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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1935. No. 401.

UNITED STATES OF AMERICA,
Petitioner,

v.

WILLIAM M. BUTLER ET AL., Receivers of Hoosac Mills Corporation,
Respondents.

BRIEF OF AMICI CURIAE WITH PETITION AND NOTICE.

WM. B. BODINE,
Attorney for Amici Curiae.

2231 Land Title Building,
Philadelphia, Pa.

Martin & Lyle, 302 Penfield Bldg., Phila., Pen. 0665, Keystn. Race 6067.

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WILLIAM M. BUTLER ET AL., Receivers of Hoosac Mills Corporation,
Respondents.

NOTICE OF MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE.

PLEASE TAKE NOTICE that the undersigned, acting as counsel for litigants interested in the questions involved in the above entitled suit, will move this Court at the hearing of this case on the 9th day of December, 1935, or as soon thereafter as the case may be heard, for leave to file a brief as *amici curiae* and for such other or further relief as may be proper.

Philadelphia, December 3, 1935.

WM. B. BODINE,
Attorney for Amici Curiae.

To:

HON. STANLEY REED,
Solicitor General of the United States,
Attorney for Petitioner.

EDWARD R. HALE,
BENNETT SANDERSON,
49 Federal Street,
Boston, Mass.,
Attorneys for Respondents.

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IN THE
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October Term, 1935. No. 401.

UNITED STATES OF AMERICA,
Petitioner,

v.

WILLIAM M. BUTLER ET AL., Receivers of Hoosac Mills Corporation,
Respondents.

PETITION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

The undersigned respectfully petitions this Honorable Court for leave to file a brief *amici curiae* in the above entitled suit.

Your petitioner applies as counsel for the concerns whose names are given in the footnote.* Each of these concerns is a processor of hogs, a basic agricultural commodity, in one or more plants located and operated in the United States. As such, it is subject in that respect to the terms and provisions of the Agricultural Adjustment Act, familiarly known as the AAA. And against each, the United States is asserting its right to assess and collect taxes under the terms and provisions of said Act.

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*Berks Packing Co.,Inc.
Louis Burk, Inc.
Chester Packing & Provision Co.
John J. Felin & Co., Inc.
Ch. Kunzler Co.
C. T. Nelson
A. C. Roberts
Reading Abattoir Co.
Jacob Ulmer Packing Co.
Shenandoah Abattoir Co.
F. G. Vogt & Sons, Inc.
Weiland Packing Co., Inc.
John A. Gebelein, Inc.
William F. Myers' Sons, Inc.
The Wm. Schluderberg—T. J. Kurdle Co.
William F. Stump
Wilmington Provision Co.
Taylor Packing Co.
Perry Packing & Provision Co.
The Tobin Packing Co.
Albany Packing Co., Inc.
Knauss Bros., Inc.
Scala Packing Co., Inc.

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Each of these concerns has brought a suit in equity in a Federal District Court (as have other like concerns, so that the number of such suits now aggregates largely over eighteen hundred) in which is sought an order restraining the further collection under said Act of taxes accrued both before and after the amendments of August 24, 1935, on the ground that said Act is wholly unconstitutional and that the claim for refund, for many years existing as an established procedure for contesting such constitutionality, has been so circumscribed by amendments to the said AAA as to render said procedure totally inadequate as a legal remedy as well as entirely lacking in the elements of due process of law required for that purpose.

Each of said concerns, therefore, is vitally interested in a decision of the constitutional questions presented in the above entitled suit.

Notice of this application having been served on counsel for the respective parties in the above entitled suit, this motion is now respectfully submitted for the consideration and action of the Court.

Philadelphia, December 5, 1935.

WM. B. BODINE,
Attorney for Amici Curiae.

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IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1935. No. 401.

UNITED STATES OF AMERICA,
Petitioner,

v.

WILLIAM M. BUTLER ET AL., Receivers of Hoosac Mills Corporation,
Respondents.

BRIEF OF AMICI CURIAE.

PRELIMINARY STATEMENT.

The concerns listed in the foregoing petition file this brief *amici curiae* in opposition to the contention of the United States that the Agricultural Adjustment Act, familiarly known as the AAA, is constitutional and gives to the United States the right to assess and collect taxes in the manner and for the purposes it provides.

Each of said concerns is a processor of hogs, a basic agricultural commodity, in one or more plants located and operated in the United States. As such, it is subject in that respect to the terms and provisions of said AAA. And against each, the United States is asserting its right to assess and collect under the terms and provisions of said Act, taxes accrued and accruing before and after the 1935 Amendments.*

Each of these concerns has brought a suit in equity in

*Public No. 320, 74th Congress, approved August 24th, 1935, for brevity in this brief called "the 1935 Amendments".

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a Federal District Court (as have other like concerns, so that the number of such suits now aggregates largely over eighteen hundred) in which is sought an order restraining the further collection under said Act of taxes accrued both before and after the amendments of August 24, 1935, on the ground that it is wholly unconstitutional and that the claim for refund, for many years existing as an established procedure for contesting such constitutionality, has been so circumscribed by limitations thereof by Sec. 21, added by Sec. 30 of the 1935 Amendments, as to make said procedure an inadequate legal remedy and entirely lacking in the elements of due process of law required for that purpose.

Thus, each of said suits presents the very same constitutional questions that are involved in the above entitled suit, as well as the right of these concerns to contest such constitutionality by suit in equity, in view of the exceptional circumstances presented by the novel provisions of the AAA and the inadequacy of, and lack of due process in, the procedure by claim for refund under the said limitations thereon.

This brief is filed in order to assist the Court in studying the AAA as a whole and not merely in its application to the cotton industry. Since it is filed in the interest of the processors of hogs, emphasis will be laid upon those features of the statute which particularly affect that industry. This means that the argument is chiefly a discussion of Delegation of Legislative Power. The contention of unconstitutionality on grounds other than excessive delegation is set forth only in outline, since the discussion of such other grounds in the brief of the respondents leaves nothing to be desired.

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ARGUMENT.

I.

THE PROCESSING AND FLOOR TAXES ARE NOT INDEPENDENT EXERCISES OF THE TAXING POWER AS SUCH BUT ARE INTEGRAL PARTS OF A SCHEME FOR THE FEDERAL REGULATION OF INTRASTATE AGRICULTURAL PRODUCTION.

1. That the objective of Congress is to adjust production to consumption and not primarily to raise revenue is abundantly clear from the Declaration of Policy in Sec. 2 of Title I.

2. That the adjustment is to be made by controlling and reducing agricultural acreage and production appears from Sec. 8(1) of Title I. It is there made clear that this reduction is to be accomplished by bringing economic pressure to bear upon the farmer. Such pressure takes the form of a payment of rentals or benefit payments of money in exchange for the farmer's promise to subject himself to the federal scheme of production-control.

