

Mr. BOEHNER. I can tell.

Mr. HOYER. And how I stand here in anticipation of that fact. If the leader does not mind, I will hold him to that.

Mr. BOEHNER. I will do my best.

Mr. HOYER. Thank you, sir.

On the supplemental appropriation, we know that the President has made a request. Can you tell us when the supplemental appropriation might be considered?

Mr. BOEHNER. In discussions with Chairman LEWIS of the Appropriations Committee, there is a lot of work being done, hearings scheduled. Again, I do not think we have a firm timetable for moving the supplemental, but over the next week or so I think we will have a much better idea. And I will be glad to inform you as soon as I know.

Mr. HOYER. I see there is not a representation, however, that I will be the first to know on this one.

Mr. BOEHNER. I am protecting myself.

Mr. HOYER. I appreciate that.

Last, these are all important and while we are being humorous to some degree about when we know about these, clearly we have a lot of important business to do, and we are now going into the third month of the year. Can you tell us what your expectations are on the tax reconciliation conference report? Obviously, that was a very contentious bill as it passed out of the House as you know, Mr. Leader; and we would like to be prepared for that bill when it comes back, when the conference committee comes back to the House.

Mr. BOEHNER. The tax reconciliation bill is in conference. I know there have been some discussions. From my standpoint, I would rather have that conference report sooner rather than later. But I have not had any indication from Chairman THOMAS that it is imminent; and secondly, it is important for the House to go to conference with the Senate on the pension bill. We are approaching a very critical deadline on the interest rate used to calculate the obligations of a defined benefit pension plan that expired at the end of the year. That interest rate needs to be reset in the large pension overhaul bill. I have got to tell you that we are waiting on Senate action. Because there are tax provisions in it, they have to take up the House bill. I suspect they will reject the House bill and go to conference. But it is important for us to get into conference on the pension bill and action is going to be required rather quickly. I do expect the tax reconciliation bill, over the next couple of weeks, I would hope that they will be finished.

Mr. HOYER. I appreciate the leader's information.

Again, in closing, I would ask the leader if he would use his good offices on the food bill because there is substantial controversy around the country, as well as on the House floor, on that bill to provide for as full a consideration and amendatory process as pos-

sible. I appreciate the leader's attention to that.

GENERAL LEAVE

Mr. DEAL of Georgia. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4167.

The SPEAKER pro tempore (Mr. PRICE of Georgia). Is there objection to the request of the gentleman from Georgia?

There was no objection.

NATIONAL UNIFORMITY FOR FOOD ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 702 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4167.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4167) to amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes, with Mr. BOOZMAN in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Georgia (Mr. DEAL) and the gentleman from California (Mr. WAXMAN) each will control 30 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. DEAL of Georgia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in support of H.R. 4167, the National Uniformity for Food Act. The manufacturing and distribution of the things we eat and drink is now a national industry. Coca-Cola, which is based in my home State in Atlanta, Georgia, for instance, is shipped to every corner of the country and throughout the world. Many believe that it is just common sense for these types of food manufacturers and distributors to have one labeling standard for the country, not 50 standards for 50 States.

More importantly, in order to make informed choices, consumers need consistent information. When a food warning is supported by science and consumers need to know it, the same warning should be applied to food everywhere. H.R. 4167 achieves that result.

With a mobile society, inconsistent warning requirements are guaranteed to confuse. When it is a matter of health and safety, a little confusion can have catastrophic effects.

A person in North Augusta, South Carolina, for example, can walk into a store and buy a product with no warning label. The same person could walk across the street to a store in Augusta, Georgia, and buy the same product but have a warning label attached. Does this make any sense? Of course not. It does not make any more sense to the shopper than it makes here in the House today.

When people need to be warned that a food product may hurt them, everyone needs to be warned. Uniformity in food regulation and labeling is not without precedent. Meat and poultry are regulated under uniform standards. The Nutrition Labeling and Education Act of 1990 requires uniform nutrition labeling. If consistency in nutrition labeling is warranted, consumers should certainly have the benefit of consistency in warning labels of the food they eat.

Some have rightfully argued that State-specific circumstances might necessitate a warning unique only to their State. This bill acknowledges that fact by inviting States to assert their unique problems and ensure that they will get a fair and fast response from the Food and Drug Administration.

I would also like to dispel some of the misinformation that opponents of the bill have been perpetuating. In no way will this bill hinder the ability of States to respond to public emergencies. If a State feels there is an imminent public health threat that must be protected by requiring manufacturers and distributors to put a warning label on their product, they can do it immediately. All this bill requires is they tell the FDA of the threat. That is something they should be doing anyway and in most cases are already doing.

Additionally, this bill does not affect a State's ability to issue its own notification to the public, to embargo a product, or to issue recalls when they deem that necessary.

Finally, this is mostly a question about food safety, but there is a broad economic aspect to it too. Making consumers deal with 50 different labeling requirements is not without cost. In effect, it divides America into 50 different markets where each of the products cost the consumer just a little more to buy.

The men who wrote our Constitution decided that letting each State wage trade wars with its neighbors was a terrible idea, so they outlawed it by putting the Federal Government in charge of interstate commerce. It is hard to see the Framers changing their minds today so that one big market for American food can revert to 50 little markets where consumers pay more and get less.

Consistent requirements will lead to consistent results for those who make our food, and consistent information will lead to consistently better and safer choice for our consumers.

I urge my colleagues to support H.R. 4167.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield for the purpose of making a unanimous consent request to the gentleman from Texas (Mr. GENE GREEN).

(Mr. GENE GREEN of Texas asked and was given permission to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Chairman, I rise in opposition to this legislation.

This is the second Congress in which this bill has been approved by the House Energy and Commerce Committee without the benefit of a hearing.

Committee approval of a bill with universal support is one thing. But this bill does not enjoy universal support and raises serious questions about States' rights and national security. Had we been given the benefit of a hearing, we could have learned more about the National Association of Attorneys General's opposition. We could have learned about the elements of the bill that led the Association of Food and Drug officials to conclude that this bill would "handcuff the first responders who deal with food safety issues every day."

