

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1033

2001 HOUSE AGRICULTURE

HB 1033

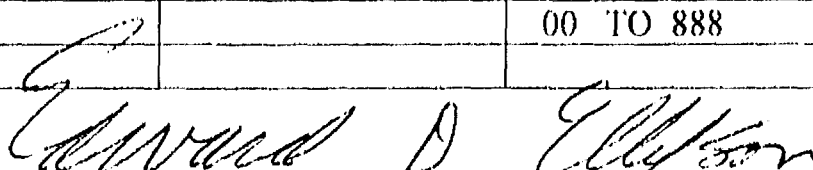
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1033

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-18-2001

| Tape Number   | Side A | Side B | Meter #    |
|---|--------|--------|------------|
| one   | A      |        | 00 TO 5800 |
| two   | A      |        | 00 TO 888  |
| Committee Clerk Signature  |        |        |            |

Minutes:

1A:00: VICE CHAIRMAN D JOHNSON: We will now open the hearing on HB 1033.

REPRESENTATIVE JOHN WARNER: Representative Warner read testimony from prepared text. There we pass out. He then asked for questions.

Representative Berg: Has there been any litigation under this statute in N.D? The answer was I am not sure.

1A:351: TIM DAWSON: I am Tim Dawson with legislative council and I am here to explain the bill. I'm not here for the Bill or against the Bill. Representative Warner pretty much covered everything in the Bill. We are taking out subsection 4 which states the investigatory authority of the Attorney General over antitrust matters may be invoked by the Attorney General only after a district court has reviewed the information and has determined reasonable cause to believe that there is a possible violation of antitrust laws. This has been removed so now they can just go ahead without going to court. If there is a problem, a person dose not

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House Agriculture Committee

Bill/Resolution Number HB 1033

Hearing Date 1-18-2001

cooperate then we go to court anyway. So it just takes that first going to court out of the way.

1A:417: Vice chairman Johnson: Are there any questions?

Representative Berg: Mr.Chairman, so the current process is some other entity would have bring an action into the court and then the Attorney General could get involved after a different party had been brought up to that level.

1A:440 TIM DAWSON: This is when the Attorney General of the State of North Dakota enforces antitrust matter so if they think there is an antitrust problem out there, they go out to investigate it. So they go out there and they ask for lets say in subsection one, they have reasonable cause to believe that a person has anything revenant to an investigation of a violation of this chapter, the Attorney General can go out there and ask them for that thing. Before, they would have to go to district court. Now they just have to go to the person and ask them for that thing. The person says, no I don't want to give you the thing. Then they go to court.

REPRESENTATIVE BERG: O.K., so current statue is they would need to go to the district court to obtain permission to start with the antitrust investigation. This bill would simply say, if they see a violation, they can go ahead and proceed with that violation. Then if is substantial they would take it to court.

TIM DAWSON: It dose not have to be substantial. All a person has to do is fail to comply with the written demand. Then the Attorney General would have to go to court.

1A:542: VICE CHAIRMAN JOHNSON: Anymore questions.

Unidentified Speaker: Just to follow up; how long has this been on the books?

TIM DAWSON: Since 1987.

Mark Sitz: My name is Mark Sitz. Thank you Mr. Chairman and committee members. I'm a farmer from Drake and I represent the Members of North Dakota Farmers Union. We would like to certainly throw our support behind HB 1033. Our farm organization has for sometime been following the concentration issues of we all know about. I don't think there is any secret in how direction the Ag. marketing and processing industry with the companies joining forces. The mergers or acquisitions. The producer is certainly the ultimate individual that our organization wants to protect. We feel that this is a reasonable step in doing that. In my opinion this move if you will HB 1033 is kind of going down the same road as the mandatory price reporting issue that congress has stalled on for sometime and eventually the state legislature in S.D. went ahead and made a bold move and took it on. I see this as somewhat of the same issue although there are other states that have had this provision that we do not. So that how I view this and I think it is an important move for recognizing the difficulties that producers have out there and I would just Mr. Chairman put my support behind this BILL. In consumer protection issues that this is the way it is done. We are just asking for equality for Ag. producers. Bring that all together.

1A:946: John Crabtree: I am relatively a new resident of N.D. having moved here in August of last year. I came to N.D. to accept the position of Executive Director of the Commission of the Future of Agriculture. The is prepared testimony from John Crabtree which is attached to these minutes. After the testimony was read John stated that he would be glad to answer any questions.

1A:1550 Karl Limvere: I am pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches and

am representing the Conference and the committee today. Written testimony attached to these minutes. Pertains to both HB1033 AND 1034. KARL RECOMMENDED A DO PASS FOR THE BILL.

1A 1997 VICE CHAIRMAN JOHNSON: Are there any questions.

Link Reinhiller: Mr. Chairman and members of the committee. My name is Link Reinhiller I am a cow calf producer. I am giving testimony in support of the bill and I am representing the Dakota Resource Council. Written testimony follows and is attached to the minutes.

1A:2925: VICE CHAIRMAN JOHNSON: Are there any questions to this testimony? Is there any other additional testimony in favor of this Bill?

Farm Beau: Brian Kramer: Thank you Mr. Chairman and members of the committee. We support the position on HB1033 as well it simply allows the Attorney General a little more latitude in investigating antitrust laws and antitrust actions. From that stand point we think it is good for us for our producers and we would support it. That's the end of my testimony. If there is any questions, I'd be glad to answer questions..

1A:3026: VICE CHAIRMAN JOHNSON: Any questions? Any other testimony in favor of this Bill? Opposition to the Bill.

