United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 106th CONGRESS, SECOND SESSION

Vol. 146 WASHINGTON, THURSDAY, JULY 20, 2000 No. 95

Senate

The Senate met at 9:45 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Great is the Lord, and greatly to be praised and His greatness is unsearchable. I will meditate on the glorious splendor of Your majesty.—Psalm 145: 3,5.

Let us pray:

We come humbly and gratefully to draw from Your divine intelligence what we need for today's deliberations and decisions. We thank You for the women and men of this Senate and their staffs who support their work. Help them humbly to ask for Your perspective on perplexities and then receive Your direction. Give them new vision, innovative solutions, and fresh enthusiasm. We commit this day to love and serve You with our minds. Today, when votes are counted on crucial decisions, help them neither to relish victory nor nurse discouragement in defeat but do everything to maintain the bond of unity in the midst of differences and then move forward. This we pray in the Name of the Prince of Peace who called us to be peacemakers. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MIKE CRAPO, a Senator from the State of Idaho, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. CRAPO. Today the Senate will resume debate on the Agriculture appropriations bill. The Harkin amendment regarding beef is the pending amendment, and it is expected that a vote in relation to that amendment will occur during this morning's session. Senators should also be aware that it is the intention of the bill managers to complete action on this important bill by this afternoon. Therefore, votes can be expected throughout the day.

The Senate may also begin consideration of the conference report to accompany the Department of Defense appropriations bill during this evening's session.

I thank my colleagues for their attention.

Mr. REID. Mr. President, I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. CRAPO). Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. The leadership time is reserved.

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2001

The PRESIDING OFFICER. The Senate will resume consideration of H.R. 4461, which the clerk will report.

The bill clerk read as follows:

A bill (H.R. 4461) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2001, and other purposes.

Pending:

Reid (for Harkin) amendment No. 3938, to prohibit the use of appropriated funds to label, mark, stamp, or tag as ''inspected and passed'' meat, meat products, poultry, or poultry products that do not meet microbiological performance standards established by the Secretary of Agriculture.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3938

Mr. HARKIN. Parliamentary inquiry: Before I start and the clock starts ticking on me, where are we and what time are we operating under right now?

The PRESIDING OFFICER. The pending business is the Harkin amendment No. 3938. There is no time limitation.

Mr. HARKIN. There is no time limit?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Mr. President, I am sorry; I was under the mistaken impression that there was a time limit. I stand corrected. I want to talk for a few minutes about the pending amendment.

In some conversations I had last night and earlier this morning previous to coming to the floor, I found that there may be some misconceptions about my amendment and what it seeks to do. So I would like to take the time to try to clarify it.

I did not think there would be opposition to it. It was merely to clarify a situation that has arisen in a court case in Texas. So in the next few minutes I will try, as best I can, to try to outline it and clarify exactly what this amendment is and what it intends to do.

Everyone in the food chain, from the farm on through to the table, has a vital stake in the USDA food safety and inspection system for meat and poultry products. This goes back many years. As the years have evolved, and

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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as our processes for growing, slaughtering, processing, packaging, transporting, and the selling of meat and meat products and poultry products has changed, we have changed the way we do things.

As Secretary Glickman once I think so adroitly explained, the days of poke and sniff have to be over. We need new inspection standards because of the rapidity of the lines, the tremendous increase in the production of meat and meat products, which are good sources of protein for our people and for export. We need the change. So that is what we have done.

But the linchpin in all of this is consumer confidence. Our food safety system must adequately protect consumers. It must assure consumers that their food is safe. If consumers lack confidence in the safety of meat and poultry products, they will not be good customers. That means less demand and lower prices and income for livestock and poultry producers, as well as for our packers and processors.

On May 25, a huge cloud of uncertainty was cast over USDA's meat and poultry inspection system when the Federal district court for the Northern District of Texas held that USDA does not have the statutory authority to enforce its pathogen reduction standards for salmonella in ground beef.

The pathogen reduction standards are a critical part of the new food safety system which was adopted by the USDA in 1996 in the hazard analysis critical control point and pathogen reduction rule. It is otherwise known by its acronym HACCP, something that many of us in the Senate and the House have worked on for many years to bring about.