Legislation that causes this degree of concern should not be pushed through committee and brought to the floor without the benefit of a hearing.

Mr. Chairman, this bill is an affront to States' rights. In each of the 50 States, State legislatures have passed food safety laws that offer residents additional food safety protections than federal law provides.

This sweeping legislation would eliminate those State laws. It does so in two ways.

First, the bill preempts all existing State-mandated food safety warnings.

Second, it eliminates all State food safety laws that are not identical to federal law.

In the name of food uniformity, this bill will actually disrupt State food safety enforcement activities and hinder States' ability to protect residents from unsafe foods.

The bill also would prevent State and local governments from warning residents about the presence of contaminants in local food.

In my State of Texas, this bill would nullify laws protecting Texans from unsafe food and color additives. It would have the same effect on nearly 200 laws in each of the 50 States. Jurisdiction for food safety activities has long resided with the States, which conduct 80 percent of all food safety inspections.

This bill also has serious implications to national security.

The National Association of State Departments of Agriculture—which opposes this bill—has highlighted the role that the current food safety system plays in national security, saying that it "forms the first line of defense against the growing threat of a terrorist attack against our nation's food supply."

According to the State Agriculture Departments, the preemption provisions of this bill "would leave a critical gap in the safety net that protects consumers."

I encourage my colleagues to protect consumers, stand up for States' rights, and ensure the security of our Nation.

Oppose this misguided bill.

Mr. WAXMAN. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, today the House takes up legislation that would overturn 200 State laws that protect our food supply. Some of them are in labeling and some actually deal with the substance of what can be in food in the State.

A year ago, the House passed legislation to try to dictate private end-of-life decisions of Terry Schiavo and her family. This intrusion of the Federal Government into personal decisions was, I think, universally condemned, and yet today the House is once again trying to usurp powers that do not belong in Washington.

Why are they doing it? Because some special interests want to overturn State laws that they never liked. The only difference is that it is the authority of State and local governments to protect against food-borne hazards that is now under assault.

In California, for example, we have candies that come in from Mexico that have lead in them. So our legislature passed a law regulating lead in candy. It is a sensible idea. Lead can cause brain damage to children. Yet the authors of this bill that is before us today, without holding any hearings, want to preempt that law.

Now, their argument is, well, we ought to have a Federal law that does the same thing. If we ought to have a Federal law to do the same thing, why has the Federal Government not done that? The Federal Government has not been involved in these areas. They have been in the area of State control.

In Maine there is a law that requires consumers to be warned about the dangers of eating smoked alewives. This is not a problem in California, but apparently it is one in Maine. Yet again it would be preempted.

I could go on and on. Wisconsin knows a lot about cheese. It has special labeling requirements for cheese. Florida has special labeling requirements for citrus. Mississippi and Louisiana have special rules for differentiating farm-bred from wild catfish, and Alaska has similar rules for salmon. Ten coastal States have special laws protecting their residents from contaminated shell fish, and all 50 States have laws ensuring the safety of milk. And all of them would be preempted.

The arrogance of the House of Representatives appears to know no bounds. The attitude seems to be that all knowledge resides in Washington and all power should as well.

This is dangerous legislation. I know the proponents are going to say to you, well, they can appeal to the Food and Drug Administration to allow them at the State level to continue with their laws. Can you imagine that? The States, the sovereign States of this country, have to go hat in hand to a Federal bureaucracy to allow them to continue laws that their people accepted, passed under their rules, the State legislature and the Governors, to protect their population?

The FDA cannot protect the food supply all by itself. The agency is un-

derfunded and overworked, and it is failing even at the core mission of protecting consumers from dangerous drugs.

You do not have to take my word for it. Just yesterday, 37 State Attorneys General, Republicans and Democrats, sent a letter to Congress opposing this radical legislation. They stated: "We write to urge you to oppose the National Uniformity For Food Act which undercuts States' rights and consumer protection." And they go on to say: "State and local governments are often the first line of defense when problems emerge. Prohibiting State and local leadership and action in this area is a serious mistake."

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We have also had opposition from the National Association of the State Departments of Agriculture and the Association of the Food and Drug Officials. These food safety experts know that passage of this legislation would create havoc and endanger families.

For years, I have heard my Republicans say, let us allow the States to do what they need to do to protect their people. I agree with them. Do not bring everything to Washington.

Madam Chairman, I reserve the balance of my time.

Mr. DEAL of Georgia. Madam Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. ROGERS) who is the sponsor of this legislation.

Mr. ROGERS of Michigan. Madam Chairman, I thank the chairman and I want to thank our 59 Democrat cosponsors. I want to thank the gentleman from New York (Mr. TOWNS) and the chairmen, Chairman BARTON and Chairman Deal, for the work that they have done on this very important piece of legislation.

I will say today that you will see great political theater, and I have the greatest respect for the gentleman from California (Mr. WAXMAN) and normally the great substantive debate that is put forth, but what we are going to see today are a lot of half-truths, or no truths at all or not even getting close to what this bill really does.

If you truly care about the health of the pregnant woman who is driving from Michigan to Florida to Illinois to meet family members all through that journey, then when she goes to that store to pick out some food, the label for her safety and the safety of her child ought to be the same. It should not be any different, the science that says that Illinois ought to label a safety provision in food; I cannot think of anything more important than the safety of our food ought to be the same.

Because you know what? Science in California or science in Alaska or science in Florida is no different. The periodic tables are the same in Michigan as they are in Florida, as they are in Maine, as they are in New York. If it rises to that level where somebody with good science and scientists who

care passionately about the safety of food and what we put in our bodies, to say we better tell people about this safety hazard, if it is good enough for one State's children, it is good enough for 50 States' children.

Matter of fact, one of the examples that my good friend mentioned about the Florida citrus example is not preemptive because it has nothing to do with food safety. You are going to hear this again and again and again today, that we are somehow doing something awful and not letting them protect their citizens. That simply is not true.

