

**American Planning Association ° Center for Biological Diversity  
Center for Native Ecosystems ° Community Rights Counsel  
Defenders of Wildlife ° Earthjustice ° Environment America  
Environmental Working Group ° National Audubon Society  
National Wildlife Federation ° Natural Resources Defense Council  
Sierra Club ° The Wilderness Society ° World Wildlife Fund**

December 11, 2007

The Honorable Tom Harkin, Chairman  
U.S. Senate Agriculture, Nutrition & Forestry Committee

The Honorable Saxby Chambliss, Ranking Member  
U.S. Senate Agriculture, Nutrition & Forestry Committee

The Honorable Patrick Leahy, Chairman  
U.S. Senate Judiciary Committee

The Honorable Arlen Specter, Ranking Member  
U.S. Senate Judiciary Committee

**RE: Oppose Craig Farm Bill Amendment**

Dear Senators:

On behalf of our members and supporters, we strongly urge you to oppose the amendment Senator Craig (R-ID) has introduced to the Food and Energy Security Act of 2007 that would prohibit all state, local, and federal use of eminent domain to take farmland or grazing land into public ownership for the purposes of a park, recreation, open space, conservation, preservation view, scenic vista, or similar purposes. It would impose severe sanctions on any state or unit of local government that uses eminent domain for these purposes — a five-year loss of financial assistance and all federal funds appropriated through an Act of Congress or otherwise expended by the Treasury. The Craig amendment arbitrarily imposes absolute bans on certain long-standing uses of eminent domain for public use while totally excluding others, including prisons, public utilities, roads or rights of way open to the public or common carriers, pipelines, and similar uses.

Acquiring land by purchase or donation is preferable, but there are times when eminent domain is necessary and appropriate, both for the public uses that would always be banned by the Craig amendment and those that would always be allowed.

Congress and the courts have repeatedly recognized that local, state, and national parks and recreation, open space, conservation, preservation view, and scenic vistas are clearly valuable public uses that justify eminent domain. For example, the Congressional Research Service's Annotated Constitution [cites laws and cases](#) upholding eminent domain, including an 1896 Supreme Court

decision confirming the right to condemn in order to "promote the general welfare" by preserving an historic site (the Gettysburg Battlefield) for public use and protection.

"E.g., *Shoemaker v. United States*, 147 U.S. 282 (1893) (establishment of public park in District of Columbia); *Rindge Co. v. Los Angeles County*, 262 U.S. 700 (1923) (scenic highway); *Brown v. United States*, 263 U.S. 78 (1923) (condemnation of property near town flooded by establishment of reservoir in order to locate a new townsite, even though there might be some surplus lots to be sold); *United States v. Gettysburg Electric Ry.*, 160 U.S. 668 (1896), and *Roe v. Kansas ex rel. Smith*, 278 U.S. 191 (1929) (historic sites). When time is deemed to be of the essence, Congress takes land directly by statute, authorizing procedures by which owners of appropriated land may obtain just compensation. See, e.g., Pub. L. No. 90-545, Sec. 3, 82 Stat. 931 (1968), 16 U.S.C. Sec. 79 (c) (taking land for creation of Redwood National Park); Pub. L. No. 93-444, 88 Stat. 1304 (1974) (taking lands for addition to Piscataway Park, Maryland); Pub. L. No. 100-647, Sec. 10002 (1988) (taking lands for addition to Manassas National Battlefield Park)."

The Craig amendment would be a draconian infringement on federalism by the federal government into the traditional rights of state and local governments. It would even ban uses of eminent domain to clear title when no one objects.

The Craig amendment would devastate the ability of states, localities, and the Federal governments to create and protect public parks, to provide for conservation of essential resources and recreation, and to preserve open space. Sometimes, the ability to require a property owner to sell property at a fair price is needed to deal with an unjustifiable "hold out" who seeks to stop a worthy public project, or to extort a monopolist's profits from the public.

Finally, as the Congressional Research Service [explained](#) about a different proposal, there does not:

"seem to be any proportionality requirement between the prohibited condemnations and the length and scope of the federal funds suspension. *If Congress' Spending Power* includes a proportionality requirement for conditions on federal funds, as the [Supreme] Court suggests, the absence of proportionality in some of the bill's applications may raise a constitutional issue."

For all these reasons, we urge you to oppose the Craig amendment.

Sincerely,

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cc: Senators