That system was designed to protect human health by reducing the levels of bacteria contamination in meat and poultry products. I might add that the HACCP rule was broadly supported by consumer groups, by packers, by processors, by the meat and poultry industry, as being a step in the right direction from the kind of inspection procedures that we had before.

The HACCP and the pathogen reduction rule established a modern inspection system based on two fundamental principles.

First, the meat and poultry industry has the primary responsibility and the flexibility to design plans for producing safe products and then to follow those food safety plans. So the industry has the primary responsibility. And they should have the flexibility to design plans for producing safe products and then to follow those plans. That is the first principle.

The second principle is that the public health is best served by reducing the level of pathogens on meat and poultry products nationwide—a very commonsense principle. To accomplish this, USDA developed pathogen reduction standards using salmonella as the indicator bacteria. These standards set targets that plants have to meet for reducing microbial pathogen levels. If a plant repeatedly fails to meet salmonella targets, USDA may refuse to inspect the plant's products, thereby effectively shutting the plant down until the plant implements a corrective action plan to meet the pathogen reduction standard.

What happened was the district court in Texas held that USDA does not have the statutory authority to enforce its food safety standards designed to reduce pathogen levels in ground beef.

The court stated, in its June 13 final judgment, that the salmonella reduction standard ''is hereby declared to be outside the statutory authority of the United States Secretary of Agriculture and the United States Department of Agriculture to the extent that it allows the Secretary and/or USDA to withdraw or suspend inspection services or withhold the mark of inspection on the basis of an alleged failure to comply with the Salmonella performance standard for ground beef. . . .''

That is the quote from the finding of the district court.

Keep in mind, if USDA cannot withdraw or suspend inspection, it is powerless to enforce the pathogen reduction standards. Refusing inspection is USDA's only enforcement tool. Again, the Texas decision was based on an interpretation of USDA's statutory authority to enforce the salmonella reduction standard.

I am aware there has been a lot of discussion about the legitimacy of the salmonella standard. Is it science based? Does it rationally relate to food safety? Those are legitimate questions to raise. But the court did not even get to those questions. It just ruled that the USDA did not have the statutory authority to enforce its standard designed to reduce pathogenic bacteria.

I believe the American public would be shocked to be told that the U.S. Department of Agriculture does not have the authority, under our meat and poultry inspection laws, to require reductions in microbial contamination of meat and poultry.

If USDA lacks the authority to enforce pathogen reduction standards, then, surely, we stand at the edge of a food safety debacle, a chasm. I am going to repeat that. The American public would be shocked to find the USDA does not have the authority, under our existing meat and poultry inspection laws, to require reductions in microbial contamination of meat and poultry. Think about that.

Frankly, I have my doubts about the reasoning of the court in the Texas case. But the court has held that the USDA lacks this authority to enforce the pathogen reduction standards.

That decision has created an intolerable degree of uncertainty about USDA's authority to ensure the safety of meat and poultry products, not only in Texas but anywhere in the entire United States.

Plainly and simply, all my pending amendment does is to clarify that the USDA has the legal statutory authority to require reductions in pathogenic bacteria in meat and poultry products.

Let me explain why it is so critically important that we clarify this and that USDA has that authority. I have some charts to show that. This chart has some very sobering statistics.

In the United States, according to the Centers for Disease Control and Prevention, foodborne pathogens are responsible for 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths every year.

That is an estimate by the Centers for Disease Control and Prevention.

The economic impact of foodborne illness for the United States is estimated to be $6.6 to $37.1 billion per year. Just to clarify, these statistics include all foods—not just meat and poultry but all foods. Meat and poultry are certainly a substantial portion of the cases; I don't want to mislead anyone. This covers lettuce, tomatoes, fruits, vegetables, and everything else. Again, these are not just illnesses, hospitalizations, and deaths that result simply from the failure to reduce pathogens in the processing and packaging stream. This could come about from mishandling of food at the consumer level, at the purchasing level, storage, miscooking, and inapplicable storage of partially cooked food.

I want to illustrate the dimensions of foodborne pathogens in our country. Again, I am not condemning the meat and poultry industry. I am not trying to frighten consumers. Yet there is no denying that we have much more foodborne illness than we should. Consumers are paying attention. Consumers are concerned about the safety of their food. Again, I come back to the matter of consumer confidence. What industry can build markets if it fails to build confidence in its customers? If you support the meat and poultry industries, as I do, then you also have to support a food safety and inspection system that effectively assures the safety and quality of meat and poultry products.