Matter of fact, if they have a standard based on good science that says, hey, we think that this food ought to have this warning label, then come to the FDA, show us the science, so we can share it with the rest of the country. Is that not the right thing to do? Do you not want to protect the children of all our 50 States? Absolutely you do.

So I will say to you, let us subside with the political theater, the half-truths, the scare tactics and say we are going to embrace what we know is the right thing to do, a single standard. It is very much a common-sense issue. You are not going to find any family in America who thinks we ought to have 50 States and 50 different organizations trying to determine what is safe in our food and what is not.

The same way we do with nutritional labeling, we went through and said the Federal Government better set some standards if we are going to have a consistency in all 50 States. It was widely supported, as this bill is bipartisanly supported.

We said, hey, we better set an organic standard so we can tell all of America that we have got one standard that rises to the ability to label it as organic. Today, we are saying food safety rises to that same level. Every American, every mother, understands it. I am sure my colleagues on the other side will as well.

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

If the Federal Government wanted one uniform standard and wanted to preempt the States from different standards, they could do it. They could do it, but what this bill would do is to preempt the States from even going forward on their own initiative to look at problems and have a standard or label in their State.

The problem has never been demonstrated that there is an issue where there are too many State differences. The problem is that the Federal Government has not been involved in this area. So if we can get the States out of it and the Federal Government out of it, then processors can just sell their food and not worry about having to meet any standard anywhere.

In California, we have a law that says you must designate if some harmful substance is in food. The consequence of that warning label means that the

food producers make sure they do not have to put a warning label on because they get rid of any toxic substance that might be in their product. That is a good result of that requirement. It would be preempted by this law.

Madam Chairman, I yield 3 minutes to the gentlewoman from California (Ms. ESHOO), my colleague and a very important member of the Energy and Commerce Committee.

Ms. ESHOO. Madam Chairman, I thank the gentleman from California (Mr. WAXMAN), my distinguished colleague, for not only his eloquence on this bill but all the work that he has done on public health issues and health in general for the people of our country.

I rise to oppose this bill, and I do because I believe it is an assault on public health and consumer protection. It is no wonder there has never been a hearing on this bill in the last 8 years.

So this is not about theater. This is not, as the gentleman who introduced the bill said a few moments ago, about theater and deception. This is a very, very serious debate, and it is a debate that should have been taking place in a public hearing, in a hearing of our committee; and it has not. I think that that in and of itself is an assault on the American people. It is disrespectful.

The bill will preempt any State or local food safety law that is not identical to a Federal law, and we do not have those Federal laws. So it will absolutely leave a void. Is the majority saying here that they are set to put into place, if this bill passes, God forbid, that they are going to place on the Federal books, 200 Federal laws in a nanosecond? I do not think so.

Under this bill, the FDA will have to approve any food safety law that is at variance with Federal policy, and according to the CBO, the bill will preempt an estimated 200 State and local laws dealing with food safety. Absolutely, preempt them, right away, 200 State and local laws.

It is going to cost the FDA \$100 million over the next 5 years to process petitions from States seeking to retain these laws. There is simply no credible public health justification for the extraordinary steps that this bill takes.

The attorney general of California has weighed in against the bill. I insert this memorandum to the California delegation as part of the RECORD at this point.

MEMORANDUM

FEBRUARY 10, 2006.

To: Honorable Members of the California Congressional Delegation

From: California Attorney General, Bill Lockyer

Re Opposition to H.R. 4167, the National Uniformity for Foods Act of 2005.

H.R. 4167, the National Uniformity for Foods Act of 2005, endangers important public health protections California law provides its citizens. As the measure moves toward a possible vote on the floor of the House of Representatives, I wanted to make sure members of the California delegation fully understand this threat, and urge you to

oppose the bill. Perhaps the proponents did not make clear the extent to which H.R. 4167 would deprive Californians of the particular benefits of Proposition 65. This landmark law was passed by 63 percent of the voters, and it has reduced Californian's exposure to toxic chemicals in food.

1. Scope of the Bill

The dramatic sweep of this bill may not have been made apparent:

It would forbid any state from requiring any form of health disclosure for a food, even where the FDA has no requirement in place for a given food, and is not even considering a requirement. This prohibition would even bar warnings posted in stores within a single state, and which therefore have no effect on interstate commerce, other states or a manufacturer's nationwide product label. (Proposed 2(b)(2).)

It apparently would bar states from limiting toxic chemicals in a food simply because the FDA has a general rule barring foods that are "injurious to health," even where the FDA has not set any exposure standard for specific toxic chemical states may want to regulate. (Proposed 2(a)(3).)

It would remove the incentive that currently exists for food companies to reduce toxic chemicals in food products to below the level that requires a warning under Proposition 65.

2. Examples of Benefits of State Regulation

There are many examples of how Proposition 65 has benefitted Californians. An excellent case in point is the recent effort by my office, the Legislature and Governor Schwarzenegger to address the issue of lead in imported Mexican candies. These candies are extremely popular with millions of Californians, especially our large Latino population. But they have garnered little attention from federal regulators in Washington, D.C. For years, FDA has set an allowable lead level in these candies of 0.5 parts per million. That standard, uniformly recognized by public health officials as too lax, allows approximately 20 times more lead in a piece of candy than Proposition 65 permits. Lead damages the developing fetus, and impairs nervous system development in young children. A 2003 article in the *New England Journal of Medicine* concluded that levels of lead previously considered safe, actually caused a significant reduction of children's IQ. Thus, what may in the past have been considered a "trace amount" posing no real risk now is known to damage health.

Despite numerous press stories showing these candies' adverse health effects on children in the local Latino population, FDA took only limited action to enforce its own alarmingly lax standard. As a result, in June 2004, my office filed an action under Proposition 65 which will force Mexican style candy manufacturers to reduce to safe levels the lead in their candies. In addition, last year the Legislature passed and the Governor signed Assembly Bill 121, which prohibits the sale of adulterated candy containing lead, imposes fines for the sale of such candy and directs the state Office of Environmental Health Hazard Assessment to set a regulatory level allowing only "naturally occurring" lead to be present in candy.