3. That the so-called tax is merely a cog in the mechanism of control appears from the following considerations:

(a) There is no tax until the Secretary of Agriculture determines that rental or benefit payments are to be made. See Sec. 9 (a). In other words, the making of rental or benefit payments is the sole occasion for the tax.

(b) The declared objective being to close the gap between the farmer's financial condition today and his condition in a pre-war period, the rate of the tax is declared to be the extent of such gap. Sec. 9(b). In other words, there is no relation what-

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ever between the rate of tax and the activity of the processor, except that the extent of the gap in the farmer's income is translated into such-and-such a sum per pound of raw material processed. Congress in so many words has said "We exact from the processor a sum equal to our estimate of what the farmer should be receiving in addition to his present income."

(c) The sum so exacted is to be paid into the treasury but is by the act itself so appropriated as to be available to the Secretary of Agriculture for rental and benefit payments and other features of the reduction program. Sec. 12(b). In other words, the tax and its use are so related that, except for the specified use, there would be no tax, and except for the tax, the scheme could never go into effect.

(d) The tax terminates at the end of the marketing year current at the time the Secretary determines to discontinue rental and benefit payments. Sec. 9(a). In other words, just as the proposed exercise of control is the occasion of the tax, so a determination to abandon control marks the end of the tax.

(e) Since the object of the scheme of federal control is to enable the farmers to get higher prices for their products, and so close the gap, it must follow that if (for example) the processors of hogs had voluntarily paid to their several vendors such prices as would close the gap there never would have been any tax whatever.

(f) While the formula for the tax rate is specified in the act, the Secretary of Agriculture is given discretion to lower it (Sec. 9(b)); he is (by Sec. 15(a)) given authority to exempt the processing of any commodity from all tax whatever, and even to

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refund what has been paid; and he is empowered by Sec. 15(d) to impose compensating taxes of unspecified amounts upon commodities competing with basic commodities.

In view of the foregoing we submit that what Congress has done is not to exercise its taxing power except as part of a regulatory scheme, the administration of which it has confided to an executive official. The next question for consideration, therefore, is whether the tax must stand or fall according to the validity or invalidity of the regulatory scheme.

II.

SINCE TAXATION HAS BEEN RESORTED TO BY CONGRESS MERELY IN AID OF A REGULATORY SCHEME, THE TAX IS NOT COLLECTIBLE IF THE SCHEME ITSELF IS UNCONSTITUTIONAL.

1. A decision that a tax is uncollectible because obviously levied merely to accomplish a result beyond the power of Congress is a decision fatal to the processing taxes if a federal attempt to regulate production is invalid. On principle it should make no difference whether a producer is threatened with a tax if he does not cooperate or promised a benefit payment if he does. In either case, if the control acquired through his cooperation is beyond the power of Congress, the use of the taxing power to acquire it is an illicit use. If the use of the taxing power is illicit because of an illicit objective, payment of the tax ought not to be enforced merely because it is assessed against the processor and not against the producer.

2. The alleged voluntary character of the control purchased from the farmer does not validate the attempt to

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gain such control by economic pressure instead of by penal sanctions. If Congress cannot prescribe a production-quota and enforce it by penalty it ought not to be possible to accomplish the same result with money exacted from the processor. If it is said that this is not an invasion of the area reserved to the States because, being a mere contract, it will be a nullity if opposed to local policy, the answer is that the Federal Government cannot be allowed to put itself in a position of inferiority to a State. Either the purchased control is effective in spite of contrary local policy or the making of a contract for subordinated control is not within the power of Congress.

III.

THE REGULATORY SCHEME OF WHICH THE TAX IS AN ESSENTIAL PART IS NOT WITHIN ANY POWER DELEGATED TO CONGRESS.

1. No justification for the attempted control can be found in the Commerce Clause. This act is, in the field of agriculture, the counterpart of NRA in the industrial field.

2. The Government accordingly appears not to rely on the commerce power but on the power to tax plus the supposedly uncontrollable power to spend. It is respectfully submitted that it is a contradiction in terms to speak of a Congress with limited powers and also to assert the existence of a power in that Congress to tax and spend for any and every purpose which the legislators deem conducive to public welfare. The true limit of taxation for the public welfare is the scope of the substantive powers granted to Congress in the Constitution. The power to tax is but an adjective power and cannot be so used as to enlarge the substantive powers. The doctrine that a citizen may not question an appropriation should have no application to a case

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in which the question is raised not at a time when the money is already in the treasury but before the money leaves the citizen's pocket.

3. If the power to regulate production does not come from the commerce clause and cannot be inferred from the general welfare clause, it simply does not exist—and the whole regulatory scheme must fail.

IV.

IT IS NOT DUE PROCESS TO INTEGRATE AGRICULTURAL INDUSTRY AND COMPEL THE PROCESSING GROUP TO FINANCE THE PRODUCING GROUP.

1. While appropriations to promote the agricultural interest may be a legitimate use of public money, it does not follow that processors may be made the sole contributories to the fund. There is something inherently unfair in making the vendee pay money to the vendor to enable the latter to charge the vendee a higher price.

2. Even if the power to regulate agricultural production inheres in Congress and if, therefore, the power to tax may be invoked in aid of it, the Vth Amendment must be the citizen's protection against an abuse of the taxing power. We submit that to levy the processing tax is as much of an abuse as it would be to lay a tax on pacifists to pay for the building of battleships at a rate measured by their cost. A proper exercise of the taxing power presupposes a study of the ability of the taxable to pay and (in the case of an excise) some consideration of the activity in respect of which the tax is laid. If the procedure is to begin at the other end, i. e., if the rate is first to be fixed by facts wholly extraneous to the business of the taxpayer, it is submitted that the resulting burden of the tax should be

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borne by the public treasury, and not by a relatively small group of citizens. "Taxes" this Court has well said "are very real things and statutes imposing them are estimated by practical results." *Nichols v. Coolidge,* 274 U. S. 531, 541 (1927).

For the reasons thus briefly summarized under the four foregoing captions we contend that the enactment of AAA was beyond the constitutional power of Congress. If the Court assents to this conclusion, a consideration of the questions of Delegation and Ratification becomes unnecessary. If, however, the Court desires to consider the questions last-mentioned, the following discussion is respectfully submitted:

V.

THE ACT INVOLVES AN INVALID DELEGATION OF POWER TO THE SECRETARY OF AGRICULTURE.