The second chart shows some of the progress we have made since we established the new pathogen reduction standards which the USDA has been implementing. Salmonella levels on meat and poultry products have fallen. Salmonella rates in ground beef have dropped 43 percent for some of our small plants, 23 percent for large plants. In fact, in the entire United States, only three plants have failed to meet the standard. I think this is strong evidence that the standard works and that it is reasonable. Yet the court in Texas says USDA does not have the legal authority to do what it has been doing to reach these dropping rates in salmonella levels. It says USDA does not have the authority to continue to do that.

The next chart indicates the success of the USDA new food safety system for meat and poultry. This chart shows the rate of foodborne illnesses has fallen from 51.2 per 100,000 people in 1996,

when the HACCP rule was implemented, to 40.7 per 100,000 people in 1999. That is a 20.5-percent decrease in total foodborne illnesses in the last 4 to 5 years. That is a major success story in food safety. But now the Texas court's decision has rejected USDA's authority to reduce pathogens on meat and poultry products which led us to this tremendous reduction.

The salmonella standard is not perfect, from what I am told by scientists and others. That is why I have carefully crafted my amendment so it does not codify or lock into place the existing salmonella standard. My amendment would do nothing to prevent changing, improving, or even challenging a pathogen reduction standard. I want to continue to work with producers, the meat and poultry industries, consumers, and the USDA to see that we have science-based, workable performance standards that protect the public health. Again, what my amendment does, and all it does, is to make certain that USDA has the legal, statutory authority to enforce pathogen reduction standards that are critically important to assuring food safety.

I am willing to engage in any colloquies about this amendment. Keep in mind, this court decision was only 2 months ago. Quite frankly, if we don't act soon, I think there is going to be great concern among consumers, customers in the export markets, about our commitment to reducing pathogens, reducing bacteria in our meat, livestock, and poultry products.

We are not trying to lock in a standard. As I said in my opening statement, times change, conditions change. We have to be able to do that. But the authority to do that, as it has been going back probably almost 70 years—80 years almost—the authority for meat and poultry inspection has been with the U.S. Department of Agriculture. To be sure, during most of that time, they were not involved in the reduction of pathogens and bacteria. But with the new changes in how we do inspections, with HACCP, we decided, and the processors and the consumers decided, that we needed to do everything possible to reduce bacteria contamination on our meat and poultry products.

As I said, we have done a great job in that. We have reduced it. We are on our way. Most of the plants in America have met these requirements. They have used HACCP. They have been responsible. Only three plants in the entire United States failed to meet the standard. I think if the court had gotten beyond the statutory problem and gotten to the essence, the substance of it, the court, on the weight of the evidence, would have had to decide that the reduction standard is reasonable. Obviously, if all the plants in the country are doing it and only three have not met it, a reasonable person—and I believe the court is reasonable—would say, obviously, it has to be a pretty decent standard. But the court didn't even get there. They just said, sorry, you don't have the authority, which really has opened up a chasm.

That is why it is so critically important for us to address this issue this year. The only vehicle we have that I can see right now is to do it on the Agriculture appropriations bill, which is a good bill and which I hope will make its way through and be signed by the President. I think it is critically important to give them that authority. That is all my amendment does right now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, this amendment, on its face, looks as though the Senate is being asked to vote in favor of supporting the Department of Agriculture's standards for meat inspection that include the power to shut down a plant if it is found that the product being produced contains a contaminant. In the case in Dallas, TX, the Senator cites, it was salmonella.

The plant operated by Supreme Beef in that area was shut down by the Department of Agriculture and, according to testimony in the case in Texas, it was shut down solely on the basis of the fact that the product being produced contained a prohibitive level of salmonella, or some salmonella.

What the court said was that the Department of Agriculture wasn't given that kind of power by the Congress to impose regulations of that kind, and that to shut down a plant there had to be some connection between the operation of the plant and the presence of the salmonella in the product. In other words, if the plant was totally sanitary, obeyed every rule of law or regulation of the Department of Agriculture for safe and sanitary operation, just because of the test, the Department was without the power under the law to shut down the plant.