H.R. 4167 would preempt Assembly Bill 121, simply because FDA has a more lax, and largely unenforced, lead standard. Additionally, H.R. 4167 would preempt Proposition 65's warning requirement because it is a non-uniform disclosure.

The bill would preempt another important use of Proposition 65—my vigorous efforts to assure that parents and women of child-bearing age are aware of the risks to unborn babies and their small children from consuming too much fish with high levels of

mercury. This effort is largely consistent with the FDA's own policies. The FDA website warns that women who are pregnant or may become pregnant should not consume certain types of fish (such as swordfish and shark), and should limit consumption of all types of fish, because of their mercury content. California has given life to this requirement by requiring that similar information be posted in grocery stores that sell fresh fish and restaurants that serve fish. At least six other states have instituted similar public disclosure requirements concerning mercury in fish. We recently completed the evidence phase of a trial concerning warnings for canned tuna. We believe such warnings can be provided in a manner that will not conflict with FDA's advice, but will ensure the advice is seen by more consumers of fish than FDA's website. H.R. 4167 would preempt this disclosure requirement.

In addition, even well established and successful uses of Proposition 65 could no longer be enforced, unless approved by the FDA. For example:

Lead in ceramic tableware: Based on a 1991 action by then Attorney General Dan Lungren, industry agreed to substantially reduce lead that leaches from ceramic tableware into food and beverages. Manufacturers took that step because of the marketplace incentive created by the duty to post conspicuous point-of-sale warnings. While warnings initially were common, most companies have reduced lead levels to substantially below FDA requirements.

Lead in calcium supplements: In June of 1997, California reached agreement with makers of calcium supplements to reduce levels of lead contamination in their products below the level at which a warning would be required under Proposition 65. Because of the importance of encouraging women to increase their intake of calcium, this agreement was negotiated without ever providing a consumer warning. Meanwhile, FDA issued advisories concerning some sources of calcium as early as 1982, and requested additional data in 1994. But it never has taken regulatory action.

Arsenic in Bottled Water: Arsenic in bottled water has been reduced to less than 5 parts per billion under the settlement of a Proposition 65 action reached in 2000. FDA, in contrast, still applies a standard of 50 parts per billion.

Leaded crystal: Based on science showing that substantial quantities of lead leach from fully-leaded crystal (defined as 24 percent lead) into beverages, California took action to require visible warnings at the point of sale in California, as early as September of 1991. Leaded crystal—as distinguished from other types of glassware—now carries prominent warnings in California stores. Since 1991, FDA never has publicized its advisory addressing this hazard in a manner likely to be seen or read by consumers.

In other instances, quiet compliance with Proposition 65 has produced public health benefits without litigation. Lead soldered cans leach substantial amounts of lead into foods stored in the cans. As soon as Proposition 65 took effect in early 1988, our investigations found that food processors were switching to cans that do not use lead, before enforcement action was even necessary. In 1993, years after Proposition 65 took effect, FDA issued "emergency" action level. Similarly, potassium bromate is a listed carcinogen under Proposition 65. Informal surveys in 2002 of stores in California found no bread containing potassium bromate for sale. And the 2002 surveys found stores in other states sold bread containing potassium bromate. Meanwhile, FDA remains engaged in a multi-year process to encourage bakers to stop using this additive.

I recognize many have expressed concern about certain enforcement activities of Proposition 65 by private parties. That is why my office and the California Legislature have taken vigorous action to ensure that private lawsuits brought under Proposition 65 are pursued only in the public interest. In 1999, the Legislature amended the statute to require that private plaintiffs report to the Attorney General concerning their enforcement activities. In 2001, I sponsored additional legislation that requires all persons who want to bring private Proposition 65 cases seeking consumer warnings to first provide my office with appropriate scientific documentation. That statute also requires that all settlements of those cases be reviewed by my office and approved by courts in a public proceeding under specific legal standards. These actions by the state have curbed questionable lawsuits filed by private litigants, and reduced the number of settlements that are not in the public interest.

I am aware that many in the food industry have expressed great concern over the chemical acrylamide, its presence in many foods, and the potential application of Proposition 65 to those foods. The FDA has been considering this issue since 2002, and currently has no schedule for when, or whether, it will take any action concerning the matter. In the meantime, a single serving of french fries contains 80 times the amount of acrylamide EPA allows in drinking water. Accordingly, I have filed suit under Proposition 65 to require warnings for acrylamide in french fries and potato chips, so that people in California can make their own choices about their exposure to this chemical. This suit would not ban any products or require that warnings be provided in any other state. It would, however, provide Californians the health information they demanded in passing Proposition 65.

3. Petition Process

While H.R. 4167 would allow states to petition FDA for authority to impose additional requirements, it is inappropriate to require a state to seek the federal government's permission to protect the health of its citizens. Moreover, our past experience suggests the FDA would deny any such petition.

Further, the specific provisions of the petition process raise concerns. Initially, states would have six months to petition FDA for approval of existing requirements applicable to specific foods, during which time those requirements would remain in effect until disapproved by the FDA. (Proposed §403B(b).) While the bill provides for judicial review of FDA's decision, it does not establish the standard by which any denial of a petition would be judged. The lack of a review standard would leave FDA potentially limited discretion to arbitrarily strike down state requirements. (Proposed §403B(b)(3)(C)(ii)(I).)

Any general requirement such as Proposition 65 itself—and any new requirement, could be adopted only after approval by FDA. The FDA could delay that process indefinitely through extension of the "public comment period." (Proposed New §403B(c)(1), (3)(B).) Thus, it appears that any time a state official sought to apply an existing law to a food product where no specific requirement for that food had been set, enforcement of the law would be barred until and unless the FDA granted its permission.