The Government's argument on this point is an ingenious attempt at over-simplification. It would suggest that the sole function of the Secretary of Agriculture is to find certain readily ascertainable objective facts, and that the imposition of the processing tax upon certain definite commodities automatically follows. Such an argument requires a brief re-examination of the lengthy provisions of the statute on this subject.

(A) Discretion to determine what is to be taxed and when the tax is to become effective.

The taxing provisions are to be found in Section 9 of the statute. This permits the taxation of "any basic agricultural commodity". The latter term is defined in Section 11, which lists specific commodities (including hogs). The list, however, is in fact an illusory one, because by Section 15(d) the Secretary is empowered to impose a compensat-

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ing tax on any "competing commodity", and the determination of "competition" is left to him, the phrase not being defined in the Act. The class of possible taxable objects is therefore wholly indefinite. In this respect, petitioner can hardly argue that Congress itself has defined the scope of action.

But even if we confine ourselves to the list of products given in Section 11, nothing in the statute ordains in mandatory language that any specific commodity shall be taxed. Power to select the objects of taxation from among those enumerated is conferred directly on the Secretary of Agriculture in the form of an authorization to determine the commodities with respect to which rental or benefit payments are to be made. The tax is imposed at the beginning of the marketing year immediately following a proclamation by the Secretary that payments will be made with respect to any commodity. Consequently we next turn to Section 8, which makes provision for such payments, to determine whether Congress has declared a policy, set up standards of action, or required findings in regard to those payments. We submit that it has not.

Before direct consideration of Section 8, it is important to note that the Act introduces another dispensation. We have said that the tax becomes effective when benefit payments are made. This is also an illusory provision, because under the terms of Section 15(a) the Secretary may, in the exercise of his judgment, suspend the imposition of the processing tax upon any commodity or any product therefor, and may even direct a refund of the tax paid. The tax is therefore not an invariable concomitant of benefit payments, and this fact destroys any argument that the former automatically goes into effect upon the determination of the latter. Let us assume for the moment, however, that the two are inseparable.

Section 8 declares that the Secretary "shall have power", in order to effectuate the declared policy of the Act, to arrange for a reduction in the acreage or produc-

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tion for market of any basic agricultural commodity, and in connection therewith to make rental or benefit payments "in such amounts as the Secretary deems fair and reasonable." It will be seen that the initiation of a crop-reduction program by the Secretary is no more mandatory than is the prohibition of the transportation of petroleum in interstate commerce under Section 9(c) of the National Recovery Act: (*Panama Refining Co. v. Ryan,* 293 U. S. 388). Section 8 by itself plainly declares no policy. It places no limits upon the power of the Secretary in respect to either contracts or payments. There is no limit set as to the reduction for which he is willing to contract, nor as to the financial obligation he is willing to incur. He may act or not—as he chooses—unless a standard may be found in the introductory phrase "in order to effectuate the declared policy".

The best proof that Section 8 is purely permissive is contained in Section 11. This provides, in substance, that the Secretary may *exclude* from the operation of the provisions of the Act during any period any basic commodity or any class, type or grade thereof, if he finds that the Act cannot be effectively administered to the end of "effectuating the declared policy" with respect to such commodity or classes thereof. This section nullifies any argument that the word "power" is the equivalent of "duty".

What is the net result of these provisions? It is clear that each supposedly mandatory provision is nullified by another provision elsewhere in the Act. For each injunction there is a corresponding dispensation. Thus, the Secretary is to make rental or benefit payments in connection with reduction contracts; but he need not do so if he decides otherwise. A tax is to go into effect when rental or benefit payments are made; but the Secretary may forgive such a tax. The tax is to apply to certain specified commodities; but the Secretary may add to the list of taxable objects at his will. The sole guide to his action is the effectuation of "the declared policy of the Act".

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This brings us to a consideration of the "Declaration of Policy", contained in Section 2 of the Act. As has been pointed out, all action by the Secretary is referable to this section, because there is no other limitation upon his conduct. What standards of action does this section establish? The section is divided into three paragraphs. The first states it to be the legislative policy "to establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor" as will increase the purchasing power of farmers by raising the prices to a level which prevailed during a specific five-year base period prior to the war. The second paragraph provides that this parity shall be approached gradually, in view of the current consumptive demand in domestic and foreign markets. The third paragraph specifies that the consumers' interest must be protected by readjusting farm production at such a level "as will not increase the percentage of the consumers' retail expenditures for agricultural commodities or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period."

We do not quarrel with the assertion that the statement of policy is explicit in so far as it seeks to insure to the farmer a certain level of purchasing power. The vice of the Act, however, lies in the fact that there are no limitations whatever upon the methods to be used by the Secretary in reaching the goal desired. Congress has defined the objective, but has given the Secretary a free hand in reaching that objective. It has not declared that production in the case of any commodity is to be restricted to a fixed figure. It has not even declared that production shall be balanced with consumption—a determination that might be made with reasonable accuracy. The limitation in the second paragraph of Section 2 that parity shall be approached "gradually", obviously does not place any intelligible limitations upon the conduct of the Secretary, and in fact is at

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variance both with the Declared Policy of the first paragraph and also with the actual practice of the Adjustment Administration. When Sections 2 and 8 are read together, the restrictions are found to be illusory; the extent of action is purely discretionary; the standards are the mere judgment of the Secretary. It is true that he is to make a determination that rental or benefit payments are to be inaugurated, but this is merely his judgment that the appropriate time has come to begin such payments, and in forming that judgment his discretion is absolute and uncontrolled. He is not required to begin such payments at any particular time, or upon the happening of any specified conditions. His judgment is not based upon or controlled by the ascertainment of any existing facts. Indeed, the only actual fact which he can determine is that the price of any given commodity is less than the fair exchange value thereof. Having made such a determination, however, his further actions in relief of that condition are entirely discretionary. In this respect the Act is to be contrasted with the Flexible Tariff Act. Under the latter measure, when the President found a discrepancy between the production cost of domestic and foreign goods, it became his duty to levy such a tax as would equalize such costs, but the President was not given free rein to determine what measures generally he should adopt to accomplish the desired end.