This amendment—if we adopt it—as suggested by the Senator from Iowa, would impose a new legal authority that is not now present, which would give the Department of Agriculture more power than it has, more power than it has asked for, and, I suggest, more power than we ought to give on an appropriations bill, without more careful review; that is, the power to arbitrarily shut down a plant, whether it is being operated correctly and in a sanitary manner, with all due regard for the product that is being produced, the safety of that product for human consumption.

Because of this court case that puts in question the Department's authority that it exercised in this one case, we are being asked now to say that these standards, which are regulations in effect, ought to be codified; they ought to be put in the form of a law.

Now, that is a step that we, in my view, ought not to take—not on this bill, not as an amendment to an appropriations bill, not on the basis of one district's court's finding in the State of Texas, which doesn't have application and is not being honored by the Department's regulators anywhere else in the United States except in that Federal court jurisdiction.

The Department of Agriculture has not asked for this amendment. I am advised that the Department of Agriculture doesn't support this amendment. The Department of Agriculture has not yet decided whether to appeal this decision of the district court. It may decide to modify its regulations because of this district court decision. So we would be acting prematurely and, in response to the suggestion in this amendment, we would be exceeding even the decision being made now in the Department of Agriculture, or the Department of Justice, which has to prosecute the appeal. So the Department of Justice hasn't decided, I am told, whether to appeal this decision to the court of appeals. The Department hasn't decided that yet. Yet we are being asked to reverse, in effect, by legislation, the decision of that district court.

We are not an appellate court. I suggest that the Senate should not act today favorably on this amendment as if we are reviewing the legal intricacies involved in this case and are making some careful, thoughtful determination about whether or not that case ought to stand or whether it ought to be reversed. I am going to suggest to the Senate that what we ought to do is look at the implications through hearings in the Agriculture Committee or in the committee that has jurisdiction over other food safety concerns. Our Appropriations Subcommittee could conduct hearings—and that might be the appropriate thing to do—and hear from the Department of Agriculture and hear from others who have views on this subject. And then we could make a recommendation to the Senate.

But this is a brand new decision, as the Senator said; it was made, I think, in May. It is a recent decision. We ought to let the legal process work its way to a conclusion with the Department of Agriculture, the Department of Justice, and the packing company involved in this case. They must have had some persuasive evidence to present to the court as to why the Department of Agriculture acted arbitrarily and improperly, or without the sanction of law, to shut down this plant as they did. And here we are going to substitute our judgment collectively for the judgment of the district court judge who heard all the evidence, who saw the witnesses, including Department of Agriculture officials who described what they did and why they did it.

The Senate needs to know that there is a committee that is available to the Department of Agriculture that is called the Advisory Committee on Microbiological Criteria. The Department of Agriculture and the Secretary look to this committee normally for advice and consult on issues of this kind. No consultation, as I understand

it, has taken place with this special committee of experts who are brought together for the purpose of providing scientifically based opinions to the Secretary of Agriculture on the question of adulteration and sanitation issues of meat and poultry packing and processing plants.

So let's not pretend that we know as much as this advisory committee. Let's not pretend that we have a better reason for making a decision in this case than the district court did, which found just the opposite of what the Senator is asking this Senate to find. So I am suggesting that this is premature. It is inappropriate for us to legislate in this fashion on an appropriations bill, without the benefit of facts and expert opinions and views on the subject.

So it is my intention, without cutting off anyone's right to speak, to move to table the Senator's amendment and to ask for the yeas and nays on that vote. But I do not want to make that motion right now without notice to my friend and colleague from Iowa or any other Senator who wants to be heard. We had told all Senators they could expect a vote on an amendment on this bill at or about 10:30. I hope we can keep that commitment to the Senate.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I appreciate the chairman not moving to table right now. I listened as closely as I could, while conversing with my staff, to the comments made by my friend. I hope we can engage in a colloquy on this. We are talking past each other.

Obviously, the chairman had to leave the floor, but I hope we can engage in a colloquy on this because this is a very serious matter. I don't want there to be misperceptions out there.

