, 2009), <https://www.nytimes.com/2009/10/18/us/politics/18liberal.html> [<https://perma.cc/R5TB-K4M5>].

189. 164 CONG. REC. H10145 (daily ed. Dec. 12, 2018) (speech of Rep. Blumenauer).

190. 164 CONG. REC. H10151 (daily ed. Dec. 12, 2018) (Roll No. 434).

191. Chuck Abbott, *Trump Signs 2018 Farm Bill*, SUCCESSFUL FARMING (Dec. 20, 2018), <https://www.agriculture.com/news/business/trump-signs-2018-farm-bill> [<https://perma.cc/UTP8-AKTW>].

192. *Id.*

193. President Donald J. Trump, President Donald J. Trump’s State of the Union Address, (Feb. 5, 2019) (transcript available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address-2/>) [<https://perma.cc/2TTC-TK36>].

3. Key Provisions of the New Law

In general, the 2018 compromise farm bill was largely a “continuation bill” of existing agricultural policy.¹⁹⁴ It provided for continuing funding and support for crop insurance, SNAP, conservation programs, rural development programs, market development programs, and funding for African-American land grant colleges. Some of the key provisions included:

Crop Insurance

The 2018 farm bill largely maintains the status quo with the federal crop insurance program,¹⁹⁵ with both Republicans¹⁹⁶ and Democrats¹⁹⁷ largely supporting the continuation of existing policy. The greatest threat to a change in the status quo was in the Senate. Senator Dick Durbin, an Illinois Democrat,¹⁹⁸ and Senator Charles Grassley, an Iowa Republican,¹⁹⁹ co-sponsored an amendment in the Senate which would create a means test for the crop insurance program.²⁰⁰ The

194. Helena Bottemiller Evich & Catherine Boudreau, *Farm bill headed to Trump after landslide House approval*, POLITICO (Dec. 13, 2018), <https://www.politico.com/story/2018/12/12/house-passes-farm-bill-1060916> [<https://perma.cc/VRS5-3M3A>].

195. *Id.*

196. 164 CONG. REC. H10143 (daily ed. Dec. 12, 2018) (speech of Rep. Conaway) (“The farm bill honors the request of nearly every farmer and rancher that we do no harm to Federal crop insurance.”).

197. 164 CONG. REC. S7411 (daily ed. Dec. 11, 2018) (speech of Sen. Stabenow) (“By protecting and expanding crop insurance and improving support for our dairy farmers – in fact, strengthening the support for our dairy farmers, who were hit so hard with price drops and other issues – we maintain a strong safety net for farmers.”).

198. Evie Fordham, *A Young Female Progressive Wants to Unseat Veteran Senate Democrat Dick Durbin. Sound Familiar?*, THE DAILY CALLER (Jan. 3, 2019), <https://dailycaller.com/2019/01/03/anne-stava-murray-challenge-dick-durbin/> [<https://perma.cc/DKV9-9XFM>].

199. Jennifer Steinhauer & David S. Herszenhorn, *Charles Grassley Faces Formidable Challenger in Iowa Senate Race*, N.Y. TIMES (Mar. 3, 2016), <https://www.nytimes.com/2016/03/04/us/politics/charles-grassley-patty-judge-iowa-senate-race.html> [<https://perma.cc/YS5H-KEXZ>].

200. Larry Dreiling, *Senate farm bill passes by crushing margin*, HIGH PLAINS J. (Jun. 29, 2018), <https://www.hpj.com/agnews/senate-farm-bill-passes-by-crushing-margin/article82f3951e-7b9d-11e8-8d86-abc1a0a83c9.html> [<https://perma.cc/7MPA-FJVB>].

amendment would affect crop insurance policyholders with adjusted gross incomes over \$700,000 by reducing their premium subsidies by fifteen percent.²⁰¹ This amendment was sharply opposed by the crop insurance industry.²⁰² The amendment was not brought to the Senate floor after a compromise was reached between Senator Roberts and Senator Durbin to instead bring forward an amendment sponsored by Senator Durbin²⁰³ to reauthorize a federal program supporting rural emergency health services.²⁰⁴ In the end, compromise saved the crop insurance program from significant reform.