Even if we concede to the Secretary the utmost sincerity, he must guess blindly at the effect of his actions. He must consider such intangible factors as the cooperation of the farmer, the vagaries of the elements, and the resistance of the consumer market. All of these factors are not existing facts, but prophecies of the future. Nor is there any necessary relation between the imposition of the tax and his determination that rental or benefit payments are to begin. He may make the determination, put the tax into effect, and use the money for open market or surplus buying, carrying on the benefit feature as a matter of form only. It seems perfectly clear that the generating event

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which calls this tax into being is a mental operation of the Secretary, which is not a fact finding, but a pure exercise of discretion as to whether and to what extent or by what means it is advisable to carry out the general policy of the Act. What Congress in effect has said to the Secretary is this: "We wish to reach and maintain a certain constant level of purchasing power for the farmer. We give you blanket power to raise money for that purpose. It is unnecessary for us to *compel* the farmer to reduce production, because we give you the power to make contracts with him and we put no limit upon the money you can hand out to him. We know from our knowledge of human nature that you will have no difficulty in persuading a farmer not to raise crops if you pay him high enough for that privilege. By levying the tax, by making contracts, by rigging the market and making purchases on your own account, somehow you should be able to attain the desired result. You are left free to exercise in your own discretion, all or none of the many powers granted to you."

Petitioner argues that once the Secretary finds farm price to be below parity price, it is his duty (not his option) to inaugurate a reduction program; and further, that the taxpayer cannot question the discretion exercised in planning such a program, because the tax goes into effect when *any* reduction takes place. This proposition sounds plausible until it is analyzed with reference to a particular commodity. A concrete example is milk, which was specifically included in the list of the original basic commodities. Although dairy production was at a volume above market requirements, no production-control program has as yet been put into effect. According to "Agricultural Adjustment in 1934" (a Report of Administration of the Agricultural Adjustment Act February 15, 1934, to December 31, 1934), "A dairy-adjustment program was presented to producers, but the support it received from the dairy industry was not deemed sufficient to warrant its adoption." (p. 5) The Report further indicates (pp. 132, 133) that while farmers

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were about equally divided in numbers between those in favor and those opposed to all or parts of a suggested reduction program, it was deemed inadvisable to put the program into effect until a substantial majority of the producers desired it. Petitioner states (p. 72 of its brief) that a decrease of production would mean a decrease of the total domestic supply and this in turn would of necessity tend to raise domestic prices. The conclusion is drawn from this premise that the determination of the Secretary to initiate a reduction program did not involve any application of judgment. If the proposition is as simple as this, then the question immediately arises why no reduction program was initiated in the case of milk. It is true, of course, that if only fifty per cent. of the dairy farmers desired such a program, it would not have been as effective as if a substantial majority had desired it. Since, however, petitioner claims that it was mandatory upon the Secretary to act to increase the price to a desired level, the question immediately arises why such action was not taken in the case of milk in order that partial results at least might be accomplished.

The same situation exists in respect to cattle, which were added as a basic agricultural commodity on April 7, 1934.* No rental or benefit payments have been made with respect to this commodity, although the Government has embarked on an elaborate cattle-purchase program; and no processing tax has been put into effect.

These two commodities are cited as examples of the extraordinary discretion vested in the Secretary of Agriculture by the Act. They indicate that the problem is not as simple as petitioner would have this Court believe it. The Secretary does not merely determine if farm price is less than parity price, and if so automatically embark upon a system of rental or benefit payments. The problem is highly complicated by many factors which result in leaving the

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*Jones-Connally Cattle Act, Public No. 142, 73d Congress, 48 Stat. 528.

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imposition of the tax upon the citizen wholly within the Secretary's judgment.

It may be here noted that even were such a policy declared in terms sufficient to give an intelligent guide, the Secretary might with impunity ignore that policy, because Section 8 contains no requirement that findings of fact shall be made; and we take it that the usual statement in the orders of the Secretary declaring the necessity of a reduction program in the case of a particular commodity, to the effect that the program is entered into in order to effectuate the declared policy of the Act, is not a finding of fact but a mere conclusion. Such a statement does not set forth the facts upon which the conclusion is based, with the result that the conclusion cannot be tested in the light of any policy. The proclamation of the Secretary with respect to hogs is given in the footnote.* The absence of any requirement for findings of fact is another reason why the delegation of power is improper: see *Panama Refining Co. v. Ryan,* supra, at page 431.

We have mentioned the consumer, although there is no evidence of any effort to comply with the "standards" of the third paragraph of Section 2. No findings, so far as the records show, have been made to meet that test. On the other hand, history is eloquent as to the reduction in consumer demand. It is a fair statement to make to say that the interests of the consumer have been steadily ignored in the attempt to reach the ideal of the pre-war period. The Secretary may, however, have had some justification for ignoring the consumers' interests, for an examination of

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*"I, Henry A. Wallace, Secretary of Agriculture of the United States of America, acting under and pursuant to an Act of Congress known as the Agricultural Adjustment Act, approved May 12, 1933, have determined and hereby proclaim that benefit payments are to be made with respect to hogs, a basic agricultural commodity.

In testimony whereof I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington this 17th day of August, 1933.

(Signed) H. A. Wallace,
Secretary of Agriculture."

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the body of the Act shows that there are no detailed provisions to guide him in guarding the consumers' interests. It is quite conceivable that the third paragraph of Section 2, thoroughly inconsistent with the other objectives of the Act, was inserted merely as a polite gesture to the public, without sincerity of purpose.

One further contention of the petitioner on this subject requires brief consideration. This contention may be stated as follows: The Secretary is given discretion only with respect to rental or benefit payments; the expenditure of public funds in such a manner is an executive and not a legislative function; therefore the imposition of processing taxes contingent upon the exercise of such a specified executive function involves no delegation of legislative power. The fallacy of such an argument lies, of course, in the fact that the question here is not directly that of the expenditure of public money, but is the very serious and fundamental question of the imposition of a tax. It is one thing to say that the executive may have wide discretion in distributing an appropriation. It is quite another thing to claim that the exercise of such discretion may be made the basis for the levying of a tax. In fact, the argument defeats itself. It will not be denied that the power to raise taxes is a legislative power. To say that this legislative power can be hitched onto executive discretion as to the expenditure of funds, like a tail to a kite, is to put the most extreme case of delegation possible. As was said in the *Panama Refining* case, supra (p. 432):

> "We are not dealing with action which, appropriately belonging to the executive province, is not the subject of judicial review, or with the presumptions attaching to executive action."

On the contrary, we are dealing with the taking of money from the taxpayer's pocket, which in its effect upon him is equally as serious as the creation of the crime of

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transporting "hot oil". Consequently, it will not do to justify an unwarranted delegation of taxing power by coupling the tax with discretionary action admitted to be unlimited in its scope.

(B) Discretion to Determine the Rate of Tax.

The act provides that farm price and fair exchange value are to be ascertained from available statistics of the Department of Agriculture. Petitioner's brief stresses at length the fact that these statistics are known and identified. We do not quarrel with this fact. We readily agree that the act refers to official statistics which have been for a number of years issued by the Department. We do insist, however, that when the formula is examined it is found to have no mathematical basis whatsoever. Reduced to their lowest terms, the two factors entering into the formula (farm price and fair exchange value) are based upon the unchecked answers of casual correspondence of the Department throughout the country, weighted first by states and then weighted again by reference to a family budget. We seriously question whether the tax burden of the citizen should be based upon such statistics.