The Senator from Mississippi just got through saying, more than once, that what we are being asked to do is codify a regulation. I would like the Senator from Mississippi to show where in my amendment it codifies a regulation. It is not there. I challenge my friend from Mississippi to show that. It is not there. I said explicitly in my statement that my amendment does not codify any regulation. It is not there. So if the Senator from Mississippi says that my amendment codifies a regulation, I challenge him to show where and how. I think that is a misperception.

Secondly, again, let's be clear on what we are talking about here. Is it reasonable, I ask, for the U.S. Department of Agriculture, which has the statutory power to inspect meat and poultry products, which it has for many years, is it reasonable for the USDA to also inspect and set some standards for the reductions of packaging bacteria that is on our meat and poultry products?

If the answer to that is no, it is not reasonable, then I guess you could vote to table my amendment because that is where we will be. We will be at a point where what we would be saying is that the U.S. Department of Agriculture should not have any authority to establish pathogen reduction standards nor any authority to enforce them. I suppose they could test them. But they could never enforce them. I think that is what we have to ask ourselves: Is it reasonable for the U.S. Department of Agriculture to set pathogen reduction standards and then to be able to enforce them?

I said in my opening statement, and I say again to my friend from Mississippi, my amendment does not codify any regulation. Yet, if I am not mistaken, I heard my friend from Mississippi state in his comments that we are being asked to codify a regulation. I carefully drafted the amendment not to do that.

If the Senator from Mississippi can show how we codify our regulation, we would be glad to change the amendment. It is not there. That is a misperception. All this amendment says is that the USDA has the statutory authority to both set a pathogen reduction standard and then to enforce it. That does not mean a packer or a processor couldn't challenge those standards as being unreasonable or not applicable. That still can be challenged. Any rule or regulation can be challenged in court.

Let's take the Supreme Beef case, I say to my friend from Mississippi, where the Supreme Beef packing plant had failed the salmonella standard reduction three times. They had failed it three times before the USDA stepped in and withdrew its inspection, thereby basically shutting the plant down.

Again, keep in mind that the plant did not go to court to challenge the standard. They went to court and said USDA doesn't have the statutory authority to set the standard or to enforce it. The court found that USDA did not have that statutory authority. Here is a plant that failed three times to meet the salmonella reduction standard. They had been warned. They knew it.

Keep in mind that a lot of this ground beef from Supreme Beef goes into our School Lunch Program. Go out and tell the parents of America they can send their kids to school and they can eat ground beef in school but we are not going to enforce any bacteria reduction standards such as salmonella in our packing plants. Supreme Beef failed it three times. Now they can fail it four or five times. They will have no standards whatsoever—none, zero, zip—because the USDA will not be able to enforce its salmonella reduction standards.

I think what Supreme Beef should have done was challenge, if they wanted to, the reasonableness of that standard. They could go to court and get a stay to keep operating and then show the court that the standard that was imposed on them by USDA and by which USDA is shutting down their plant by refusing inspection is unreasonable, unwarranted, and inapplicable. Fair enough; let them do that. But they cannot even get there because they said USDA doesn't have the authority to do it.

That is where we are. If we take no action, that is where we are. Supreme Beef can go ahead and keep right on operating. They don't have to worry about any salmonella reduction. They can keep pumping that food right into the School Lunch Program.

The chairman indicated that there is a USDA scientific advisory committee that may review this standard this fall. I welcome that. Nothing in my amendment would prevent changes based on those recommendations. Nothing in this amendment would do that.

Again, one has to ask oneself, should the USDA have the authority under the HACCP program to issue pathogen reduction standards and then to be able to enforce those?

Again, I go back to my chart. Since the pathogen reduction standard for salmonella went into effect in 1996—it is so prevalent and makes people pretty sick—rates in ground beef dropped 43 percent in our smaller packing plants and 23 percent in our larger plants.

That is success. That is why plants all over America have not challenged this in court. They seem to be doing quite well with it. Only three plants in the entire United States have failed to meet this standard—three—Supreme Beef, of course, being one of them.

As I said, since the HACCP rule was implemented in 1996, 51.2 foodborne illnesses per 100,000 people went down to 40.7. It is working. Yet because of one plant in Texas that decided to thumb its nose at the salmonella reduction standard—obviously, they had a good attorney—they went to court and said USDA does not have the authority either to set the standard or to enforce it. The court said: You are right, they don't, because Congress never gave them that authority.