Indeed, H.R. 4167's petitioning scheme brings to mind one of the grievances against distant British authority recorded in the Declaration of Independence. "He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them." (Declaration of Independence, 4th paragraph.)

4. Need for National Uniformity

In a few instances, legitimate reasons exist for national uniformity in food labeling and standards. These circumstances, however, already are addressed under current federal law, which also prohibits states from adopting requirements that conflict with properly adopted and necessary federal labeling requirements.

Existing section 403A of the Federal Food, Drug, and Cosmetic Act expressly precludes state laws mandating label requirements for a wide variety of matters on which the FDA has acted and uniformity is necessary. This preemption covers standards of identity, use of the term "imitation," identification of the weight of the product and its manufacturer, the presence of food allergens, and whether the product is pasteurized.

Other federal regulatory statutes that govern nationwide industries, such as the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), adopt a much more limited approach. FIFRA, for example, preempts only state warning requirements that would appear on the nationwide label of the product. It also allows each state to adopt more restrictive requirements for use of pesticides within that state.

Even where Congress has not expressly preempted state law, courts uniformly have held that state law must give way to federal requirements where the two are in "actual and irreconcilable conflict." The California Supreme Court applied that requirement in *Dowhall v. SmithKlineBeecham* (2004) 32 Cal.4th 910.) This doctrine sufficiently ensures state regulations do not interfere with properly adopted federal requirements.

In fact, FDA officials have demonstrated a disturbing tendency to manufacture "conflicts" in their desire to preclude states from enforcing their own laws to protect public health. FDA officials arbitrarily declare "misbranded" products for which additional warnings would be given, without even consulting state authorities. For example, last August, the FDA, at the behest of a Washington, D.C. law firm, sent me a letter asserting that state warning requirements concerning mercury in canned tuna conflicted with federal law. The FDA sent this letter without any advance notice to my office. Further, the letter was based on inaccurate information provided the FDA by the industry law firm, and was sent without awareness that we proposed only that California states provide warnings completely consistent with FDA's own published "mercury in fish advisory." In light of such incidents, it's arguable that if there is any need for legislation, it is to amend federal law to protect the states against arbitrary and informal action by federal officials who take it upon themselves to declare California law in "conflict" with federal law, without providing state authorities advance notice or any opportunity to be heard.

H.R. 4167 would greatly impede our ability to protect the health of Californians, both under Proposition 65 and under other laws that could be adopted by the voters or our Legislature. I thank those of you who are opposing this measure. For those of you still considering the bill, I strongly urge you to oppose it and for those of you who have agreed to co-sponsor the measure, I hope you will reconsider your position in light of the important consumer protections H.R. 4167 will impede.

Madam Chairman, the State Departments of Agriculture, as well as State and food safety officials from all 50 States oppose the bill because they believe it hampers their ability to protect the public from hazards in the food supply, even potential bioterrorist attacks, an issue that really should be

debated and discussed and would have been if we had ever had a hearing.

These State and local officials are responsible for conducting 80 percent of the food safety inspections in the country, and yet today we are diminishing their ability to carry out their important role.

The National Association of State Departments of Agriculture representing every State in the Union has come out against the bill.

The Association of Food and Drug Officials wrote that "The bill will preempt States and local food safety and defense programs from performing their functions to protect citizens."

Equally disturbing, the bill will scale back State laws designed to protect pregnant women and children from potential hazards in foods. Why would we ever take such a step?

For all of these reasons and many more, I rise in opposition to the bill. It is bad public policy and it should be rejected by the House.

Mr. DEAL of Georgia. Madam Chairman, I yield 3½ minutes to the gentleman from Florida (Mr. BOYD) for purposes of a colloquy.

Mr. BOYD. Madam Chairman, I want to thank the gentleman from Georgia for yielding time to me to enter in a colloquy so that we may clarify certain parts of this.

I, and other Members, would like to be certain that we understand how this bill affects State food safety laws. It is my understanding that the bill contains a list of 10 provisions of Federal food safety laws and that State law dealing with the same subject as the Federal law is required to be identical to the Federal law. Is my understanding correct?

Mr. DEAL of Georgia. Madam Chairman, will the gentleman yield?

Mr. BOYD. I yield to the gentleman from Georgia.

Mr. DEAL of Georgia. Madam Chairman, yes, it is.

I would add that, under the bill, "identical" means that the language in the State law is substantially the same as that in the listed sections of Federal law and that any differences in language are not material. This is important to understand.

Mr. BOYD. Madam Chairman, I thank the gentleman for his clarification.

Am I correct in also understanding that virtually all of the State laws that relate to the sections of Federal law listed in the bill are identical to Federal law already?

Mr. DEAL of Georgia. If the gentleman would further yield, yes.

For example, Federal law contains what is referred to as the "basic adulteration standard," which provides that a food is adulterated if it bears any added poisonous or deleterious substance which may render the food injurious to health. All States have a provision that is identical to this provision of Federal law.

Mr. BOYD. Madam Chairman, I thank the gentleman.

Is the basic adulteration standard to which the gentleman has referred the standard that the Federal Government or States would rely on to deal with the presence of unsafe levels of contaminants in food? Would that provision permit a State to take action against a terrorist threat to food supply?

Mr. DEAL of Georgia. The gentleman is correct on both of those points.

Mr. BOYD. Madam Chairman, a lot of us are confused. There have been a lot of allegations coming from all directions. There are folks who oppose the bill, that have produced a list of 77 State laws that would purportedly be nullified under this bill.

If the gentleman would, is that an accurate portrayal of the effects of this bill?

Mr. DEAL of Georgia. Madam Chairman, if the gentleman would continue to yield, no, it is not.

Careful analysis of that list shows that of the 77 State laws listed, 55 would not be preempted. Let me give you two examples. First, included on the list is an Alabama law that sets nutritional standards for grits. This uniformity bill does not deal with nutritional standards or with grits, so the Alabama law is unaffected by the bill.