1A:3024: Cal Rolfson: I represent American Crop Protection Association. Printed testimony follows. There has been some very good testimony on this Bill. I do not in my testimony intend to demean the value of that testimony. As Paul Harvey would say, I hope to bring you the other side of the story. Printed testimony follows.

Following the written testimony Cal Rolfson went on to say. In conclusion, I note that the Attorney Generals office is not here to support this Bill. I understand they are maintain a

neutral position. I understand the need to deal with antitrust investigation issues in the Agricultural industry. I support that concept. In my opinion there is nothing in the current law that would prohibit the Attorney General of North Dakota from enforcing the antitrust laws under its power in this chapter. Without this Bill. That power is still there. There is nothing that prevents with all the explanation we have heard today from the prior speakers the Attorney General from taking that information, gathering it and presenting it to a District Court. I am also concerned about the spring board attempt that I seem to hear that is the rational for this Bill that we really want to just force the Federal Government to do some investigation. To do what we believe what we should do. I think this bill seems to be a little excessive. I do not think it is necessary to change this law to accomplish the very thing we expect to accomplish.

This Bill shifts the burden from the government to the private citizen.

1AA:4578 Representative Berg: Are you aware of any antitrust the Attorney General has made in recent years where they have gone to District Court and been denied.

CAL ROLFSON: I don't recall that they have.

Representative Berg: The intent of this legislation is to get at some of those companies that have consolidated and really controlling the the price of Agricultural Products. It is a frustration that we have in N.D. separating those issues that are federal verses those issues that are state and a lot of times we try and get at those federal issues and have a tough time doing it. I guess my concern really relates to this section.. Cal Rolfson states that the power that is granted will not accomplish and need not accomplish what is expected.

1A:5123 QUESTIONER: You represent American Crop Protection Association. O.K., you are representing a company that could be investigated for antitrust violations.

Cal Rolfson: That certainly is correct, but I also represent many others could well be here and certainly would support the position that I support. 1A:5800

My professional position is that there is no need to change the statutes. The protections were in there in this uniform act that passed in 1987. There is another issue. If you change a uniform law, you may wind up causing Federal preemption to take place if there is a law in that area and in changing a uniform law, you then create exclusive federal authority. You may just do what you don't want to do with this Bill. This would give the Attorney General considerably more power.

1A:Representative Berg: I don't want to belabor my point but it would seem to me that this Bill may not have any effect because the Attorney General would have to go to the District Court, prove that there is probable cause to investigate. If this Bill goes into effect and the person being questioned for antitrust just says no then the Attorney would have to go back to court to meet the same threshold that they would need under existing law. If they did not meet that threshold they would not go anywhere with it. Cal Rolfson: Please read paragraph four. That is what you are deleting.

1A:833: VICE CHAIRMAN JOHNSON: Are there any more questions on this Bill. Any additional testimony? We will close the hearing on H.B. 1033.



2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1033 AND HB 1034

House Agriculture Committee

☐ Conference Committee

Hearing Date 1-25-2001

| Tape Number                                     | Side A | Side B | Meter #      |
|---|--------|--------|--------------|
| ONE   | A      |        | 3830 TO 5148 |
| TWO   | A      |        | 00 TO 1503   |
| Committee Clerk Signature <i>Edward Ellyson</i> |        |        |              |

Minutes:

1A:3830 REPRESENTATIVE NICHOLAS: We will open the hearing on HB 1033 AND HB1034.

1A:3840: ATTORNEY FOR THE ATTORNEY GENERALS OFFICE: DARREL GROSSMAN.

1A:3901: REPRESENTATIVE BERG: If HB1033 passes, were saying the Attorney General could go ahead and go directly if they see an anti trust violation to a business organization and request records etc. The current statue without 1033 says, the attorney general must go to a district court and get authorization to proceed. Is that right so far? So the question I have is the comparison was kind of made of made with a search warrant. We do not allow someone to go out and search someone's house without first getting some judge to sign off and say you have reasonable cause to go search. More specifically has the Attorney Generals office in recent year seen a antitrust issue gone to a District Court and not been given the authorization to

proceed with its investigation.

1A:4084 MR. GROSSMAN: Mr Chairman and members of the committee. No we have not.

While I certainly don't have any concerns about the proposed amendment, I want to make it clear to the committee that if there were no change in the law, I do not believe it would impede any of the investigations or legal responsibilities or enforcement abilities that the antitrust would have. We are confident that if a situation would arise that we could intact go to a District Court and that Judge if we are doing or job properly would infaret give us the permission that is requested under the current statue.

1A:4195 REPRESENTATIVE BERG: HBO 1034 provides an appropriation to do this so the questions really relate to HB 1033. Is there anything that you can not do now under current statues that you could do with this change.

1A:4240 MR. GROSSMAN: I can give one simple example of when it might arise and that might be in the case rather high profile visible militate national antitrust issue and that particular case that other states with sufficient bases could proceed with their investigation immediately where in that instance we would have to try and get in to see a District Court Judge to get approval. Again I am not suggesting Mr. Chairman that would impede us. There might be a minor delay of a day or two and that is the most prominent example I can give you. I believe that if we had an urgency and we went to the District Court we could get the approval.

I believe that would be quite promptly. I think it would be granted at the time we were there unless is was some extremely complicate if the court needed to further consider.

We would go to a judge and say here is the probable cause and that is why we need to do follow upon this. This is why we need to do an investigation. Most of the circumstances the courts

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House Agriculture Committee

Bill/Resolution Number HB 1033 AND 1034

Hearing Date 1-25-2001

are it would be our are of expertise and if you are satisfied that you have a sufficient case that you need to proceed and if the only way you can proceed is with Courts approval we could get it. Again, it is going to have to be an antitrust issue and again it is only an authority to investigate. It is not an authority to take and sort of immediate action nor to issue any sort of injunctive relief. It is merely getting that first step of approval process. If you want to pass this legislation the money would be there. If we don't need the sums we won't use them but if they are there then we would get involved if it is significant to N.D. It won't hurt to have the resources available if we need them. For expert witness etc. costs.