The propriety of the use of these statistics, however, becomes an academic question, in view of the fact that in the case of certain commodities the formula has not, in any real sense, been taken as the determinant of the rate of tax. It is true that the act specifies the formula in the first instance: The rate is to be the difference between the fair exchange value of the commodity and the actual current farm price thereof. Two later provisions of the act, however, permit a complete departure from the basic rate. In the first place, section 9(a) provides that "The rate so determined (i. e. by reference to the formula) shall, at such intervals as the Secretary finds necessary to effectuate the declared policy be adjusted by him to conform to such requirements." In the second place, section 9 (b) gives leave to the Secretary to determine whether the tax at the formula

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rate, on the processing of the commodity generally or for any particular use or uses, will cause such a reduction in the quantity of the commodity or products thereof domestically consumed as to result in an accumulation of surplus stocks or in the depreciation of the farm price. If he finds that such a result will occur, he may then put the tax "at such rate as will prevent such accumulation of surplus stocks and depreciation of the farm price and the commodity".

The petitioner contends that the cotton processor cannot question these provisions because the rate of the tax on cotton has not been adjusted. The processors of hogs, however, (on behalf of a number of whom this brief is filed) certainly do not fall into this category, in view of the determination of the tax on that commodity.

The processing tax on hogs was first imposed by the Secretary in Regulations issued October 18, 1933 (Hog Regulations, Series 1). These prescribed that a tax should go into effect as of November 5, 1933. For the month of October, however, the fair exchange value of hogs determined in accordance with the Department statistics was $8.38, while the current average farm price was only $4.17. It is obvious that the formula bore no practical relation to any tax that might have been imposed, since the resulting tax of $4.21 would have been greater than the farm price itself. By the Regulations the Secretary prescribed that as of November 5, 1933, the tax should be 50 cents per cwt.; as of December 1, 1933, $1.00 per cwt.; as of January 1, 1934, $1.50 per cwt.; and as of February 1, 1934, $2.00 per cwt.

On December 21, 1933, the Secretary issued Hog Regulations, Series 1, Revision 1, in which he stated that an adjustment of the rate of tax was necessary, and accordingly fixed it as follows: as of January 1, 1934, $1.00; as of February 1, 1934, $1.50; as of March 1, 1934, $2.25. The rate has remained at $2.25 since the latter date. As has been noted, when the tax was first imposed, this sum was prac-

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tically one-half the maximum rate. By December 1934, however, the farm price of hogs had risen so high that the rate of $2.25 actually exceeded the formula rate; and it has remained in excess of the formula rate continuously since that date. Indeed, in January 1935, the tax based upon the formula would have been but 81 cents.*

On first impression, a reading of the act would suggest that the formula rate would go into effect initially and then be adjusted from time to time on the basis of actual past experience. Actually the various provisions taken together allow the Secretary to ignore the formula entirely. This is exactly what was done in the case of hogs. *The original formula rate has never been put into effect, either at the inception of the tax or at any other time.* In the first instance, the Secretary prescribed rates which would take effect at various months in the future—a determination that must necessarily have been based upon opinion and not upon existing facts. In December 1933, a second adjustment was made, operative again as to future months, and raising the ultimate tax by 75 cents. If such an adjustment is contemplated by the provisions of the act, it denotes an extraordinary breadth of discretion. Finally, when operations of the scheme had become so successful that the farm price had exactly doubled, the Secretary did nothing to readjust the tax to conform with the formula—a course of conduct which can only be explained by assuming that the sole reason for levying the tax is to have funds in hand to pay the farmer as high a premium as possible.

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*The actual statistics for the first six months of 1935, as computed by the Department of Agriculture, are as follows:

1935	Index of Articles Farmers Buy	Fair Exchange Value of Hogs	Current Average Farm Price of Hogs	Difference	Rate of Tax
Jan.	126	9.10	6.87	2.23	2.25
Feb.	127	9.17	7.10	2.07	2.25
March	127	9 17	8.10	1.07	2.25
April	128	9.24	7.88	1.36	2.25
May	128	9.24	7.92	1.32	2.25
June	127	9.17	8.36	.81	2.25

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Obviously, on this showing the Secretary cannot plead that the determination of the rate is a mere exercise of mathematics. He is in this dilemma: If the formula states a limit, it is one which has no real application to the case and leaves the Secretary free to decide the amount of tax at will. If, on the other hand, the formula is merely another meaningless provision, then for the first time a Cabinet officer has been given power to levy a tax at whatever rate he pleases, without limit or restriction. It is difficult to conceive of a more complete surrender of legislative power. The argument that a readjustment of the rate downward is not to be made in the case of mere temporary fluctuations can hardly stand, in view of the fact that the rate has exceeded the formula through the whole of the past year. If, however, the formula is not to control, then the contention that the Secretary is merely performing an administrative function loses all of its significance.

We submit this analysis of the Act compels the conclusion that the delegation of power to the Secretary of Agriculture is wholly unwarranted under our scheme of government. Petitioner has attempted to bring the Act within the category of those cases where the statute was one designed to take effect in the future upon certain conditions not within the control of either Congress or the executive, and where it was essential to its purpose that it should become effective without delay upon the happening of such contingencies; in which case it was held permissible to delegate to the executive the power to say whether those events had occurred, always, however, upon an informed fact-finding. When the scope of the Secretary's authority is examined, it will be found to bear no real relation to such a situation. A comparison with the familiar case of *Hampton v. United States,* 276 U. S. 394, is instructive on this point. The *Hampton* case involved the provisions of the Flexible

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Tariff Act. This Act gave to the President the power to increase or decrease duties on imported articles to equalize the differences in cost of production of those articles in the United States and in foreign countries. The Act specifically listed the subjects of taxation. It fixed the basic rate in dollars and cents. It limited a change in rate to the extent of fifty per cent. The determination of a change was based upon existing facts, and not upon guesses as to the future. The facts were to be found by the Tariff Commission, and the President was *required* (*not permitted*) to act on those findings and declare the new rate to be in effect after a specified waiting period. The Congress, furthermore, was exercising its undoubted and unlimited power over articles concededly in foreign commerce.