Secondly, the list includes several State laws that require that fish be labeled as previously frozen, if that is the case. These laws are not affected by the uniformity provision because those State fish labeling requirements are not warnings.

Of the 22 State laws that would be affected by the bill, 14 authorize States to adopt requirements for food and color additives that are different from Federal requirements. Although these laws would be preempted under the bill, the fact is that none of the 14 States that have these laws have any current requirement for food or color additives that are different from Federal requirements.

So, in spite of all the wild assertions that the uniformity bill would nullify "the bulk of the State food safety laws," as one opponent has put it, the fact is it would do nothing of the sort.

Mr. BOYD. Madam Chairman, I thank the gentleman for that comprehensive and reassuring response. I agree there is a lot of confusion about the bill, and we do not clearly understand the effects on State law and authority. I am satisfied, however, that the bill properly preserves the ability of States to take action to protect consumers, while ensuring that food safety policies will be uniform and scientifically based, and I thank the gentleman for his time.

Mr. DEAL of Georgia. Madam Chairman, I reserve the balance of my time.

Mr. WAXMAN. Madam Chairman, I yield 6 minutes to the gentleman from Michigan (Mr. STUPAK), an important Member of the Energy and Commerce Committee, who has been very active on FDA issues for a number of years.

Mr. STUPAK. Madam Chairman, I thank the gentleman for yielding me the time.

Madam Chairman, I rise today in strong opposition to H.R. 4167.

I find it interesting that the majority party, which calls itself an advocate for States' rights, would actually put forth a bill that eviscerates State food safety laws. If passed, this bill would be a huge setback for consumer safety, public health and America's war on terror.

Yesterday, I urged the Rules Committee to accept the Capps-Eshoo-Waxman-Stupak consumer protection amendment which would permit States to maintain or enact food safety and food warning laws that require notifications regarding the risks of cancer, birth defects, reproductive health issues, and allergic reactions associated with sulfiting agents in bulk foods.

□ 1315

Our amendment would also permit States to maintain or enact food warning laws and notify parents about risks to children.

I offered a second amendment which would allow States to maintain or enact food warning laws that require notification labeling regarding the treatment of foods with carbon monoxide. This bill, as written, would wipe out over 80 food safety laws and put our Nation's food safety standards squarely in the hands of the FDA.

Michigan maintains and has laws that would be overturned with this bill regarding sulfiting agent warnings in bulk foods, smoked fish, the safety of food in restaurants, and laws governing the safety of milk. That is why 37 bipartisan State attorneys general oppose this bill.

The bipartisan Association of Food and Drug Officials also have strong concerns. They stated and wrote to us, and I quote, "This legislation undermines our Nation's whole biosurveillance system by preempting and invalidating many of the State and local food safety laws and regulations that provide the authority necessary for State and local agents to operate food safety and security programs. The pre-9/11 concept embodied in this bill is very much out of line with the current threats that confront our food safety and security."

They also said that preemption and invalidation of State and local food safety and security activities will "severely hamper the FDA's ability to detect and respond to acts of terrorism." They added, and I quote, "Our current food safety and security system will be significantly disrupted and our inability to track suspected acts of intentional alteration of food will be exploited by those who seek to do harm to our Nation."

The danger of placing our Nation's food safety laws squarely in the hands of the FDA is demonstrated by my amendment on carbon monoxide.

Madam Chair, I would like to direct your attention to these pictures. Which meat do you think is older, the red

meat on the top or the brown meat on the bottom? It is a trick question. They are both the same age. Both have been sitting in a refrigerator side-by-side for 5 months.

You can see the date of the labels, October 2005. The meat on the top, which is bright red and looks very, very healthy, has actually been treated with carbon monoxide, which causes the meat to look red and fresh long into the future. The meat on the bottom here, the brown, is actually brown and slimy. Like I said, the meat on the top is 5 months old and looks as good as new, but what happens if you eat this? You will probably become very ill and possibly die from a foodborne pathogen like *E. coli*.

The FDA, in all of its wisdom, or lack thereof, has no objection to allowing carbon monoxide meat to be packaged. Color is the most important factor people look at when they determine which type of meat to buy, according to numerous studies. This new practice is clearly consumer deception, yet the FDA decided it was okay. The FDA either did not look at the evidence or it just didn't find this whole matter troubling. I do not know which is worse.

Right now, States may pass their own laws which label carbon monoxide meat so the consumers are well aware of what they are getting before they purchase it. All my amendment says is to allow the States to require carbon monoxide labeling if you are going to try to freshen up your meat. That is all we want to do, to allow a consumer to know what is going on. So when they go to the store and look at the meat, if they buy it based on a color which supposedly brings out the freshness, they will know it was done by tricking it with carbon monoxide, but that it is the same meat, kept for the same amount of time. All we are asking with our amendment is to allow us to prevent this.

Do we really want this? We want to let the consumer know that the meat has been chemically treated before they purchase it. This bill would prevent me from doing that.

Public health and food safety have primarily been the responsibility of the States. We should not now tie the hands of the States who want to protect the health of their citizens in the absence of FDA judgment, resources, expertise, or the will to do the right thing. I urge the majority party to stand up for the American people and allow our Democratic amendments and the Stupak carbon monoxide amendment on the floor next week for consideration.

America can make the choice. With this bill, we will get tainted meat with carbon monoxide and jeopardize the health and safety of the American people.

I urge my colleagues to vote "no" on this bill.

Mr. WAXMAN. Madam Chairman, will the gentleman yield?

Mr. STUPAK. I yield to the gentleman from California.

Mr. WAXMAN. Madam Chairman, I think what the gentleman is illustrating is so important, because the sponsors of this bill said we need the Federal Government to protect the health of people all over the country. So let us have one uniform standard.

Well, right now, the FDA could adopt that standard and stop the use of carbon monoxide as a food additive and as a preserver of meat, but they have not acted. So if a State wants to act, why should we tell them they cannot act when the FDA hasn't done anything at the Federal level? I think that is the point you are making.

