Mr. Merlino is the Senate assistant legislative clerk, working on the legislative team of the Office of the Secretary of the Senate.

Mr. Merlino began his Senate career in 1994 as a Senate doorkeeper. He then joined the Secretary's legislative staff and has performed many of its functions, including the constitutional task—the constitutional task—of maintaining the Senate Journal.

Another of Mr. Merlino's main responsibilities is to call the roll during votes and quorum calls. More important, he is also one of those special workers on the dais who have been known at times to actually keep new Members, as they preside over the Senate, awake during long stretches in the chair.

He is always ready with a good sports quip and is known as a person who goes above and beyond the call of duty. As a matter of fact, I know it was his birthday yesterday and I have been planning this speech for some time and I wanted to make sure it coincided with that important date for him.

The Secretary of the Senate, Nancy Erickson, noted that in addition to his hard work and attention to detail—this is a quote—''It is his great sense of humor that helps many of us keep smiling, especially during the Senate's late [night] legislative sessions.''

A small cog in the greater legislative process, Mr. Merlino is a member of an often unrecognized but dedicated team that keeps the Senate running smoothly and one that is charged with ensuring continuity of operations no matter what the situation.

In fact, Mr. Merlino recently entered the history books. During a pro forma session held at the Postal Square Building immediately following the earthquake in August, Mr. Merlino, unknowingly, became one of only two people, along with Senator COONS, to have spoken during the only official session of the Senate convened outside the Capitol Building since 1814. The last time the Senate met outside the Capitol Building for such a session was when the British troops burned the Capitol during the War of 1812. So again, Mr. Merlino took his role in the history books of this great institution.

I hope my colleagues—and I know the Presiding Officer, again, by expelling me from the chair this morning to allow me to make this statement—will join me in honoring Mr. Merlino, a fellow Virginian, for the excellent work he and the legislative team do each and every day and for their commitment to public service.

It is in that sense of Mr. Merlino's commitment to public service that I know the Presiding Officer joins me in this and that we get our work done today, so we can give this team—and the literally couple other million Federal workers across the country—the sense that we are not going to shut down the government, that they are going to be able to go into the holiday season with the recognition that the government will continue operating, but, more important, that so many of us recognize the great work they do to keep this country moving forward.

With that, Mr. President, I yield the floor and again thank my good friend, Mr. Merlino, for his good work.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk (Mr. Merlino) proceeded to call the roll.

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

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

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Could I ask my friend to yield for a colloquy between the Republican leader and myself?

Mr. GRASSLEY. I will yield and ask unanimous consent that I reclaim the floor when the leader is done.

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

The majority leader.

GOOD PROGRESS

Mr. REID. Mr. President, Senator MCCONNELL and I have just finished a meeting. We are making good progress on being able to handle the issues that everyone knows are outstanding. We are not there yet, but we are very close.

There will be votes tomorrow. There could be votes this afternoon also. I would also say, because this is a question that people will ask, the House is going to pass their bill around 3 o'clock—that is the omnibus, around 3 o'clock. Time is not always exact. There is a ruling from this White House and its predecessors that if one House passes a spending bill, as we are doing here, and there is a presumption that it will pass in the other body, the time is extended for 24 hours. So everyone does not have the worry about the government closing tonight.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, let me echo the remarks of the majority leader. As he has indicated, the administration takes a view that if the final appropriations bills pass one House this afternoon—we could have that vote today or it could be tomorrow—but the administration, I am told by the majority leader, takes the view that it has passed one House, there would not be a government shutdown. So I think everybody should be reassured that that is not going to happen. The conference report has been signed and we are moving toward completing the basic work of government through next September 30 very shortly.

On the second issue, the majority leader and I are making significant progress in reaching an agreement on a package that will have bipartisan support, I hope. I think we are going to get to that place. And I share his view that good progress is being made.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

CHAPTER 12 BANKRUPTCIES

Mr. GRASSLEY. Mr. President, I wish to take a few minutes to discuss a case that was argued a few weeks ago before the Supreme Court, Hall v. the United States. This case involves a specific provision that I authored which is contained in the 2005 bankruptcy reform law. Throughout the litigation in this case, my statements supporting the provision—in other words, the statements that were said here on the floor of the Senate and in committee report were discussed in these cases at length.