I want to clear up one other thing. I am told the USDA is not opposed to this amendment. They are not taking a position because of pending litigation because they are in the courts right now because of this pending litigation.

The USDA has a charge to ensure lower bacteria counts. Again, it is not the power to arbitrarily shut down a plant because of the appropriateness of a specific USDA standard. The standard is still subject to review by a court. I want to make that as clear as I can.

No. 1, I challenge my friend from Mississippi to show me how my amendment codifies the regulation. I challenge my friend to show that. He has said that. I have carefully drafted it so that it does not codify any regulation. The regulations can change. The advisory committee can meet. Maybe they want to change these standards—I am speaking here regarding this amendment—but I don't know why they would want to change a standard that has been so successful, by which every

packing plant in America today is abiding, except three, one of them being Supreme Beef that brought this case.

It is not that technical. All we are doing is asking, through this amendment, to give USDA the authority to set the standard and enforce it—not what standard. This amendment does not give the USDA the authority to set a standard that I specify and to enforce that standard. It says to set pathogen reduction standards and to enforce them. Obviously, if they set a standard that is unreasonable, inappropriate, and inapplicable, that can be challenged in court. They can be challenged in the rulemaking process. That is the way it is done.

But if we continue as we are right now, there is no reason for any plant in America to abide by these salmonella reduction standards because USDA has no authority to enforce them. They could go into a plant and say: Gee, you know, you are right above salmonella; that is above our standard. The plant can say: So what. Get out of here. We don't have. I don't think that is what the American people want or the American consumers want. I don't believe it is what the vast majority of packers and processors in America want. They want the public to have the highest level of confidence that their meat and poultry and meat products and poultry products are wholesome and without bacterial contamination.

It is too bad because of one bad actor—one plant in Texas that failed three times to meet the standard, and on the fourth time, after having clear warnings, the USDA came in and withdrew the inspection, which effectively shuts down the plant—we have to throw the whole system out and say the USDA does not have the authority. That can open the floodgates for plants all over America.

I say to my friend from Mississippi, there is no codification of any regulation, none whatever. It is only giving the USDA the authority under which it has been operating for 4 years, which has been successful. Only three plants in America have failed to meet standards. I think that is a good success story. I don't think we ought to not give the authority to the USDA to continue on this pathway simply because of one bad actor in Texas and because of the fact that we failed in our statutory deliberations and in our statutory approach to give the USDA this authority. I am not pointing the finger at anybody.

We should have at some point statutorily given the USDA this authority. We did not do so. That is what this amendment seeks to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi

Mr. COCHRAN. I move to table the Harkin amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to a motion to table amendment No. 3938. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kentucky (Mr. BUNNING) is necessarily absent.

The PRESIDING OFFICER (Mr. ALLARD). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 218 Leg.]

YEAS—49

Allard	Grams	Nickles
Ashcroft	Gregg	Roberts
Bennett	Hagel	Roth
Bond	Hatch	Santorum
Brownback	Helms	Sessions
Campbell	Hutchinson	Shelby
Chafee, L.	Hutchison	Smith (NH)
Cochran	Inhofe	Smith (OR)
Collins	Jeffords	Snowe
Craig	Kerrey	Stevens
Crapo	Kyl	Thomas
DeWine	Lincoln	Thompson
Domenici	Lott	Thurmond
Enzi	Mack	Voinovich
Frist	McCain	Warner
Gorton	McConnell	
Gramm	Murkowski	

NAYS—49

Abraham	Edwards	Lieberman
Akaka	Feingold	Lugar
Baucus	Feinstein	Mikulski
Bayh	Fitzgerald	Moynihan
Biden	Graham	Murray
Bingaman	Grassley	Reed
Boxer	Harkin	Reid
Breaux	Hollings	Robb
Bryan	Inouye	Rockefeller
Burns	Johnson	Sarbanes
Byrd	Kennedy	Schumer
Cleland	Kerry	Specter
Conrad	Kohl	Torricelli
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Dorgan	Leahy	
Durbin	Levin	

NOT VOTING—1

Bunning

The motion was rejected.