Let the States, if the Federal Government fails, sometimes because they have lobbyists up here who are more powerful, let the States at least be able to protect their own citizens to pass the laws they think are appropriate.

Mr. STUPAK. Reclaiming my time, the gentleman is absolutely correct. What we are saying, basically, is let the consumer be aware of what they are buying. Let the buyer beware.

I should know if the meat I am buying here, the hamburger, has been treated with carbon monoxide to make it look fresh and healthy, but it has been sitting for 5 months and really contains a deadly pathogen, with *E. coli*, that can kill me.

Mr. DEAL of Georgia. Madam Chairman, I now yield 3 minutes to the gentleman from Virginia (Mr. GOODLATTE), the chairman of the Agriculture Committee.

Mr. GOODLATTE. Madam Chairman, I thank the gentleman from Georgia for yielding me this time and for his leadership on this issue, and I rise in support of H.R. 4167, the National Uniformity for Food Act of 2005. This bill takes a measured approach to national uniformity for food by providing a mechanism for a thorough, orderly review of States' existing regulations that may differ from those of the Federal Government.

In the United States, the food production and distribution system is truly national. Products made in one State are distributed not only in all 50 States, but also the District of Columbia, the U.S. territories, and many countries around the globe. Consumers, as well as food manufacturers, have a right to expect that rational, scientifically based and consistent standards will apply. Citizens of all States and territories deserve and expect the same level of food safety protection. Likewise, all citizens in this country will benefit from uniform standards.

The House Committee on Agriculture oversees a significant portion of America's food safety system. The Federal food safety functions over which this committee has jurisdiction have long employed uniform standards to protect public health, facilitate the marketing of agricultural commodities, and improve efficiency of the interstate trading of producers' goods. The adoption of uniform standards is common practice and, indeed, the general rule when

it comes to the Federal food safety efforts.

The USDA Food Safety and Inspection Service is responsible for the safety of domestic and imported meat in the United States. It enforces uniform standards through the authority granted by USDA, by the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Ag Products Inspection Act, and other authorities.

Likewise, previous amendments to the Food, Drug, and Cosmetic Act, which were included in the Food Quality Protection Act of 1996, provided that a State may not set tolerance levels for pesticide residues that differ from national levels unless the State petitions the Environmental Protection Agency for an exception based on a State-specific situation.

Moreover, uniformity is not limited to those areas of food safety. Congress has repeatedly recognized the importance of uniformity in food regulation in other sectors. For example, the FDA, as authorized by the Nutrition Labeling and Education Act, implements uniform standards for nutrition labeling, health claims, and standards of identity.

With the world's safest food supply, every American benefits from this system of national food safety standards. H.R. 4167 builds on this record of success by extending this same approach to food safety standards used by USDA and other agencies to the FDA's food safety programs. This is an important step forward in ensuring consumer confidence in the food they buy for their families, and I urge all Members to support H.R. 4167.

Mr. WAXMAN. Madam Chairman, I am now proud to yield 3 minutes to the gentlewoman from Connecticut (Ms. DELAURO), who is the chairman of the Appropriations subcommittee that deals with the Food, Drug, and Cosmetic Agency.

Ms. DELAURO. Madam Chairman, I thank the gentleman for yielding me this time.

Madam Chairman, every time this body considers a bill on how we regulate the food of this country it is designed not to strengthen existing law, but to weaken it, and this despite the fact that we face many threats to our food supply: avian flu, BSE, and bioterrorism. Today, we debate the National Uniformity for Food Act. This bill would make our food safety laws uniform: uniformly weak, uniformly toothless.

Right now, it is States, not the Federal Government, that conduct the body of our food safety work. State and local agencies do 80 percent of the food inspections in the United States. They are on the front lines. They test food products and they manage food emergencies. Yet under this bill, State laws requiring warnings and labels on foods would be superceded or eliminated.

The nonpartisan Congressional Budget Office estimates that 200 State laws would be immediately affected by this

bill's passage, requiring States to submit requests for waivers to the FDA. The cost to the FDA for reviewing these waivers would be \$100 million. Does this bill authorize another \$100 million to FDA? Of course not. This, at a time when the administration's budget proposals cut Federal food safety funding by over \$450 million.

One of my colleagues talked about this being theater. This is not theater. Many of us have been asking for more funding for food inspections and food safety over the last several years, and the administration and the leadership in this House have refused to do it.

This bill has other problems. States regulate shellfish, milk production, and other food products. In the absence of any Federal standards, those State protections will disappear. The bill undermines our ability to respond to bioterrorism and other food emergencies. It would require the notification of the Secretary of HHS before responding to a food emergency. They could only respond once they have received assurance that the Federal Government is not taking enforcement actions of their own. The State would then be required to apply for waiver, after the fact, to justify their actions. This is absurd.

If this Republican Congress wanted to make our food safety laws uniform, it would create a single food agency that would regulate the safety of our food, as some of us have suggested over and over again. We have 12 different agencies and 35 statutes currently in place to regulate food safety at the Federal level. If you want to be serious about this issue of food safety, let us have one single agency whose responsibility it is to make sure our food supply is safe and ensure the public health of this Nation.

We need to do a better job of coordinating our efforts to protect the public health, but we do not get there by weakening our laws; we get there by strengthening them. And that is something that this bill does not even begin to attempt to do.

Mr. DEAL of Georgia. Madam Chairman, I now yield 2 minutes to the gentleman from Georgia (Mr. BISHOP).

Mr. BISHOP of Georgia. Madam Chairman, I thank the gentleman for yielding me this time, and I rise today in support of H.R. 4167, the National Uniformity for Food Act. If enacted, this important legislation would set much-needed national standards for food safety and put an end to the confusing and often contradictory standards that exist across many States.

This is important, given that consumers have a right to expect the same scientifically based safety standards everywhere in the United States. By establishing a single national system based on comprehensive, science-based standards, consumers and businesses will be clear about what is safe, what is permissible, and what needs to be labeled. This is an opportunity to bolster consumer confidence.