SNAP

Many conservative reforms of the SNAP program were left out of the final compromise farm bill.²⁰⁵ This was viewed as a victory for Democrats, as Congressman Peterson declared he “stared [Republicans] down on SNAP.”²⁰⁶ The reforms of the SNAP program advocated by many conservative Republicans and President Trump did not have a chance to succeed as they were essentially unanimously opposed by Democrats. In addition, had the reforms been championed by the Senate Republican leadership, the whole compromise would have likely fallen apart, and no legislation would have passed in the 115th Congress.

201. *Id.*

202. *See* Press Release, Crop Ins. and Reinsurance Bureau, Inc. Crop Ins. Indus. Statement on Senate Farm Bill Passage, (Jun. 28, 2018), <http://cropinsurance.org/wp-content/uploads/2014/02/Senate-Farm-Bill-Passing-Statement.pdf>.

203. *See* Dreiling, *supra* note 200.

204. *See* Press Release, Sen. Dick Durbin, Senate Passes Durbin, Roberts Farm Bill Amendment To Support Rural EMS Agencies (Jun. 29, 2018), (available at <https://www.durbin.senate.gov/newsroom/press-releases/senate-passes-durbin-roberts-farm-bill-amendment-to-support-rural-ems-agencies->) [<https://perma.cc/3XE8-SMW7>].

205. *See* Evich & Boudreau, *supra* note 194.

206. *See* Helena Bottemiller Evich, Catherine Boudreau & Liz Crampton, *How Paul Ryan is selling his food stamp loss*, POLITICO (Dec. 11, 2018), <https://www.politico.com/story/2018/12/11/paul-ryan-snap-food-stamps-welfare-congress-1023334> [<https://perma.cc/V43Q-ZWAN>].

*Conservation Reserve Program, Conservation Stewardship Program,
and Conservation Programs*

The 2018 farm bill increased the total acreage limitations from the Conservation Reserve Program from 24 million acres to 27 million acres, the middle point between the Senate’s bill increasing the acreage to 25 million acres and the House’s bill increasing the acreage to 29 million acres.²⁰⁷ In addition, the Conservation Stewardship Program was preserved.²⁰⁸ However, some funding was shifted away from the Conservation Stewardship Program to other conservation programs, including the Environmental Quality Incentives Program, the Regional Conservation Partnership Program, and the Agricultural Conservation Easement Program.²⁰⁹ Overall, conservation programs fared very well with the 2018 farm bill, and one commentator noted that this farm bill “maintains and improves programs that help family farmers and ranchers improve their environmental stewardship.”²¹⁰

Agricultural Export Promotion Programs.

The 2018 farm bill fully funds the Foreign Market Development Program and Market Access Program (“MAP”).²¹¹ As discussed earlier, the Foreign Market Development Program assists in the promotion of export markets for agricultural products.²¹² With the MAP program, the Foreign Agricultural Service of the U.S. Department of Agriculture “partners with U.S. agricultural trade associations, cooperatives, state regional trade groups and small businesses to share the costs of overseas marketing and promotional activities that help build commercial export markets for U.S. agricultural products and commodities.”²¹³

207. Matt Perdue, *Environmental Sustainability in the 2018 Farm Bill*, NAT’L FARMERS UNION (Jan. 16, 2019), <https://nfu.org/2019/01/16/environmental-sustainability-in-the-2018-farm-bill/> [<https://perma.cc/9QVL-VM35>].

208. *Id.*

209. *Id.*

210. *Id.*

211. 164 CONG. REC. H10143 (daily ed. Dec. 12, 2018) (speech of Rep. Conaway).

212. *See Foreign Market Development Program (FMD)*, *supra* note 25.

213. *Market Access Program (MAP)*, U.S.D.A. FOREIGN AGRIC. SERV., <https://www.fas.usda.gov/programs/market-access-program-map> [<https://perma.cc/C65Q-5P66>] (last accessed Mar. 2, 2019).

Funding for African-American Land Grant Colleges and Universities.

The 2018 farm bill provides \$80 million in funding for students attending African-American land grant colleges and universities who study agricultural disciplines.²¹⁴ Congressman David Scott of Georgia stated the following in remarks on the floor of the House of Representatives with regards to this funding: “Only God could pull this together, and we thank God for this blessing and for touching the hearts and the souls and the spirits of all of my colleagues who will vote for this historic bill.”²¹⁵

Rural Development.