In contrast, the Agricultural Adjustment Act, stripped of empty words, guarantees that the making of contracts, the expenditure of money, the choice of the subjects of taxation, and the determination of the amount and time of taxation, are left wholly to the unfettered judgment of the Secretary. He can make contracts or not, spend what he pleases, tax any class of processors whom he wants and when he wants, and justify each successive step by the statement of opinion that in his judgment "it will effectuate the declared policy of the Act." The point bears repetition that his various functions cannot be isolated. We are not here dealing with mere executive action, but with executive discretion which in fact terminates in the imposition of a tax; and it is of this tax the processors complain.

Even more serious, however, is the actual situation that in reality it is not the Secretary who determines to impose the tax, but the farmers themselves. Whether or not adjustment programs are to be put into effect is in practice made dependent upon a vote of the producers. A concrete illustration is the case of hogs: The method of taking the farmers' vote is outlined in "Corn-Hog Adjustment (A Handbook For Use in the Corn-Hog Adjustment Program)", issued by the Agricultural Adjustment Adminis-

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tration in January of 1935. The relevant extracts are placed in an appendix to this brief. Under the system invoked, a series of six regional meetings were held throughout the country, at which representatives of the Administration discussed the advisability of a corn-hog program for 1935. The vote of the meetings was taken, and recommendations made. It was then proposed that a direct referendum be taken among all the corn-hog producers on the question of the 1935 program. As the pamphlet indicates, "It was generally agreed that the Administration should undertake no new action unless a clear majority of farmers favored such action." The referendum actually took place during the first two weeks in October, the producers being asked to vote on two questions: First, whether they favored any adjustment program dealing with corn and hogs in 1935; and second, whether they favored a "one contract" adjustment program dealing with grains and live stock, to become effective in 1936. A majority of the votes cast being in the affirmative, the 1935 program was therefore initiated.

Exactly the same procedure was carried out for the year 1936. In October, 1935, the Administration issued Commodity Information Series, Corn-Hog Leaflet No. 1. This pamphlet is also included in the appendix. Examination will show that it places the continuance of the program squarely in the hands of the farmer. It commences, "Shall corn-hog adjustment continue?—Producers will decide!" It concludes, "Whether a production-control program for corn and hogs will be continued rests with the farmers themselves, and will be determined by their votes in the corn-hog referendum to be held this month on the following question:

DO YOU FAVOR A CORN-HOG ADJUSTMENT PROGRAM TO FOLLOW THE 1935 PROGRAM WHICH EXPIRES NOVEMBER 30, 1935?" (Italics theirs.)

The same course has been followed in the case of other commodities. Generally the vote has been favorable, and

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a reduction program has been instituted. As has already been noted, in the case of milk the dairy farmers were about equally divided in their sentiment, with the result that no milk program was put into effect. In the case of cotton, the Bankhead Cotton Control Act specifically requires that a vote of the farmers be taken to determine if quotas are to be instituted.

It may be the Secretary acts properly in polling the sentiment of the farmers upon these subjects under the broad grant of power under the Act. In fact the brief of petitioner acknowledges this fact (see page 76). Recognition of the fact, however, effectively nullifies any argument by the petitioner that the Secretary is merely acting in a ministerial capacity, and that the imposition of the tax involves no exercise of legislative discretion. In fact, it means not only that power has been delegated to the Secretary to impose the tax, but also that he in turn may delegate this power to the farmer. In other words, the farmer decides whether a tax shall be levied upon a certain class for his own benefit. Since it can hardly be argued that any standards are laid down to control the farmer's action, except the needs of his own pocketbook, the Act now appears in its true light as an unlimited and uncontrolled grant of power.

It will of course not do to say that the farmer merely decides he will limit his production. If, as petitioner itself contends, the tax automatically goes into effect upon the making of benefit payments, the farmer in substance decides that a tax will be laid. We submit that such a delegation of power goes beyond any conceivable grounds of constitutional, or for that matter even extra-constitutional, government.

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VI.

THE ATTEMPTED RATIFICATION OF THE TAXES BY THE 1935 AMENDMENTS IS INEFFECTIVE.

The brief filed on behalf of respondents ably discusses this proposition and effectively disposes of the various authorities cited by the petitioner. We therefore content ourselves with the following observations, which we consider fundamental.

FIRST: In any event Congress cannot ratify what it could not have done itself. Improper delegation of power is not the only infirmity urged against the tax. Consequently, if the tax be held invalid on any ground other than invalid delegation, ratification cannot give it life.

SECOND: The ratification cannot be sustained as a retroactive tax. It does not purport to be such; indeed the Amendments expressly state that their provisions do not impute illegality to any earlier acts of the Secretary. Nor could a retroactive excise thus be imposed under the due process clause, if the tax be now laid for the first time.

THIRD: Viewed as an attempted ratification, the action is equally ineffective. This is not

(a) A case of a curative statute aimed to remedy defects and mistakes in the administration of a law, where Congress has admittedly legislated upon the subject in the first instance; nor

(b) A case involving the administration of our insular possessions, to which the Constitution in this regard does not apply, and where Congress *can* admittedly delegate legislative power to executive officials.

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On the contrary, this is a case where by assumption, Congress is required by the Constitution to legislate, but where it has delegated that function to another. The problem is entirely novel, but the answer is clear. The people have a right to be governed by their elected representatives, and not by another. If another legislates and Congress assembles merely to rubberstamp his acts, Congress commits a fraud upon the powers entrusted to it. The people have no assurance that the legislative mind has functioned. Their equity lies in the fact that it is they who have delegated the power, and they may insist upon its proper exercise.

FOURTH: The Amendments to the Act make it clear that Congress is embarking upon a deliberate scheme of government by ratification. We have (a) an original unlawful delegation of power; (b) a ratification of acts done thereunder, and (c) an extension and expansion of the same powers for the future. This can only mean that future ratifications and future delegations are contemplated. If this be the case, all pretense of Congressional legislation can be abandoned. Each Department, under an omnibus grant of authority, can write its own laws, and at strategic intervals have Congress say, "that is exactly what we would have done in your place". Surely, the people are, under our present Constitution, entitled to protection from the continental form of government which this system now seeks to introduce.

For the reasons herein briefly stated, it is respectfully submitted that the Agricultural Adjustment Act, and more particularly the processing taxes levied thereunder, should be declared invalid; and that the decree of the court below should therefore be affirmed.

WM. B. BODINE,
Attorney for Amici Curiae.

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APPENDIX "A".

Excerpt from "Corn-Hog Adjustment—A Handbook for Use in the Corn-Hog Adjustment Program". (pp. 10-16).

(Published by Dep't. of Agriculture, Jan. 1935.)

Regional Meetings Held.

A series of six regional meetings was held in early September at Kansas City, Indianapolis, St. Paul, Salt Lake City, Atlanta, and New York City. Representatives of the Agricultural Adjustment Administration discussed the economic outlook for 1935, with State corn-hog committeemen, extension workers, and others. The advisability of devising a corn-hog program to prevent a new cycle of surplus and price collapse was considered.