We have a fund like this in consumer protection funds like this one. The antitrust fund could build up because multi state cases do involve large sums. There are significant amounts in antitrust situations. In our current situation we would let other states take the lead roll.

1A:1190:CHAIRMAN NICHOLAS: Any other questions. Thank you for coming down.

We will close on HB 1033 AND HB1034

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1033

House Agriculture Committee

☐ Conference Committee

Hearing Date 2--16--01

| Tape Number                                     | Side A | Side B | Meter #   |
|---|--------|--------|-----------|
| ONE   | A      |        | 00 TO 610 |
|   |        |        |           |
|   |        |        |           |
| Committee Clerk Signature <i>Edward Ellyser</i> |        |        |           |

Minutes:

1A:CHAIRMAN NICHOLAS: Lets go to HB 1033. Committee Members this Bill was part of our interim study. Even if Appropriations did not do anything with this a couple things could happen to this. The Attorney General Office can either find some money somewhere else in their budget. If there is no money put in the companion Bill HB 1034. The second thing is the Attorney Generals Office could go to the emergency fund and get some money. We could pass this legislation. Dose anyone have feelings anyway. The Chair will entertain a motion. The Bill bypasses the District Judge.

representative BERG: Basically what this Bill does is that if the Attorney General has a bone to pick with any business, they can go directly to that Business and request that they give them all the information that they want. I think that if you have to go to District Court first the Attorney General should have to show cause. In my opinion this has been talked about and the Bill goes far beyond Agriculture anti trust violations. I am concerned about this Bill.

Page 2  
House Agriculture Committee  
Bill/Resolution Number HB 1033  
Hearing Date 2--16--01

I think it is kind of like a search warrant. It is like they can go into your house and search it without a Judge signing off on it. It has to be done rather quickly. I think there should be some kind of a check.

REP. LEMIEUX: If we go to page two line eight it states that if a person objects with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides, or in which the person maintains a principal place of business within the state, a petition for an order to enforce the demand. So it depends, it offers the person the right not to comply. Then the district court can be brought into it.

REPRESENT BERG: It erases our premise that we are innocent until proven guilty. It shifts the burden to the individual.

1A: 486 CHAIRMAN NICHOLAS: Any other questions.

Rep. Froelich makes a motion for a DO PASS---IT WAS SECONDED BY REP. LLOYD.

Roll was taken There were 11 yes'es and 4 no's Representative Brandenburg carries the Bill

CLOSED ON HB 1033

1A: 610

2-16-01

Date:  
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 108

House AGRICULTURE Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By FROELICH Seconded By MUeller

| Representatives                   | Yes | No | Representatives  | Yes | No |
|-----------------------------------|-----|----|------------------|-----|----|
| Eugene Nicholas, Chairman         | ✓   |    | Rod Froelich     | ✓   |    |
| Dennis E. Johnson - Vice Chairman | ✓   |    | Doug Lemieux     | ✓   |    |
| Rick Berg                         |     | ✓  | Philip Mueller   | ✓   |    |
| Michael Brandenburg               | ✓   |    | Kenton Onstad    | ✓   |    |
| Joyce Kingsbury                   | ✓   |    | Sally M. Slanvig | ✓   |    |
| Myron Koppang                     | ✓   |    | Dennis J. Renner |     | ✓  |
| Edward H. Lloyd                   |     | ✓  | Dwight Wrangham  | ✓   |    |
| Bill Pietsch                      |     | ✓  |                  |     |    |
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Total (Yes) 11 No 4

Absent 0

Floor Assignment BRANDENBURG

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
February 16, 2001 2:20 p.m.

**Module No: HR-29-3714**  
**Carrier: Brandenburg**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1033: Agriculture Committee (Rep. Nicholas, Chairman) recommends DO PASS**  
(11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1033 was placed on the  
Eleventh order on the calendar.

2001 SENATE AGRICULTURE

HB 1033



2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1033

Senate Agriculture Committee

☐ Conference Committee

Hearing Date March 8, 2001

| Tape Number                                      | Side A | Side B | Meter #    |
|--|--------|--------|------------|
| March 8 1  | X      |        | 0.0 - 10.0 |
|  |        |        |            |
| Committee Clerk Signature <i>Larry J. Hansen</i> |        |        |            |

Minutes:

TIM DAWSON; Legislative Council, explained the bill to the committee. This bill will simplify the procedure, it takes away the first step of going to the court.

PARRELL GROSSMAN; Attorney General's Office, testified in support of this bill, on behalf of Wayne Stenejhem.

MARK SITZ; North Dakota Farmers Union, testified in support of this bill. In our research we found no other state that has the current setup that we have in North Dakota.

SCOTT FRY; Dakota Research Council, testified in support of this bill and passed out testimony for Link Reinhiller.

Testimony was handed out for Calvin Rolfson.

The hearing was closed.

SENATOR KLEIN moved for a Do Pass.

SENATOR NICHOLS seconded the motion.

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Senate Agriculture Committee

Bill/Resolution Number HB 1033

Hearing Date March 8, 2001

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR NICHOLS will carry the bill.