The 2018 farm bill also makes a significant investment in rural development. The bill preserves²¹⁶ the Rural Economic Development Loan and Grant program, which provides funding for economic development projects.²¹⁷ It also provides \$350 million in additional funding annually to provide rural broadband coverage.²¹⁸ Finally, the 2018 farm bill also recreates the position of Under Secretary for Rural Development within the U.S. Department of Agriculture, a post which had previously been eliminated.²¹⁹

214. Andrew Kreighbaum, *Farm Bill Includes Wins for Colleges*, INSIDE HIGHER ED (Dec. 14, 2018), <https://www.insidehighered.com/quicktakes/2018/12/14/farm-bill-includes-wins-colleges> [<https://perma.cc/Q5J8-5JWW>].

215. 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. David Scott).

216. See Cathy Cash, *Farm Bill Advances Electric Co-op Interests in Rural Development, Broadband*, NAT’L RURAL ELEC. COOP. ASS’N (Dec. 13, 2018), <https://www.electric.coop/farm-bill-advances-electric-co-op-interests-in-rural-development-broadband/> [<https://perma.cc/GLR4-ZCPX>].

217. See *Rural Economic Development Loan and Grant Program*, U.S.D.A. RURAL DEV., <https://www.rd.usda.gov/programs-services/rural-economic-development-loan-grant-program> [<https://perma.cc/E43V-EHK5>] (last accessed Mar. 2, 2019) (“The Rural Economic Development Loan and Grant program provides funding for rural projects through local utility organizations. USDA provides zero-interest loans to local utilities which they, in turn, pass through to local businesses (ultimate recipients) for projects that will create and retain employment in rural areas. The ultimate recipients repay the lending utility directly. The utility is responsible for repayment to USDA.”).

218. 164 CONG. REC. H10144 (daily ed. Dec. 12, 2018) (speech of Rep. Fudge).

219. 164 CONG. REC. S7426 (daily ed. Dec. 11, 2018) (speech of Sen. Leahy).

Organic Agriculture.

The 2018 farm bill provides \$50 million in annual funding for five years²²⁰ for the Organic Agriculture Research and Extension Initiative.²²¹

Legalization of Hemp.

In a major development, the 2018 farm bill legalized hemp as an agricultural product, making it potentially available for crop insurance coverage.²²²

B. Reaction to the Compromise

With the passage of the 2018 farm bill with far wider majorities in the House of Representatives and Senate than the 2014 farm bill, the vast majority of legislators were left claiming victory with the compromise. Almost all agricultural industry organizations were left satisfied with the 2018 farm bill, as well as most environmental advocacy groups and many other advocacy groups.²²³ Both

220. *Id.*

221. See *Organic Agriculture Research and Extension Initiative*, U.S.D.A. NAT'L INST. OF FOOD AND AGRIC., <https://nifa.usda.gov/funding-opportunity/organic-agriculture-research-and-extension-initiative> [<https://perma.cc/UW7R-7BXG>] (last accessed Mar. 2, 2019) (“The Organic Agriculture Research and Extension Initiative (OREI) seeks to solve critical organic agriculture issues, priorities, or problems through the integration of research, education, and extension activities. The purpose of this program is to fund projects that will enhance the ability of producers and processors who have already adopted organic standards to grow and market high quality organic agricultural products. Priority concerns include biological, physical, and social sciences, including economics.”).

222. Brett Kelman & Andrew Sharp, *Trump signs Farm Bill and legalizes hemp, cannabidiol*, USA TODAY (Dec. 21, 2018), <https://www.usatoday.com/story/news/2018/12/21/hemp-cbd-farm-bill-signing-trump-delaware-agriculture/2387656002/> [<https://perma.cc/GCX8-WYYY>].

223. See e.g., Press Statement, Earthjustice, Earthjustice Statement on Farm Bill Agreement (Dec. 11, 2018), <https://earthjustice.org/news/press/2018/earthjustice-statement-on-farm-bill-agreement> [<https://perma.cc/8E3L-FBT6>].

Martin Hayden, the Vice President of Policy and Legislation at Earthjustice, stated the following:

Negotiators on this year’s Farm Bill protected our environment from real harm, and they deserve our thanks for their effort. This bill strips some of the worst attacks on our climate, public lands, and conservation programs from earlier

Republican and Democrat lawmakers for the most part approved of passage, providing hope that the 116th Congress can find further common ground on other major policy initiatives.

1. Industry and Advocacy Group Reaction

Advocacy groups and agricultural organizations expressed strong support for the compromise farm bill. For example, agricultural industry and producer groups as varied as the National Corn Growers Association,²²⁴ American Association of Crop Insurers,²²⁵ American Soybean Association,²²⁶ National Milk Producers Federation,²²⁷

versions, instead making key investments in all three areas. Moreover, the final legislation removes attacks on the public's ability to hold greedy corporations accountable in court when the public is harmed by their actions.