I want to take a few minutes and walk through the history and intent of this provision so people hear it straight from this author's mouth, meaning from this Senator.

At its core, the case Hall v. the United States is about statutory interpretation. The statute at issue is 11 U.S.C. (a)(2)(A), which was a farm bankruptcy provision added to the Bankruptcy Code in 2005.

Before I get into the discussion about the case, I wish to explain what this particular provision does and why it needed to be added to the Bankruptcy Code. Congress enacted Chapter 12 of the Bankruptcy Code in 1986, which was subsequently made permanent in 2005. Chapter 12 allows family farmers to use a bankruptcy process to reorganize their finances and operations. It is a proven success as a leverage tool for farmers and their lenders. It helps a farmer and the banker sit down and work out alternatives for debt repayment. Not long after it became law in 1986, we began to hear about what worked and what did not work for farmers who were reorganizing in bankruptcy.

One problem we learned arose when a debtor farmer needed to sell assets in order to generate cash for reorganization. A farmer may need to sell portions of the farm to raise cash to fund a plan and pay off his creditors. However, in this situation, we are usually dealing with land that has been in the family's hands for a long time. This means the cost basis is probably very low. So once a farmer filed bankruptcy and then tried to sell a portion or all of the land, he would be hit with a substantial capital gains tax. This creates problems, because as originally drafted, Chapter 12 required full payment of all priority claims under Section 507 of the Bankruptcy Code. The only way to avoid this requirement was if the holder of the claim agreed that its claim could be treated differently.

Thus, when a farmer sold his land which resulted in large capital gains, the IRS would have a priority claim against the bankruptcy estate. I wish to take a moment to explain the concept of bankrupt estates, which may be

a bit confusing. When an individual or corporation files for bankruptcy, an estate is created. The estate consists of property that is liquidated for the purpose of paying creditors. So in the case of farmers filing a bankruptcy petition under Chapter 12, the farm assets are the property of the estate.

According to section 541(a)(6) of the Bankruptcy Code, the proceeds of the sales of those assets are also property of the estate. So the situation farmers faced was that the IRS held a large priority claim against the bankruptcy estate.

Let me take a minute to talk about claims against the estate to understand how we got to where we are today. In this situation, we are dealing with a claim that is based on taxes owed. The Bankruptcy Code says that taxes incurred by the estate are administrative expenses. An administrative expense essentially receives top priority when determining who gets paid what. Thus, the effect this had was that the IRS with its priority claim could object to any reorganization plan that did not provide for full payment of its tax claim. The IRS essentially held veto authority over a family farmer's plan confirmation. In some instances then, a farmer who sought to sell a portion of his farm to reorganize, pay creditors, and become profitable again was prohibited completely from doing so.

After learning of this problem, I started working on a way to fix it. Simply put, I wanted to make sure that family farmers in a Chapter 12 case could, in fact, sell portions of their farm to effectively reorganize without the capital gains taxes jeopardizing the reorganization. The very purpose of Chapter 12 and bankruptcy in general is to allow for a fresh start. Unfortunately, this was not happening because of the IRS priority.

In 1999, I introduced the Safeguarding America's Farms Entering the Year 2000 Act. This bill, among other things, sought to fix the capital gains tax issue. When I introduced the bill, I said it would ''help farmers to reorganize by keeping tax collectors at bay.'' I also explained:

> Under current law, farmers often face a crushing tax liability if they need to sell livestock or land in order to reorganize their business affairs . . . High taxes have caused farmers to lose their farms. Under the Bankruptcy Code, the IRS must be paid in full for any tax liabilities generated during a bankruptcy reorganization. If the farmer can't pay the IRS in full, then he can't keep his farm. This is not sound policy. Why should the IRS be allowed to veto a farmer's reorganization plan?

But let me go back to a portion of what I quoted, these words, ''then he can't keep his farm.'' Simply put, if you are a farmer in a farming operation, and you can continue to farm, and reorganization is keeping you from farming, well, obviously you do not have a business of farming and you cannot farm. Family farms are very important to the economic viability of rural America.