Date: 3-8-01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1033

Senate \_\_\_\_\_ Agriculture \_\_\_\_\_ Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Sen Klein Seconded By Sen Nichols

| Senators                       | Yes | No | Senators         | Yes | No |
|--------------------------------|-----|----|------------------|-----|----|
| Senator Wanzek - Chairman      | ✓   |    | Senator Kroeplin | ✓   |    |
| Senator Erbele - Vice Chairman | ✓   |    | Senator Nichols  | ✓   |    |
| Senator Klein                  | ✓   |    |                  |     |    |
| Senator Urlacher               | ✓   |    |                  |     |    |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nichols

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 8, 2001 2:10 p.m.

Module No: SR-40-5137  
Carrier: Nichols  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1033: Agriculture Committee (Sen. Wanzek, Chairman)** recommends **DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1033 was placed on the  
Fourteenth order on the calendar.

2001 TESTIMONY

HB 1033

**TESTIMONY BY  
CALVIN N. ROLFSON  
IN OPPOSITION TO HOUSE BILL 1033  
HOUSE AGRICULTURE COMMITTEE**

My name is Cal Rolfson. I am an attorney practicing law in Bismarck. I represent ACPA to respectfully oppose HB1033 of the American Crop Protection Association.

ACPA is the trade association for our state and nation's businesses involved in protecting and enhancing North Dakota agricultural crops through the application of fertilizers, pesticides, herbicides and the like. They are a major player in North Dakota's agricultural economy. During the interim, ACPA worked closely with the Legislature's Crop Harmonization Committee in support of responsible and cooperative harmonization crop efforts.

Let me explain why this is a Bill that is not needed in North Dakota and the inherent dangers that it poses to every business and citizen in this state. To begin, and with apologies in advance, allow me to digress with a brief bit of personal experience.

In my former life, I served as Assistant and Deputy Attorney General of North Dakota, serving four Attorneys General (Helgi Johanneson, Al Olson, Bob Wefald and Nick Spaeth. In that office, I was regularly involved in the predecessor to the Uniform State Antitrust Act found currently in NDCC Chapter 51-08.1. Since 1987 when the Uniform State Antitrust Act was passed, and even in the predecessor Act

found in former Chapter 51-08, it has always been the case law that in order to invade the privacy of any person or business conducting an antitrust investigation or any other mandated investigation requiring compliance, the government must first apply to the District Court and show "reasonable cause" to believe that there is at least a "possible" violation of this chapter. All the Attorney General currently needs to do to seize documents or compel sworn testimony from any person or business under this Chapter is to go to an impartial party called a district judge, show that there is merely "reasonable cause" to believe that there is a "possible" violation of this chapter and, armed with a court order, may compel a response. That is not a heavy burden. In fact, that is one of the lightest burdens that is placed upon any governmental agency intending to seize evidence or compel sworn testimony in conjunction with an investigation.

What House Bill No. 1133 seeks to do is significant. The Bill seeks to shift the burden from the government to the person or business being investigated. Under this Bill, the Attorney General can go directly to the business or individual, demand the exhibits or sworn testimony and force the person or business focused upon to spend their own money hiring an attorney to go into the district court to seek the same impartial judicial scrutiny the Attorney General was formerly required to initiate before compelling testimony. Under this Bill, the Attorney General may now unilaterally and singularly determine that there is "reasonable cause" to believe that a person or business has information of interest to the Attorney General, and may then take the steps, again unilaterally, to require the person to be deposed, answer

Interrogatories under oath, or to produce any document for inspection and copying, all without ever having initiated a suit, or obtained judicial review

Ordinarily, no government investigator or attorney can invade the sanctity of a person's business, including business records without the review and approval of a district judge,. The drafters of this "Uniform Act" obviously concluded then that it is important to seek neutral judicial security before requiring compliance with the Attorney General's desire to investigate. There is no reason of which I am aware that creates enough urgency to significantly change decades of practice in North Dakota.

It is interesting that this Bill came out of the Interim Agriculture Committee. I attended the hearing when this Bill was presented. I do not recall, though I may be wrong, that there was any urgent explanation given to the committee as to why this significant change is needed. I heard no example by the Attorney General's representative why a confidential trip to the District Court is handcuffing their efforts.

Even though this Bill was presented to the Interim Agriculture Committee, there is nothing in the Bill that limits it to agriculture. Nothing! In other words, every person, gas station, bank, grocery store, hospital, insurance company or any other business or individual in this state would be subject to the significant changes proposed by this Bill if it should pass.

Under the grand jury law of North Dakota, when the Attorney General seeks to conduct a grand jury investigation he or she must first apply to the District Court



to do so. While Deputy Attorney General of the state, I was involved in grand jury investigations and I am aware of the importance of that judicial protection.

This Bill might be termed the "one-man grand jury Bill." Even worse, this Bill goes well beyond a grand jury concept, because that requires judicial approval that is currently in place for grand juries.

I urge this committee to look with the greatest suspicion upon the attempt in this Bill to eliminate the initial judicial review of the awesome power that is placed at the desk of the Attorney General.

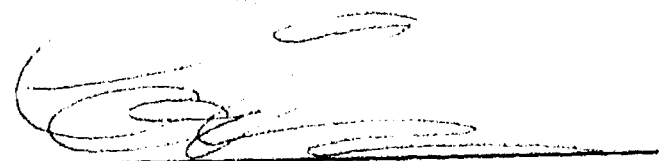
In making these comments today, Mr. Chairman and members of the committee, I do not make any adverse reflection upon the integrity and professional good judgment of our Attorney General. In my professional lifetime, we have been blessed by high quality lawyers holding that office. Of course, as we all know, we have not always been blessed in this state with attorneys general of the highest integrity including one who was federally indicted and convicted.