Id. See also Erik D. Olson & Mae Wu, *Final Farm Bill Blossoms: A Reasonable Bipartisan Compromise*, NRDC (Dec. 20, 2018), <https://www.nrdc.org/experts/mae-wu/final-farm-bill-blossoms-reasonable-bipartisan-compromise> [<https://perma.cc/QA3E-RYU8>]. Olson & Wu, both representatives of the NRDC, concluded their observations on the farm bill with the following:

On balance, the final bill is a product of bipartisan compromise. The House majority burned countless hours at taxpayer expense to developing a messaging bill with no chance of enactment. Meanwhile, the Senate got to work writing serious legislation. The compromise bill isn't perfect, but we are very pleased that it largely tracks the bipartisan Senate bill. It abandons scores of dangerous anti-environmental provisions that would have harmed the environment and doomed the bill to failure. The Members of Congress who committed to bipartisanship should be commended for delivering a viable bill.

Id.

224. Press Release, Lynn Chris, President of Nat'l Corn Growers Ass'n, NCGA Statement on Farm Bill Passage, Nat'l Corn Growers Ass'n, (Dec. 12, 2018), <http://www.ncga.com/news-and-resources/news-stories/article/2018/12/ncga-statement-on-farm-bill-passage> [<https://perma.cc/DE2U-BTT3>].

225. Press Release, Nat'l Crop Ins. Servs, Crop Insurers Comment on Farm Bill Conference Report (Dec. 11, 2018), <https://cropinsuranceinamerica.org/crop-insurers-comment-on-farm-bill-conference-report/> [<https://perma.cc/ZC83-KLU4>] (last accessed Mar. 2, 2019).

226. Press Release, Am. Soybean Ass'n, Soy Growers Pleased With Stability & Support New Farm Bill Will Provide (Dec. 11, 2018), <https://soygrowers.com/soy-growers-pleased-stability-support-new-farm-bill-will-provide/> [<https://perma.cc/S4T9-2RB8>] (last accessed Mar. 2, 2019).

227. See Press Release, National Milk Producers Federation, NMPF Commends Lawmakers for Farm Bill That Makes Significant Dairy Policy Reforms (Dec. 11, 2018), <http://www.nmpf.org/latest-news/press-releases/dec-2018/dec-11-nmpf->

National Association of Wheat Growers,²²⁸ and the National Cotton Council²²⁹ voiced approval. For example, the President of the American Farm Bureau Federation stated the following concerning the farm bill:

Farm and ranch families in particular will find a good degree of risk management support they need to help them weather the prolonged downturn in the agricultural economy that many of us are facing. Next year, we are going to face continued challenges across farm and ranch country, and this new farm bill gives us the tools we will need to weather this ongoing storm.²³⁰

Conservation advocacy organizations also generally supported the bill. Groups as varied as the National Sustainable Agriculture Coalition,²³¹ the Nature Conservancy,²³² the National Audubon

commends-lawmakers-farm-bill-makes-significant-dairy [<https://perma.cc/YW9U-JMQL>].

228. *Nat'l Ass'n of Wheat Growers Voices Support of 2018 Farm Bill Conference Report*, GRAINNET (Dec. 12, 2018), (available at <http://www.grainnet.com/article/159804/national-association-of-wheat-growers-voices-support-of-2018-farm-bill-conference-report>) [<https://perma.cc/PBB2-J3QU>].

229. Press Release, Nat'l Cotton Council, NCC Strongly Supports 2018 Farm Bill; Urges Quick Passage by Congress, Nat'l Cotton Council of Am., (Dec. 11, 2018), <http://www.cotton.org/news/releases/2018/frmbl.cfm> [<https://perma.cc/27Q2-D9NR>].

230. Press Release, American Farm Bureau Federation, American Farm Bureau Endorses 2018 Farm Bill, Board Unanimously Calls for Final Approval (Dec. 11, 2018), <https://www.fb.org/newsroom/american-farm-bureau-endorses-2018-farm-bill-board-unanimously-calls-for-fi> [<https://perma.cc/3YPD-T7U9>] (last accessed Feb. 23, 2019) (quoting American Farm Bureau Federation President Zippy Duvall).