Mr. COCHRAN. I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the amendment?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

AMENDMENT NO. 3995 TO AMENDMENT NO. 3938

Mr. COCHRAN. Mr. President, I send an amendment to the amendment to the desk and ask it be reported.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN] proposes an amendment numbered 3955 to amendment No. 3938.

On page 2 of the amendment: Strike ''established by the Secretary'' and insert in lieu thereof: ''promulgated with the advice of the National Advisory Committee on Microbiological Criteria for Foods and that are shown to be adulterated''.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, this amendment states that the microbiological standards imposed by the Secretary of Agriculture, in situations involving those described by the amendment of the Senator from Iowa, must be imposed pursuant to the Administrative Procedures Act and be subject to notice and comment procedures under that act.

It additionally requires the Secretary, in instances involving contamination of meat and poultry products that are subject to inspection and plant inspection by the Secretary, to seek the advice of the National Advisory Committee on Microbiological Criteria for Foods. This is a panel of scientists, with members appointed by the Secretary of Agriculture. The purpose of the panel is to provide advice and counsel on matters of this kind from experts to the Secretary of Agriculture.

We understand that this panel has not had an opportunity to make recommendations or observations about the standards that are the subject of these USDA regulations that were litigated in this court case because the Department of Agriculture decides when they meet, and it is my understanding that the next meeting is scheduled for the fall. There has not been a special meeting called. And the issue has not been placed on the agenda.

If my amendment is adopted, the Senate would suggest to the Secretary that this issue ought to be presented to this panel of expert witnesses and the advice of that panel sought in this situation.

The Department of Agriculture has indicated that it does not support the Harkin amendment. The Senator said that it has decided to take no position on the amendment because it involves a case that is subject to judicial proceedings at this time.

To remind Senators, this is a court case the Senator is asking be reversed by the Senate. The time for appeal has not yet expired. The Department has not decided whether to appeal. The Department of Justice has not made a recommendation, as I understand it, whether it thinks an appeal should be prosecuted or not. They may decide this court was right and then come to the Congress to ask for additional authority, and the Congress may very well decide to give the Department additional authority.

But the adoption of this amendment, without suggesting the Department needs to consult first on modifying its standards with an expert panel, that was created for the purpose of providing information, would be premature also.

So we hope the Senate will adopt this modification to the Harkin amendment. The vote on the motion to table was a tie vote, and therefore the motion failed. We could let the Senate vote on the amendment of the Senator from Iowa without any further amendment.

And if there is another tie vote, the amendment would fall.

But in order to try to resolve the issue, for the moment, my suggestion is that the Senate should adopt this amendment, putting in the extra provision of consultation with the National Advisory Committee on Microbiological Criteria for Foods, and suggest that, if this standard is given the force and effect of law, there must be some connection between the contaminated product and unsanitary conditions or the way in which the processing plant was being operated in order to justify the Department withdrawing its inspectors and therefore closing the plant.

We want to continue to ensure—and this ought to be clear—that our Nation's food supply is safe; that it is processed in the most sanitary conditions possible; that it is inspected to ensure that the food is safe for human consumption, all of that will continue to be reflected in the adoption of this amendment.

What we add is that scientific advice and counsel be sought by the Department of Agriculture on this subject with respect to this standard that has been thrown out by a court. If it can be modified to ensure that we continue to see the force and effect of the standards enforced by the courts, then that is what we would like to see happen. We would like it to be done in a process that gives respect for the power of a court and the judicial process that is in place but also the prerogatives of the Congress. The Congress has not empowered the Department of Agriculture to issue a standard of the kind the court said it could not enforce. That is a point to remember, too. The adoption of the Harkin amendment would give that power legislatively, give that power to the Secretary of Agriculture without a careful review of the implications of that new power by the Congress.

I am hopeful that this will resolve the issue for the time being, for today. The legislative committee has a right to look at it, to have hearings, to propose changes in the authorities the Department has in situations such as this. That would be the appropriate way to resolve the issue for the long term. But for today, I am hopeful the Senate will agree to this amendment, maybe on a voice vote, and then we can adopt the amendment of the Senator on a voice vote and proceed to other issues.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection it is so ordered.