The Attorney General is the chief legal and law enforcement officer of North Dakota. There is awesome investigative and prosecutorial power properly and necessarily placed in the office of Attorney General. As the former head of the Attorney General's Criminal Division, I am well aware of that power.

The single and confidential protective step to the courthouse to seek review and approval of this power is a very small step to protect a great and invaluable right - the right to be secure in person and property from unreasonable searches and seizures without due process of law. Without an absolute necessity placed before

you to justify making such a significant change that can affect every person and business in this state, I urge you to vote "DO NOT PASS" on this Bill.

Thank you. I would be pleased to respond to questions.

A handwritten signature in dark ink, appearing to read "Calvin N. Rolfson", written over a horizontal line.

**CALVIN N. ROLFSON**  
Attorney at Law

COMMISSIONER OF AGRICULTURE  
ROGER JOHNSON



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DEPARTMENT OF AGRICULTURE  
State of North Dakota  
600 E. Boulevard Ave. Dept. 602  
Bismarck, ND 58505-0020

**Testimony of Roger Johnson  
Agriculture Commissioner  
House Bill 1033  
House Agriculture Committee  
Peace Garden Room  
January 18, 2001**

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Chairman Nicholas and members of the House Agriculture Committee, I am Commissioner of Agriculture Roger Johnson. I am here today in support of HB 1033, which will amend the powers of the Attorney General when initiating anti-trust investigations.

I commend the 56<sup>th</sup> Legislative Assembly Interim Agriculture Committee, which drafted and approved this bill for introduction to this Legislature.

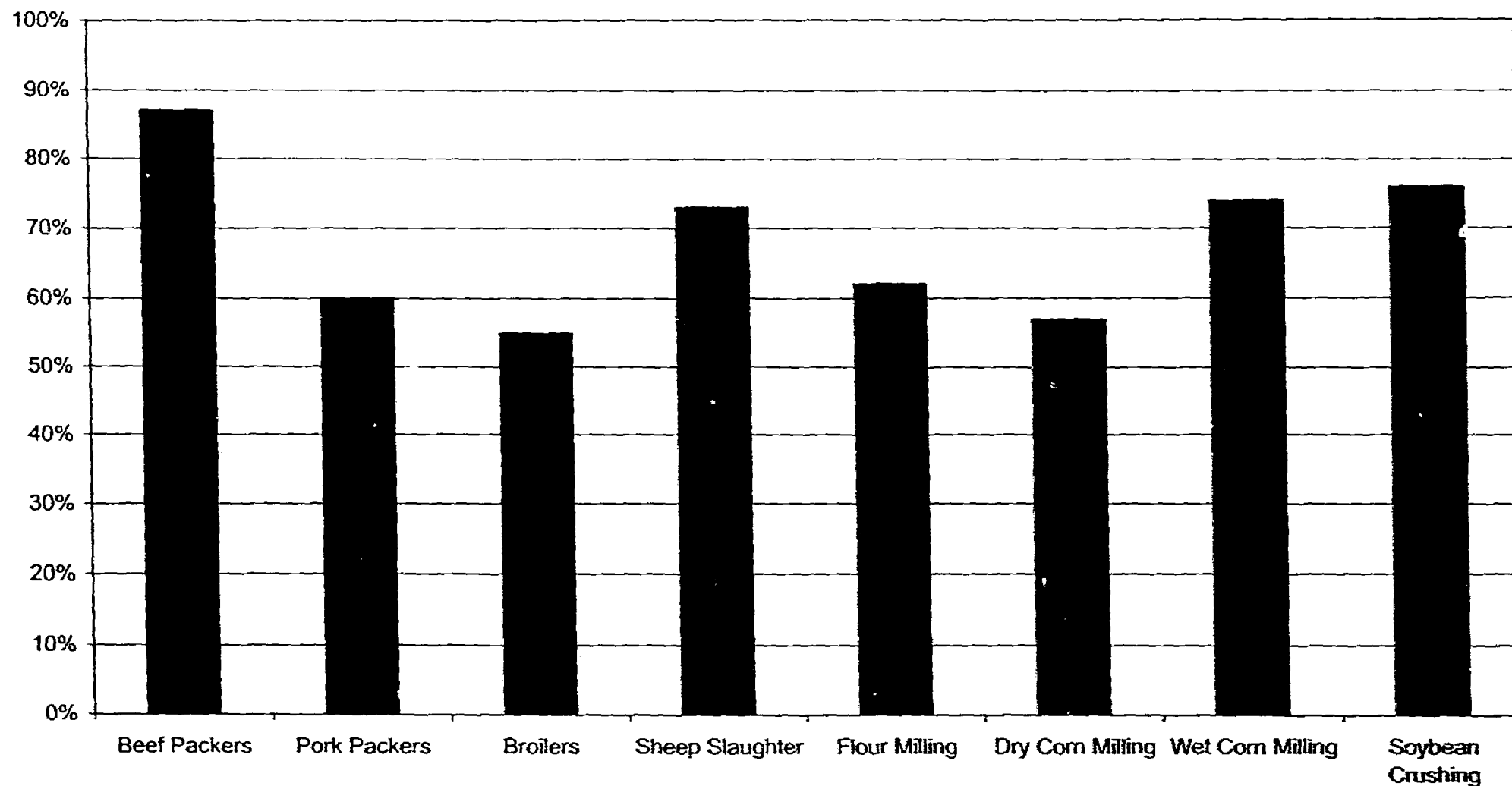
As you know, economic concentration and loss of market power are of increasing concern to farmers and ranchers in North Dakota and around the country. A handful of multinational corporations have major market control over the agricultural input, processing, marketing and retail sectors. In fact, economic concentration in eight different agricultural marketing and processing sectors continues to grow, with over 50% of the market controlled by the top four firms in each industry (Attachment 1).