231. Press Release, National Sustainable Agriculture Coalition, Release: Farm Bill Delivers Victories for Beginning Farmers, Organic/Local Food (Dec. 11, 2018), <http://sustainableagriculture.net/blog/final-2018-farm-bill-released/> [<https://perma.cc/ZSD8-59JZ>] (last accessed Mar. 2, 2019).

232. *Congress Votes for Conservation with New Farm Bill*, THE NATURE CONSERVANCY (Dec. 12, 2018), <https://www.nature.org/en-us/explore/newsroom/congress-votes-for-conservation-with-new-farm-bill/> [<https://perma.cc/QVV3-RYF5>] (last accessed Mar. 2, 2019).

Society,²³³ and the Sierra Club²³⁴ also backed it. With the bill's provisions supporting organic farming, the Organic Trade Association also endorsed the bill.²³⁵

However, several conservative groups opposed the farm bill, including the Heritage Foundation²³⁶ and the Club for Growth.²³⁷

2. Republican Reaction

The Republican reaction to the farm bill compromise was largely positive, focusing primarily on the urgency of passage of a bill for producers. Senator Pat Roberts acknowledged the following in a press release:

The goal, the responsibility, the absolute requirement is to provide farmers, ranchers, growers and everyone within America's agriculture and food value chain certainty and predictability during these very difficult times. This Farm Bill meets the producers across all regions and all crops. And, it ensures that our voluntary conservation programs are keeping farm land in operation while protecting our agriculture lands, forests, and other natural resources. The bill focuses on program integrity and commonsense investments to strengthen our nutrition

233. *2018 Farm Bill Boosts Conservation, "Gives Birds a Lot to Celebrate,"* NATIONAL AUDUBON SOCIETY (Dec. 12, 2018), <https://www.audubon.org/news/2018-farm-bill-boosts-conservation-gives-birds-lot-celebrate> [https://perma.cc/8JL5-JGFP] (last accessed Mar. 2, 2019).

234. Press Release, Sierra Club, *Sierra Club Statement on Farm Bill Conference Report* (Dec. 11, 2018), <https://www.sierraclub.org/press-releases/2018/12/sierra-club-statement-farm-bill-conference-report> [https://perma.cc/V299-RRN4] (last accessed Mar. 2, 2019).

235. *New Farm Bill signed into law, advances organic,* ORGANIC TRADE ASSOCIATION (Dec. 20, 2018), <https://www.ota.com/news/press-releases/20439> [https://perma.cc/S9ZE-AJWA] (last accessed Mar. 2, 2019).

236. Daren Bakst, *A Nightmare Farm Bill for Conservatives*, THE HERITAGE FOUND. (Dec. 3, 2018), <https://www.heritage.org/agriculture/commentary/nightmare-farm-bill-conservatives> [https://perma.cc/C39D-SFY8].

237. Press Release, The Club For Growth, *Club for Growth Disappointed in Conservatives' Betrayal on Farm Bill* (Dec. 13, 2018), <https://www.clubforgrowth.org/club-for-growth-disappointed-in-conservatives-betrayal-on-farm-bill/> [https://perma.cc/9YYV-A9PN].

programs to ensure the long-term success of those in need of assistance.²³⁸

While the vast majority of Republicans supported the farm bill, the compromise bill did not include the provisions on SNAP reform that many House Republicans and President Trump wanted.²³⁹ The compromise likely was a bittersweet one for many Republicans.²⁴⁰ Congressman Conaway noted the increase of commodity support payments to corn, soybean, wheat and cotton farmers was a “victory.”²⁴¹

3. Democrat Reaction

With overwhelming support from House Democrats as well, Democratic reaction to the compromise was largely ecstatic. Democrats could point to a compromise bill which included no deep cuts to the SNAP program.²⁴² Then–Minority Leader Congresswoman Nancy Pelosi stated the following in a press release:

Informed by the values and expertise of our Conferees, this bill upholds our obligations to the nearly 39 million Americans who are food-insecure. It preserves current benefits for millions of children, seniors and students, 1.5 million veterans, 23,000 service members, individuals with disabilities and hard-working families who rely on this transformative lifeline. It makes smart improvements to food stamps that

238. See Press Release, Sen. Pat Roberts, Chairman Roberts’ Bipartisan Farm Bill Passes Senate; One Step Closer to Certainty and Predictability for Kansas Farmers and Ranchers (Dec. 11, 2018), <https://www.roberts.senate.gov/public/index.cfm/pressreleases?ID=B491B1ED-0635-436C-A86A-03217028B6B9> [<https://perma.cc/25YE-8U8T>].