By an almost unanimous vote, the State groups favored a 1935 corn-hog program. Each meeting recommended certain provisions. In general, these recommendations favored:

(1) A somewhat smaller adjustment below the base production average, in the cases of both corn and hogs.

(2) Smaller total payments on both corn and hogs.

(3) More liberal authorization for use of the acres shifted from corn production.

(4) More flexibility in administrative rulings; and

(5) Redetermination of hog and corn bases in instances where it was justified by examination of the producer's data.

At these regional meetings, the Administration proposed a direct referendum among all corn-hog producers on the question of developing and offering a new program for 1935. It was generally agreed that the Administration

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should undertake no new program unless a clear majority of farmers favored such action.

A direct referendum, obviously, was the best means of ascertaining the wishes of producers themselves, but on the other hand there was the problem of time and personnel for holding the many local meetings necessary for adequate presentation of outlook information and for taking the votes. In spite of the newness and magnitude of the referendum project, however, the majority of corn-hog committeemen and extension workers declared it could be carried out promptly. Therefore, they favored it. The referendum, it was decided, should also include a vote as to whether farmers favored a general one-contract adjustment program to become effective in 1936.

The Referendum.

Accordingly, the first two weeks in October were set aside for the referendum. Except in areas where corn-hog contract signers were few and widely scattered, community meetings were called. The total number of meetings, representing all States, exceeded 16,000. The outlook information was discussed. Then a secret written ballot was taken. Two questions were voted on:

(1) Do you favor an adjustment program dealing with corn and hogs in 1935?

(2) Do you favor a one-contract-per-farm adjustment program dealing with grains and livestock to become effective in 1936?

With respect to Question No. 1, it was explained that the corn-hog program for 1935, if and when finally developed, probably would follow the general plan of the 1934 program. The percentage of adjustment from the 1932-33 base production would not be greater in 1935 than that required in the 1934 program and might be less. Benefits

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payments would not be the same as they were in 1934; that is, corn benefits probably would be somewhat larger and hog benefits materially less than in 1934.

With respect to Question No. 2, it was explained that a one-contract-per-farm program would involve the six grain crops named as "basic" in the Agricultural Adjustment Act—wheat, barley, rye, corn, grain sorghums, and flax. Such a plan would represent a shift from several single-crop contracts to a broad program of developing better systems of farming through less intensive use of the land, conservation of soil resources, and use of the land for production of those crops for which it is best adapted. The plan would seek to provide the desired degree of control over the combined acreage of the several crops involved, and yet flexibility enough to permit to cooperating farmers all the freedom of action consistent with maintaining the proper balance between production and effective demand. Such a program would be financed by processing taxes on grains and livestock and might or might not include direct control of livestock.

Results of the Voting.

The referendum was practically completed, as scheduled, by the middle of October. The final results as tabulated from certified State reports showed that 374,584 contract signers, or 69.9 percent of the total number voting, had voted favorably on Question 1 and that 262,845 contract signers, or 52.9 percent, had voted favorably on Question 2. The 535,690 signers voting on Question 1, represented more than 46 percent of all 1934 contract signers; the 496,433 signers voting on Question 2, represented nearly 43 percent of all 1934 signers. In many areas, the local corn-hog committeemen also took the vote of nonsigners present at the referendum meetings. For the entire country, about 44,026 nonsigners were polled on Question 1; of this number about one-third voted favorably. About

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40,179 nonsigners were polled on Question 2; of this number slightly less than one-third voted favorably.

The percentage of corn-hog farmers voting in the referendum was considerably larger than had been expected. The participation compared favorably with the usual turnout at political elections, in spite of the fact that much Fall work was under way at the time of the poll. The results suggest some of the possibilities for building an economic democracy in this country. The 1934 corn-hog referendum represents the first opportunity ever given so large a group of American people to express their wishes directly and solely on an economic issue.

Work on Contract Begun.

Immediately after the votes were counted, a group of farm leaders and a number of State corn-hog committeemen from the leading corn and hog producing States reviewed the referendum results with the Administration. They declared that the favorable majority of more than two-thirds of the large number voting warranted the immediate development of a new program for 1935. Shortly thereafter the Administration, in collaboration with the State corn-hog representatives, began work on a new contract. Every effort was made to incorporate all practicable suggestions based on experience in 1934 and to make the program simpler and more flexible.

On November 15, the terms of the contract were announced. The necessary administrative rulings relating to the new contract and the numerous forms, such as transmittal sheets and work sheets, were prepared next. By mid-December, all of the material pertaining to the new program had been developed.

A series of instructional meetings with State corn-hog committeemen and extension workers followed. These meetings were held during the week before Christmas in Kansas City, Minneapolis, Indianapolis, Salt Lake City,

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New York City, and Atlanta. The State workers in turn arranged meetings with county workers where the means and procedure for handling the 1935 program could be explained. Finally, plans were made for starting the contract sign-up.

APPENDIX "B".

Commodity Information Series Corn-Hog Leaflet No. 1

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
ISSUED OCTOBER 1935

Shall Corn-Hog Adjustment Continue?—Producers will decide!

Farmers are facing the question now whether a production-control program will be needed to follow the 1935 corn-hog program.

The 1935 crop year in the principal grain and livestock producing areas is drawing to a close.

The present corn-hog adjustment contract expires on November 30, 1935.

IMPROVED INCOME—MORE EQUITABLE PRICES

Substantial improvement has been made during the last two years in the economic situation of corn and hog farmers and in achieving the objectives of the Agricultural Adjustment Act.

Corn and hog prices and income to corn and hog producers have measurably increased over those of two years ago. In recent months, for the first time in nearly 10 years, corn and hog prices have been at or near the fair exchange values of these commodities. Despite the drought, cash-farm income from hogs in 1934, including adjustment pay-

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ments, was 37 percent larger than the income in 1933 and nearly 60 percent greater than that of 1932.

AVERAGE FARM PRICES OF CORN AND HOGS DURING LAST THREE MARKETING SEASONS

[Year beginning Oct. 1 and ending Sept. 30]

Marketing year	Corn	Hogs
	Cents per bushel	*Dollars per 100 pounds*
1932-33	32	3.36
1933-34	52	3.73
1934-35	82	7.10

Farmers have learned that through the voluntary contract and processing tax method an effective producer organization can be achieved. They know that substantial benefits may be expected from such cooperation. The question now before corn-and-hog producers of the United States is whether they shall continue this cooperation to prevent the return of ruinously low prices.

18757°—35

FEED SUPPLIES LARGE—LIVESTOCK POPULATION SMALL

What is the problem that farmers face today?