The language I proposed ultimately was enacted in the 2005 bankruptcy reform law. Since the Bankruptcy Code, the courts, and the IRS treated the tax liability as an administrative expense, the new provision created a very narrow exception to that administrative expense. Basically, only in Chapter 12 cases, if a farmer sold farmland that resulted in a capital gains liability, then the IRS's claim would not receive priority status. That is the benefit of the legislation I got passed to reorganization of a family farm. But it is what is in dispute in these particular cases I am referring to. Instead the government would have an unsecured claim, which means they may get paid something but not necessarily the entire amount. Also, the IRS would no longer be able to veto a plan's confirmation, thus the farmer debtor would be allowed to reorganize.

From a bankruptcy point of view, this approach makes complete sense. As I have discussed already, filing a petition creates a bankruptcy estate. The bankruptcy estate then sells the lands post petition, and that results in capital gains that are owed to the IRS. Those taxes incurred by the estate post petition are administrative expenses which receive priority status.

My language, enacted into law in 2005, stripped the priority claims owed to the government in this very specific instance and made them generally unsecured claims. However, since the passage of this legislation, the IRS has made an about-face. The government now argues, despite the way it treated this situation for all of these years, that the tax liability created is the responsibility of the individual and not the bankruptcy estate. Yet the entire reason we created this new provision was because of the way the IRS treated the tax liability.

The IRS's new position has been argued in Federal courts and has received mixed results, so now there is a dispute whether my provision accomplishes what it was designed to do. In 2009 the Eighth Circuit case Knudsen v. IRS held the provision applies to post-petition sales of farm assets, which is what we are discussing here. Specifically, the Eighth Circuit rejected the IRS's position that the Internal Revenue Code does not recognize a separate taxable entity being created when a debtor files a Chapter 12 petition.

Put another way, the IRS is claiming the individual debtor is responsible for tax liability that arises out of a bankruptcy estate action. The Eighth Circuit disagreed and said there is now an exception preventing the IRS from having a priority claim for capital gains.

But in the Ninth Circuit, the court there held that there was no exception for post-petition capital gains. In Hall v. the United States, now before the Supreme Court, the Ninth Circuit said the Halls were responsible for the capital gains tax from selling part of their farm during bankruptcy. This holding means that my provision did not create a narrow exception even though that is what I intended.

Unfortunately, the IRS, under the Obama administration, is taking a position today that is antifarmer and the exact opposite of what it said 6 years ago. This about-face on the part of the IRS came only after we made the change in the law, and it became clear that in very narrow circumstances the IRS would lose its priority position. I respect the IRS's interest in pursuing tax dollars, but it exhibited a heck of a lot of chutzpah in taking this position. Our policy reasons for this new exception were very simple. The farmers didn't have enough money to pay everyone. We decided it would be better to let them sell some assets, which would generate cash and help them to reorganize, keep farming, and pay their creditors.

In making this decision, we realized someone would have to make a sacrifice. We decided to give farmers a break from government taxes in a very narrow set of circumstances. Now, though, the government is trying to figure out a way to jump back ahead of other creditors and get more money. These creditors the IRS is trying to break in front of are small businesses, suppliers, and small local banks that extend credit and supplies to farmers. This is not what we expected would happen when we passed the 2005 bankruptcy law.

This is an important issue and an important case that the Supreme Court will decide in the coming months. The Supreme Court will decide whether this provision accomplishes my goal, which I have stated. I look forward to seeing how the case is resolved. Rest assured, I will work to ensure that this policy of protecting family farmers is followed as that was our clear intent in having this law enacted. Chapter 12 has proven successful as a leverage tool for farmers and their lenders. It helps the farmer and banker to sit down and work out alternatives for debt repayment. Should the Court rule that the Internal Revenue Code is inconsistent with the Bankruptcy Code and rule against my intent as the author, I will obviously have to work to remedy that inconsistency because what we did in 2005 is the right thing. I hope the Supreme Court realizes the history and intent behind the legislation and follows the congressional intent.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FEEDING THE HUNGRY

Mr. BOOZMAN. Mr. President, as Arkansans and all Americans do last