239. See Evich, Boudreau & Crampton, *supra* note 206. (“The Republicans have accomplished what I’ve not been able to do, and that is to make me a hero among the Democrats, because I stared [Republicans] down on SNAP,” House Agriculture ranking member Collin Peterson (D-Minn.) told reporters last week. “I go into the caucus and I get a standing ovation.”).

240. *Id.*

241. *Id.*

242. See Beth Kaiserman, *Farm Bill Deal Reached Without New SNAP Requirements*, FORBES (Nov. 29, 2018), <https://www.forbes.com/sites/bethkaiserman/2018/11/29/farm-bill-deal-reached-without-new-snap-requirements/#3cd38a893e7f> [<https://perma.cc/K653-8PSW>].

strengthen the safety net for families, create good-paying jobs and grow the economy, recognizing that SNAP creates \$1.79 for every dollar in benefits and supports more than 560,000 jobs across the country. This bill also honors our responsibilities to the 16 million men and women of agriculture, providing certainty to farmers and growers amid a lagging farm economy and the self-inflicted damage of the President's trade brinkmanship. This bill makes bold, forward-looking investments in rural communities by increasing funding for agriculture research, organic and specialty crops, broadband and energy initiatives, while making great progress to protect clean water, clean air and a healthy planet²⁴³

Congressional Democrats cited to a number of other reasons to laud the farm bill compromise, from providing increased support for dairy farmers,²⁴⁴ improving conservation and forestry programs,²⁴⁵ and the securing of funding for agriculture scholarships for HBCU's.²⁴⁶

243. Press Release, Rep. Nancy Pelosi, H.R., Pelosi Statement on Passage of Farm Bill (Dec. 12, 2018), <https://pelosi.house.gov/news/press-releases/pelosi-statement-on-passage-of-farm-bill> [<https://perma.cc/M4NC-A29T>] (last accessed Feb. 9, 2019).

244. Press Release, Rep. Collin Peterson, H.R., Ranking Member Peterson on Passage of the Farm Bill Conference Report (Dec. 13, 2018), <https://collinpeterson.house.gov/press-release/ranking-member-peterson-passage-farm-bill-conference-report> [<https://perma.cc/VD5C-ELPU>] (last accessed Feb. 9, 2019) (“I am proud of the improvement it makes for our dairy farmers. The bill will provide expanded, affordable coverage options and more flexibility for dairy farmers.”).

245. Press Release, Rep. Tom O'Halleran, H.R., O'Halleran Votes to Pass 2018 Farm Bill (Dec. 12, 2018), <https://ohalleran.house.gov/newsroom/press-releases/ohalleran-votes-pass-2018-farm-bill> [<https://perma.cc/8NCP-WSU6>] (last accessed Feb. 9, 2019).

246. Press Release, Rep. David Scott, H.R., Congressman Scott, Senator Perdue Secure Funding for HBCU Agriculture Scholarships (Dec. 12, 2018), <https://davidscott.house.gov/news/documentsingle.aspx?DocumentID=398126> [<https://perma.cc/4XHE-YGPS>] (last accessed Feb. 9, 2019) (“I am especially proud of the \$80M we have secured in funding for new scholarships for students attending the 19 African American 1890's land-grant colleges and universities across the nation. These scholarships will play a critical role in providing greater assistance for beginning farmers, and providing financial scholarships to bring more young people of all races who attend these outstanding universities for careers in the wonderful, and exciting, and growing world of agriculture businesses.”).

C. Reasons for the Compromise

The 2018 farm bill was a monumental legislative achievement in a time of much partisan division in the United States. Overcoming the odds, the legislation was enacted into law before the end of the 2018 calendar year.²⁴⁷ A number of factors converged to make passage of the farm bill in both the House of Representatives and Senate an overwhelming success.