The effects of economic concentration are adversely affecting farmers, ranchers, and consumers in North Dakota through market limitations, a lack of competition, and lower prices. HB 1033 would provide the North Dakota Attorney General the ability to expedite anti-trust investigations by eliminating the need for district court approval prior to proceeding with an anti-trust investigation. Attorneys General in numerous states already have this power. Similarly, the U.S. Attorney General is not required to get court approval prior to initiating an anti-trust investigation.

Chairman Nicholas and committee members, I urge a do pass on HB 1033. I would be happy to answer any questions you may have.

# Concentration of Agricultural Markets

(Ratio of top four firms relative to all firms)



■ University of Missouri, October 1997.

January 18, 2001

John B. Crabtree

Testimony before North Dakota House Committee on Agriculture  
Regarding HB 1033

Mr. Chairman and members of the committee - my name is John Crabtree and I live in Bismarek, North Dakota. I am a relatively new resident of North Dakota, having moved here in August of last year. I came to North Dakota to accept the position of Executive Director of the Commission on the Future of Agriculture. However, I am here today on my own personal time and my testimony is my own, based on my past experience working on state and federal policies relating to antitrust and market competition in agriculture.

I am honored that North Dakota Farmers Union, of which I am a member, would ask me to testify on these issues. Prior to coming to North Dakota I worked for a number of years at the Center for Rural Affairs in Walthill, Nebraska. The primary focus of my work there was agricultural antitrust and market competition policy.

I encourage you to vote in favor of House Bill #1033. This legislation, as we have heard, would allow the Attorney General of North Dakota to investigate possible antitrust violations, under current statutory authority, without the requirement of prior investigatory review by a district court.

The effect of the prior review requirement is to virtually bind the hands of the Attorney General in an extremely difficult law enforcement role. The information needed to support an antitrust enforcement action most often can only be obtained through these investigative procedures. Forcing the Attorney General to make a case to a district court before actually being able to use the tools necessary to build that case would doom most antitrust investigations before they even began.

I have been unable to find any other state in the region that similarly requires prior approval by a district court for this type of investigative procedures relating potential antitrust violations. Some Attorney's General in the region actually have expanded investigative powers provided to enforce specific laws (e.g. Nebraska - corporate farming law, Iowa - packer feeding law). Moreover, the review of most large firm mergers and acquisitions by the Antitrust Division of the Federal Department of Justice is standard procedure.

These large firms are expected to at least answer written interrogatories and often asked to submit pertinent documents as a normal course of merger review, with no prior review by court of competent jurisdiction. I only wish I could say that Joel Klein's Antitrust Division had been more aggressive in this process and more willing to bring enforcement actions when they were often clearly called for.

This is, of course, all the more reason to equip North Dakota's Attorney General with the

legal tools necessary to better enforce our antitrust laws. Farming and ranching are crucial to the economic vitality of North Dakota. Allowing a handful of very large, very wealthy, very powerful transnational corporations to continue to increase their dominance over agriculture and, for that matter, the entire food system would not bode for North Dakota.

It has been said, time and again, that agriculture is changing and that farmers and ranchers must adapt to those changes. Change is, no doubt, inevitable. However, agriculture is currently changing in ways that have nothing to do with efficiency or any economic "invisible hand." Current levels of concentration in agriculture and food processing are the result of raw economic power, nothing else.

One out of every 4 shipments of grain (all types) that move anywhere in the world is owned and shipped by Cargill, the largest privately held corporation in the world with operations in at least 70 countries. Cargill ranks in the top four firms in animal feed production, cattle feeding, beef processing, pork production, pork processing, flour milling, wet corn milling, soybean crushing and several other sectors. ConAgra is currently among the top 4 firms for processing beef, pork, turkeys and sheep. ADM, IBP, Smithfield, Tyson, etc. We all know the names because there just aren't very many of them and they dominate the food production and processing system.

Over the last few months Smithfield and Tyson have battled over the purchase of IBP. When the possible merger of IBP and Smithfield was announced Senator Tom Daschle of South Dakota asked me what I thought the significance of the merger was. The best way for me to define it was to call it the Cargill-Continental merger of the livestock industry. This week the Nestle Corporation announced the intention to acquire Purina Mills. Yesterday, on the cover of the Fargo Forum, there was a report that Cargill will idle the ProGold corn milling plant in Wahpeton.

ProGold is perhaps the best example for why North Dakotans should and do care deeply about better antitrust enforcement. ProGold, a value-added agricultural processing facility built with farmers' equity, is an example of what virtually everyone who cares about the future of farming and ranching in North Dakota says that we should be trying to build in the future. North Dakota invested considerable resources to help get ProGold off the ground. Within days of the plant coming online, the high-fructose corn syrup market dropped over 15%. Cargill and ADM were willing to virtually give corn sweeteners away in order to make sure that this new entrant in the market would not remain there for long.

In the end, the predatory pricing practices of ADM and Cargill forced ProGold to the brink of closure before the cooperative entered into an arrangement with Cargill to lease the plant. Now Cargill has announced that they will idle the plant, the only one of their high-fructose corn syrup plants that will be idled at this time.

If we are to create a future for farming, ranching and food processing in North Dakota we

cannot leave future cooperative ventures to be at the mercy of food processing giants as was the case with ProGold and others over the years. Giving the Attorney General proper authority to investigate antitrust violations will not, in and of itself, be enough to stem the tide of food processing concentration. However, it is a step in the right direction, an important step. Perhaps just as importantly it would send a message that in North Dakota we believe in the marketplace, we believe in competition and we believe in enforcing our antitrust laws.