REMEMBERING SENATOR PAUL COVERDELL

Mr. VOINOVICH. Mr. President, I rise today to pay tribute to Paul Coverdell, our friend and colleague. Paul was an extraordinary human being who really cared. He looked at his opportunity to serve in the Senate as a way to make a difference in the lives of his fellow man.

I will never forget Paul Coverdell. He was one of the first people who reached out to me when I first came to this body, greeting me with a warm welcome and caring advice. Although he was in leadership and had many demands on his time, he always had time for me and truly listened to what I had to say. He had common sense and a common touch. I have truly enjoyed working with him on several legislative initiatives, particularly education and the Ed-Flex bill we passed last year.

Paul had a wonderful knack for being able to work with people and to get things done. He led by example. He understood that to be a leader one had to serve. There was no job so small that he would not take it. His commitment and ability always made you want to be on his team. His enthusiasm was contagious. He made you feel good just being around him.

My regret is that because of my short tenure in the Senate, I did not get to know Paul or spend as much time with him as many of my colleagues.

He gave witness to his Christian faith every day. He will continue to be my role model in the Senate. Paul Coverdell will be missed by all of us, but my faith tells me that he is eternally happy with our Father in Heaven. I pray that thought will give comfort to his wife Nancy and the members of his family.

Mr. LEAHY. Mr. President, as have so many of my colleagues, I speak with a sense of loss and sadness about the passing of our friend, Paul Coverdell. Over the years serving in the Senate, I have seen too often the flowers on a Senator's desk and known, by that unique tradition of our body, the reflection that we have lost somebody in an untimely fashion—no one more untimely than the Senator from Georgia.

I have had the honor to serve with many Senators during the time the people of Vermont have been kind enough to let me be here. Each of these Senators has brought special qualities. It might be a knack for fiery oration or professorial intelligence. But Paul Coverdell brought a special formula of kindness and quiet persistence.

I first knew Paul when he was director of the Peace Corps. I was chairman of the Foreign Operations Subcommittee which handled his budget. I recall times when there would be an issue that would come up of some contention. I remember President Bush calling and saying: Pat, sit down with Paul. I assure you you can work it out.

We would sit quietly in my office. We would go over the issues, and we would work it out. We would work it out because I knew that Paul Coverdell would keep his word; he knew I would mine. I also knew that neither of us would read about the intricacies of our agreements in the paper the next day. We would keep each other's confidence.

When he came to the Senate, he was first and foremost a tireless champion for the interests of the people of Georgia. We all remember his relentless advocacy for some of the military bases in his home State and how proud he was to represent the State that hosted the Olympic games in 1996. In that regard he entered the sometimes messy realm of appropriations to bring full Federal support to that gigantic effort.

In many ways, these efforts were an embodiment of the people of Georgia, possessing a boundless energy, ambition, and generosity.

What I remember most, though, about Paul Coverdell—and so many of our colleagues have said the same thing—is how he worked on everything with a paradoxically quiet energy. He was not one to seek the cameras and head to the floor to yell about every disagreement. If he had a disagreement, he would call you. He would go and work with you face to face. He was often convincing. I know he changed my mind on issues.

I think one of the reasons he was so convincing is that he was always open-minded and attentive. I don't think there is any case more obvious about that than the Senate's recent consideration of the supplemental appropriation for antidrug assistance in Colombia.

There were many disagreements on this aid package. But everybody, whether they were on his side or on the opposite side, admired the strength of his conviction and the depth of the knowledge of the region.

I was privileged to work closely with him on a resolution on a recent presidential election in Peru. Senator Coverdell and I believed strongly that it was important for the United States to send a strong message throughout the hemisphere in support of democracy and to condemn the blatant subversion of democracy by the Fujimori government. Again, it was the strength of Paul's convictions and willingness to stand for the most important principles this country stands for. That is why the resolution was there.

Our mutual concern for international human rights extended to the effort to establish a global ban of antipersonnel landmines. I was so pleased to work with Paul on this issue. He would always consider my proposals thoughtfully and thoroughly. He brought a very special perspective. For him, banning landmines was about protecting Peace Corps volunteers and the communities they served. He had this unique way of looking at an issue that went way beyond warring parties. He was concerned about innocent civilians.

Paul took part in these debates and he worked behind the scenes with a