First, the outcome of the 2018 elections placed pressure on Republican lawmakers to enact the legislation prior to the Democrats taking control of the House of Representatives in the 116th Congress in 2019. The SNAP program reforms advocated by conservatives would be essentially impossible in the 116th Congress, so it was strategic for many Republicans to compromise on this issue to ensure the bill passed.²⁴⁸ In addition, Congressman Collin Peterson was able to garner the support of the House Democratic leadership to move the bill forward in the 115th Congress.²⁴⁹ Congressman Peterson also appeared to have a sense of urgency to wrap up the farm bill quickly, as many newly-elected Democrats who won election to the House of Representatives were from suburban areas and some were not particularly sympathetic to agricultural interests.²⁵⁰

Second, there was very strong support for a bipartisan approach to the farm bill in the Senate. Senate Majority Leader Mitch McConnell's strong support for the legalization of hemp and the inclusion of this provision in the farm bill was reportedly a key factor in pushing the

247. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490.

248. Braktkon Booker, *How the Midterms and Lame-Duck Session are Pushing the Farm Bill to a Deal*, NPR (Nov. 20, 2018), <https://www.npr.org/2018/11/20/669544401/how-the-midterms-and-lame-duck-session-are-pushing-the-farm-bill-to-a-deal> [<https://perma.cc/SRC2-BGZT>].

249. Fatka, *supra* note 164.

250. See Walter Orenstein, *What's inside the much-anticipated farm bill – and why Rep. Collin Peterson blames Democrats and Republicans for its delay*, MINNPOST (Dec. 5, 2018), <https://www.minnpost.com/environment/2018/12/whats-inside-the-much-anticipated-farm-bill-and-why-rep-collin-peterson-blames-democrats-and-republicans-for-its-delay/> [<https://perma.cc/TY8X-NUX8>].

measure through Congress.²⁵¹ This provision was apparently a priority for Senator McConnell.²⁵²

Finally, the role of Senators Roberts and Stabenow in bipartisan cooperation throughout the process cannot be overlooked.²⁵³ Senator Roberts' has had longstanding friendships with Senator Stabenow and Representative Peterson.²⁵⁴ Senator Roberts announced in early January 2019 that he will not seek re-election in 2020, and depending on the political climate in 2022 and 2023, this development may make the next farm bill more difficult to pass.²⁵⁵

V. CONCLUSION

In today's political environment, it seems difficult to fathom that Republicans and Democrats can work closely together on a major policy initiative. All is not lost for political compromise in the United States—the 2018 farm bill provides a glimmer of hope that policymakers of all sides can find common ground. Finally, and perhaps most importantly, the story of the 2018 farm bill is truly a victory for America's farmers. A growing risk of bankruptcy unfortunately appears to be rising among farm households.²⁵⁶ Instead of being left with uncertainty concerning the future of farm programs heading into the 2019 crop year,²⁵⁷ farmers have the peace of mind that

251. See Tess Bonn, *Adding hemp provision to farm bill was key to passage, says Farm Bureau official*, THE HILL, (Jan. 7, 2019), <https://thehill.com/hilltv/rising/424193-hemp-provision-was-key-to-passage-of-new-farm-bill-says-farm-bureau-official> [<https://perma.cc/X653-D643>].

252. *Id.*

253. See Bryan Lowry & Lindsay Wise, *Does Pat Roberts' farm bill dealmaking make him an 'endangered species?'* MCCLATCHY (Dec. 26, 2018), <https://www.mcclatchydc.com/news/politics-government/congress/article223414635.html> [<https://perma.cc/F3UC-A4WY>].

254. *Id.*

255. See Lisa Hagen, *Pat Roberts won't seek Senate reelection*, THE HILL (Jan. 4, 2019), <https://thehill.com/homenews/campaign/423870-pat-roberts-decision-on-senate-reelection> [<https://perma.cc/V32D-39AM>].

256. See Jesse Colombo, *Here's Why More American Farms Are Going Bankrupt*, FORBES (Nov. 29, 2018), <https://www.forbes.com/sites/jessecolombo/2018/11/29/heres-why-more-american-farms-are-going-bankrupt/#ae02b0865a72> [<https://perma.cc/N2MP-KH99>].

257. See Tyne Morgan, *Sen. Roberts: 'We're Going to Get Farmers a Good Farm Bill'*, FARM J. AG PRO (June 6, 2018), <https://www.agprofessional.com/article/sen->

agricultural policy will likely not be unstable in 2019. The story of the 2018 farm bill provides reason for optimism that Republicans and Democrats, instead of producing gridlock, can truly work together to place the good of the country ahead of the good of one's own politics.

roberts-were-going-get-farmers-good-farm-bill [https://perma.cc/4YAS-VAMX]
(The article quoted Senator Roberts as stating, "Our situation is so dire and with the trade policy having a question mark after it, farmers want predictability not uncertainty.").