Thank you and I would be happy to answer any questions if I am able.



**House Bill 1033**  
**Testimony of Rep. John Warner**  
**Before the House Agriculture Committee**  
**18 January 2001**

Mr. Chairman, Members of the Committee,

House Bill 1033 amends an existing provision of the Century Code which gives the Attorney General authority to investigate violations of anti trust laws. This bill removes a requirement that the Attorney General seek permission from a district court before beginning an investigation.

The removal of this section makes North Dakota's anti trust law meet the same standard as our consumer protection law which also does not require the Attorney General to seek the courts permission BEFORE beginning the investigation. In both cases, if the subject does not cooperate with the request, the Attorney General must go to the court and show cause why a subpoena should be ordered.

Removal of this provision makes it easier for the Attorney General to determine that there *has been* a violation or equally important that there *has not been* a violation and that the further expense of an investigation is unwarranted.

Passage of HB 1033 will give North Dakota's producers the same protection as North Dakota's consumers.

I would like to draw your attention to section 3 of the bill which is current law unaffected by this bill and which protects the confidentiality of any documents or testimony produced by such an inquiry.

Mr. Chairman, members of the committee, section 4 does not provide an insurmountable hurdle to anti trust cases but it does slow down the process of discovery and makes it more difficult for the Attorney General to take part in multi-state actions in a timely manner. I would urge the committee to recommend a DO PASS on HB 1033.

## Dakota Resource Council

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Testimony before the House Agriculture Committee

HB 1033 and HB 1034

Link Reinhiller, Hazen, 873-5201

January 18, 2001

My name is Link Reinhiller, and I am a livestock and grain producer from Hazen, North Dakota. I am also a former statewide chair of Dakota Resource Council (DRC), and currently chair of the DRC Farm Preservation Committee. I am offering testimony in support of HB 1033 and HB 1034, which give the North Dakota Attorney General increased ability to take anti-trust action.

Although DRC is concerned with the continual mergers and increasing consolidation in all sectors of agriculture, our particular specialty has been the meatpacking industry. DRC first began urging federal anti-trust enforcement actions as a result of growing meatpacker concentration in 1988. At that time, neither the U. S. Department of Justice nor the U. S. Department of Agriculture (USDA) felt responsible for enforcing Section 202 (e) of the federal Packers and Stockyards Act of 1921, which forbade anyone dealing in livestock to "engage in any course of business or do any act for the purpose or with the effect of manipulating or controlling prices, or of creating a monopoly in the acquisition of, buying, selling, or dealing in, any article, or of restraining commerce...."

DRC believed and still believes that the adoption, by the nation's top three meatpackers, of so-called "formula-priced forward contracts" is clearly illegal under this act. Under these contracts, meatpackers contract for fed cattle in advance without a base purchase price, and the price is based on the cash market price for the day of delivery. This business practice increases captive supply, or the number of cattle packers can control without bidding on, and it distorts the cash market that the final selling price is based on. USDA's study of livestock procurement practices in Texas two years ago showed a strong correlation between low cattle prices and high rates of captive supply. Using USDA figures, the Western Organization of Resource Councils (WORC) estimates that increased captive supply caused by formula contracts costs U. S. ranchers more than \$1 billion per year.

Over four years ago, DRC and other members of WORC submitted a petition for rulemaking on captive supply to USDA. The petition asked the Secretary of Agriculture to draw up rules requiring a firm base price on all forward livestock contracts, and the public offering for sale of all packer-fed cattle. This petition gained the support of the 1997 North Dakota State Legislature, then Governor Ed Schafer, and the entire North Dakota Congressional delegation, plus thousands of other cattle producers and producer organizations around the country. Secretary of Agriculture Dan Glickman is about to leave office without taking meaningful action on this petition.

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In other words, concentration in agribusiness is growing, to the detriment of producers everywhere, including North Dakota, and it is growing in part because of the failure of federal anti-trust action.

For this reason, DRC supports these two bills. One simply removes an unnecessary step, which we believe is absent in most other states, for an Attorney General who wants to take anti-trust action. The other provides seed money to help strengthen such an action. In both cases, the goal is make it easier for our Attorney General to take the lead along with other states in filing anti-trust cases, with the goal of making it more and more difficult for the federal government to continue to fail to act. There are strong signals that North Dakota would not be alone in pursuing such a plan. For example, other states including Kansas have discussed the possibility of state-initiated anti-trust action on the proposed IBP-Tyson merger.

We do not believe that the \$500,000 called for in this bill needs to become an annual expenditure, or that any full-time employees to be added to the state payroll for this measure to have its desired effect. We anticipate that the money would be used principally to contract for the services of experts whose testimony in economics, or whose legal advice, would lend weight to the Attorney General's case. We also anticipate that any seed money set aside by the legislature has a reasonable hope of attracting other private and public funds set aside for support of anti-trust actions. In addition, any successful actions enabled by this measure would result in the recouping of court costs, which could help keep the fund replenished. Finally, as an example, North Dakota produces approximately one million feeder calves per year. If actions taken by our Attorney General should lead to the enforcement of existing anti-trust laws, and that enforcement led to an average increase of value of just \$10 per head, the resulting economic activity would offset very quickly the appropriation attached to this bill.

HOUSE AGRICULTURE COMMITTEE  
HEARING, JANUARY 18, 2000

HB 1033 & HB 1034

My name is Karl Limvere. I am the pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches and am representing the Conference and the committee today.