The 1934 drought hastened the elimination of both surplus livestock and feed. But out of it has developed a serious problem in maintaining a balance between feed-grain production and livestock numbers in 1936 and 1937.

The indicated production of corn in the United States for 1935, as of September 1, was 2,184,000,000 bushels, as compared with a production of only 1,377,000,000 bushels in 1934 and an average production of 2,562,000,000 bushels in the 5-year period 1928-32. The combined production of all feed grains for 1935 is expected to be only about 10 percent under the 5-year average and about 75 percent greater than the extremely short crop of 1934. In addition, the in-

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dicated production of hay for 1935 is about 87 million tons, as compared with a 5-year average production of 80 million tons.

As a result, **there is enough grain and hay available to provide an adequate supply of feed for almost the same number of livestock as were on farms in the period from 1928 to 1932.**

But how many farm animals do we now have to consume these feed supplies?

Livestock numbers are far below the 1928-32 level. During 1934 the number of hogs dropped approximately 35 percent, and other livestock were reduced by from 5 percent to 11 percent. It is probable that because of the extreme shortage of feed grain and hay supplies during the past year the number of livestock on January 1, 1936, will be almost as small as the number at the beginning of 1935—which was the smallest in 34 years.

The grain supply per animal for the 1935-36 feeding season, therefore, undoubtedly will be larger than in any year since the World War, except 1926.

WHAT IS AHEAD?

The average farm price of corn in mid-September was approximately 75 cents per bushel or around 90 percent of parity.

A 20-percent increase in 1935 fall farrowings over 1934 was indicated in the June 1 pig-survey report. The 1935 fall pig crop, however, may be greater than the June forecast because of the relatively high level of hog prices now and a relatively large supply of feed grains in prospect. This would nearly offset the decline in the 1935 spring farrow.

The number of hogs slaughtered under Federal inspection during the market year ending September 30, 1936, therefore is likely to be only slightly less than the 30 mil-

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lion head slaughtered during the 12-month period just closed. The total tonnage of pork produced will be about the same, for the hogs slaughtered unquestionably will be heavier because of increased feed supplies.

Though very little improvement in export demand can be expected during the coming year, a continuation of the gradual economic recovery which has been under way since 1933 seems in prospect. With total hog supplies unchanged, 1935-1936 hog prices may be expected to average about the same as in 1934-35, but appreciably lower than the seasonally high peak in August and September 1935. As increased hog supplies will be coming on the market during the last half of the 1935-36 season, a downward trend in hog prices is in prospect.

WITH NO ADJUSTMENT—HOW ABOUT 1936?

If there is no adjustment program in 1936, farmers will be likely to harvest more than 100 million acres of corn. (Average corn acreage 1932 and 1933 about 105½ million acres.) The September Crop Report indicated nearly 94 million acres of corn for harvest in 1935, even though contract signers retired about 11½ million acres from corn production. With average yields in 1936, an uncontrolled acreage of corn would result in a production of more than 2½ billion bushels. The supply of corn per grain-consuming animal, therefore, would continue at a very high level in the 1936-37 feeding season. It is extremely doubtful whether the total number of grain-consuming animals will be increased in 1936 enough to bring the grain supply per animal back to normal.

With no adjustment program, then, the farm price of the 1936 corn crop, in view of the relation between grain supplies and livestock numbers, may be expected to average much less than the price of the 1935 crop.

The relatively large supply of grain per head of livestock this winter and the accompanying hog-corn price ratio will be very favorable to increased farrowings in

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1936, especially next spring. It is expected that the number of pigs farrowed in 1936 will average from 25 to 30 percent higher than in 1935.

If this increase in hog numbers is realized, the downward trend of hog prices is expected to continue throughout the 1936-37 marketing season.

WITH NO ADJUSTMENT—HOW ABOUT 1937?

Corn and hog producers realize the necessity of looking ahead more than one year in determining their farming operations.

Without an adjustment program to follow that of 1935, the stage will be set for another major upswing in hog production, beginning this fall and reaching its peak in 1938. If the feed situation and the price of hogs in relation to the price of corn are as favorable as present conditions indicate—assuming no 1936 program is decided upon—another increase of 25 to 30 percent in the number of pigs farrowed in 1937 may be expected. This would mean a 1937 pig crop 50 to 70 percent larger than the 1935 crop.

A considerable increase in hog production is desirable from the stand point of both farmers and consumers, since hog numbers were too drastically reduced by the drought. But an unlimited increase in hogs is not to the interest of either producers or consumers. An undue increase in hog numbers means lower prices, smaller incomes, and less buying power for corn and hog producers. When farm incomes fall, a huge market for industrial products is lost.

Farmers do not want to experience another painful production cycle—an uncontrolled upswing in production until farm prices hit bottom again and a subsequent, distressed liquidation until prices recover. These cycles have been major hazards to the hog industry for many years.

In this connection some previous rapid upswings in the hog cycle should be recalled. After the drought of 1894 the commercial slaughter of hogs increased over 40 percent from 1896 to 1898. Again, after the low point in hog mar-

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ketings which was caused by liquidation of hog numbers during and immediately following the World War, the slaughter of hogs under Federal inspection increased nearly 40 percent from 1921 to 1923. Ten such production cycles have occurred since 1890, creating periodic market gluts and shortages and an almost continuous lack of balance between supplies and prices of corn and hogs.

Almost every factor in the present situation points to an even greater increase in hog production in the next three years from the 1935-36 level than in any previous period, that is, if farmers do not cooperate to control production.

FARMERS WILL MAKE DECISION

If the corn-hog adjustment program is to be continued, serious thought must be given now to the kind and degree of adjustment desired.

Farmers will make their choice now between:

(1) A program designed to hold corn production at a desirable level and to prevent an excessive increase in hog numbers, and

(2) Abandonment of the cooperative adjustment of both corn acreage and hog production, with the risk that the rapid increases in hog production and resulting low prices which have occurred in the past will be repeated.

Through the Production Control Associations and the Referenda which have been developed under the Agricultural Adjustment Act, farmers are now in position to speak for themselves more effectively than ever before and to obtain a higher degree of collective cooperation. In order to determine farmer opinion, meetings will be conducted in all corn- and hog-producing areas of the United States during October, at which the 1936 outlook will be discussed and an expression of opinion about the questions raised in this leaflet will be obtained.

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Whether a production-control program for corn and hogs will be continued rests with the farmers themselves, and will be determined by their votes in the corn-hog referendum to be held this month on the following question:

Do You Favor A Corn-Hog Adjustment Program To Follow The 1935 Program Which Expires November 30, 1935?

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