The Rural Life Committee of the North Dakota Conference of Churches was established in 1986, and is the successor to other efforts by the Conference of Churches dating back to 1974. We have the responsibility of developing proactive, ecumenical responses to rural life issues in the state. This past year we have given particular emphasis to economic justice issues facing rural America.

The Rural Life Committee envisions and supports the development of a rural society that promotes the greatest potential number of diversified family farming/ranching opportunities possible. We support a widely-dispersed structure of agricultural production with broad-based ownership that is dominated by resident, owner-operated, family farms and ranches.

We believe that the test of any agricultural or economic policy is a moral one. Public policy must put human needs ahead of economic profits. It must foster community accountability and responsibility and self-governance to give the rural community greater control over its destiny. It must create broad-based ownership and opportunity for all.

Today, every primary commodity that is produced by farmers in this nation is sold into a marketplace in which the top four firms have sufficient market concentration (a 40% of share of the market) to be able to affect the pricing of the commodities that they buy. In economic terminology, our producers face oligopsonies. What that means is a shared monopoly condition of buyers.

The problem of a concentration in the marketplace is that such concentration fosters and encourages concentration in production. We cannot maintain a system of mid-sized independent family farms and ranches when the marketplace to which they sell is concentrated.

Just for a quick understanding, let me make one comparison. Consider the market power of one agribusiness firm in comparison to North Dakota's farm and ranch operators. One firm has a sales volume that is 17 times larger than all the production of all 30,500 farm and ranch operators in our state.

In fact, any one of the top four grain merchandisers in this country has enough warehouse space to hold the state's entire wheat crop. The top grain warehousing firm could house the entire output of North Dakota's grain production and still have space left over for grain from farmers from other states.

My point is that there is a tremendous disparity in the economic power and market position between a North Dakota farmer and the major agribusiness firms in this country.

The two bills that you have before this morning are rather modest beginning steps by which the North Dakota Attorney General's office could investigate and take appropriate action to investigate and enforce antitrust laws.

I am deeply concerned about the continuing failure of the U.S. Justice Department to actively pursue antitrust issues when there is significant concentration in market power among agricultural commodity buyers. For example, there is greater concentration today in meat processing than there was at the time the Packers and Stockyards Act was passed in the 1920's.

It is our hope that not only would these two bills give needed authority and capability to the North Dakota Attorney General's office, but that the increased involvement of state governments in such investigation and activity would spur the U.S. Department of Justice to take a more active interest and role in these issues.

These bills won't break the stranglehold that the current oligopolies have upon agricultural markets, but they are an important beginning step and a signal that their days are numbered.

I thank the Legislative Council for its work, and encourage you to continue to move forward with these bills by giving them a "do pass" recommendation.

Thank you.

# Farm groups support increasing attorney general's antitrust power

By DALE WETZEL  
Associated Press Writer

Agriculture groups and a spokesman for farm chemical companies argued Thursday about whether North Dakota's attorney general needs more power to investigate antitrust claims.

Spokesmen for the North Dakota Farmers Union and the Dakota Resource Council, a Dickinson-based landowners' rights group, asked the House Agriculture Committee to support expanding the attorney general's authority, along with setting aside \$500,000 for antitrust probes.

The legislation eliminates a requirement that the attorney general first get permission from a judge before demanding testimony or documents from the target of an antitrust probe. The committee took no immediate action on the bill.

John Crabtree, director of the Commission on the Future of Agriculture, called the proposal "a step in the right direction, and it is an important step."

"Forcing the attorney general to make a case to the district court, before actually being able to use the tools necessary to build a case, would doom most

antitrust investigations before they even began," Crabtree said at an Agriculture Committee hearing.

Supporters of the measure think it will help the attorney general investigate possible monopolistic practices in the nation's meatpacking and grain-buying industries.

Calvin Rolfsen, a spokesman for the American Crop Protection Association, said the measure was unnecessary, and a troubling expansion of government power. The Washington, D.C.-based association represents manufacturers of farm chemicals, such as weed and insect killers.

By removing a judge's initial oversight of an antitrust investigation, the legislation "seeks to shift

the burden from the government to the person or business being investigated," said Rolfsen, who is a former deputy attorney general.

Under existing law, a judge must have "reasonable cause" to believe the attorney general has grounds for an investigation, which is not a difficult standard to reach, Rolfsen said. The new law allows the attorney general to go ahead without any judicial review.

While the legislation's supporters are concerned about agricultural monopolies, "there is nothing in the bill ... that limits it to agriculture," Rolfsen said. "Every person, every gas station, bank, grocery store, hospital, insurance company ... would be subject to the significant changes proposed by this bill."



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Testimony before the Senate Agriculture Committee  
HB 1033  
Link Reinhiller, Hazen, 873-5201  
March 8, 2001

My name is Link Reinhiller, and I am a livestock and grain producer from Hazen, North Dakota. I am also a former chair of Dakota Resource Council (DRC), and currently chair of the DRC Farm Preservation Committee. I am offering testimony in support of HB 1033, a bill that gives the North Dakota Attorney General increased ability to take anti-trust action.

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In other words, concentration in agribusiness is growing, to the detriment of producers everywhere, including North Dakota, and it is growing in part because of the failure of federal anti-trust action. For this reason, DRC supports this bill. It simply removes an unnecessary step, which is absent in most other states, for an Attorney General who wants to take anti-trust action.

North Dakota produces approximately one million feeder calves per year. If actions taken by our Attorney General should lead to the enforcement of existing anti-trust laws, and that enforcement led to an average increase of value of just \$10 per head, the resulting economic activity would be a boon to all of North Dakota. Please vote DO PASS on HB 1033, it is a necessary step in saving family farming in North Dakota.

Thank you,

[signed]

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