The legislation would ensure that the FDA incorporates the best safety and warning practices of States, and allows States to continue to carry out sanitation inspections and enforcement. It would also create a process by which States can petition the FDA to adopt their own regulations as the national standard or to seek an exemption from national uniformity. A State's requirements would remain in effect while the FDA considers the State's petition. And where no Federal requirement exists, States could proceed pursuant to their own standards.

H.R. 4167 is good, commonsense legislation. It is greatly needed, and I urge my colleagues to support it.

□ 1330

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

I don't think consumer confidence is going to be bolstered when we pass a law that the State Attorneys General say would strip State governments of the ability to protect their residents through State laws and regulations relating to the safety of food and food packaging. Some of the more obvious State level warnings that almost certainly would be challenged include consumer warnings about mercury contamination of fish, arsenic in bottled water, lead in ceramic tableware, the alcohol content in candies, the content of fats and oils in foods, and postharvest pesticides applicable to fruits and vegetables. The States would not be allowed to do that.

Now, the previous speaker said that we ought to have a Federal requirement. But he was mistaken when he said that if there were no Federal requirement States can pursue their own standards. He is wrong because the bill before us would stop the States from pursuing their own standards unless the Federal Government allowed them to do so. And I think that is an intrusion on States' rights, a usurpation of power by Washington and an ability for the industries involved to be able to make their claim to the Federal Government to stop States from doing exactly what they think is appropriate to protect their public and to bolster consumer confidence.

I don't think that the confidence of the consumer should be bolstered when we have a bill on the floor that has been around for a number of years and no committee has ever held a hearing on it. We did not allow the scientists to come in and tell us whether it is a good idea or not. We didn't hear the problems from the industry that should justify this bill. We didn't hear the opponents and the arguments that they might make. Instead, in committee we had a mark-up where Members could debate what we were told by different groups, but not based on a hearing record. I think that the confidence of the American people in Congress should be very, very low; and if this bill passes the confidence of the Amer-

ican public about their food supply should be also in doubt.

Madam Chairman, I reserve the balance of my time.

Mr. DEAL of Georgia. Madam Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON).

Mr. PETERSON of Minnesota. Madam Chairman, I rise today in strong support of H.R. 4167, the National Uniformity for Food Act. As ranking Democrat on the Agriculture Committee, I support this bill because it provides uniform food safety standards and warning requirements, and it creates a single national system for food and food products regulated by the FDA.

Establishing uniform standards increases efficiency and safety as we have seen in practice today with the USDA and the Federal Meat Inspection Act, the Poultry Inspection Act, and other authorities that were referred to by the chairman in his remarks a short time ago.

Consumers gain with this consistency and uniform regulations for packaged food all across the 50 States under this jurisdiction of the FDA. If a food product is safe in one State, it is safe in all States.

With the world's safest food supply at the lowest cost to its consumers, every American benefits from this system of national food safety standards. H.R. 4167 builds on this record of success by extending the same approach to food safety standards used by USDA and other agencies; and, therefore, I believe this bill should be supported.

I strongly encourage my colleagues to vote in favor of this bill and to oppose any amendments that weaken or attempt to gut the commonsense approach of this legislation.

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

I just want to read a portion of a letter from Tommy Irvin who is from the Georgia Department of Agriculture. And he said, "The bill is craftily written to disguise its true effects on our authority to protect consumers. Both vague and broad in scope, this legislation will, in reality, go far beyond the stated purpose of uniformity. The real effect of this legislation will be the deregulation of the United States Food Industry."

Madam Chairman and my colleagues, we have at the Federal level, the Department of Agriculture. The Department of Agriculture has a dual mission: to protect consumers from unsafe agriculture products, particularly meat and chicken. But they also have the obligation to bolster the agriculture industries in this country. And they always have this tension about who to respond to first.

We also have the Food and Drug Agency, and they regulate food additives and the food supply that the USDA does not cover. Well, as Representative ROSA DELAURO mentioned,

we ought to have one food agency, but we have never been able to do that because people fight over their turf.

Well, while the Federal Government is fighting over its turf, this bill would take away the jurisdiction from the States to protect their own people, and that is why we never hear a bill labeled as the "usurpation of power in Washington to take away from the States the ability to protect consumers of food." They do not call it that. They call it the "National Uniformity Bill for the Food Product," or something along those lines. They always have a very nice sounding label for legislation.

Well, do not be fooled by the label that this bill has, because it misleads the consumer and the American public into thinking we are doing something to protect them, when I fear it is going to make them weaker.

Madam Chairman, I yield 2 minutes to the gentleman from Oregon (Mr. Wu).

Mr. WU. Madam Chairman, I thank the gentleman from California for yielding, especially under these circumstances where I am not completely decided about this legislation. I have a sincere inquiry for my friends on the other side of this debate, and I realize that there are Democrats and Republicans on both sides of this debate.

Given my background in securities law, if one wants to sell securities across this country, there is one layer of regulation at the Securities and Exchange Commission, but you have to run the securities through the blue sky laws of every single State in the United States.

Similarly, there is banking law at the Federal level; but if you want to do, say, furniture lending and consumer lending, you have to do compliance work under consumer protection laws for every State in the Union. I used to do this kind of legal work when I was in the private sector.

I had not intended to participate in the debate today; but, quite frankly, I was eating. And as important as securities and insurance and other issues are, it seems to me that Americans truly care about the safety of what they are eating and the ability to know what it is that they are putting down the hatch. And I am truly curious about the folks on the other side of this debate.

What is it that distinguishes the food industry so that it does not have to, say, like the securities industry, comply with both Federal and State law, or with furniture lending, comply with both Federal and State law? Because it seems to me that the food industry is pretty healthy in this country and making good money, and we do not need to give it, if you will, an artificial boost.

I would be happy to yield to someone from the other side.

Mr. DEAL of Georgia. I thank the gentleman for yielding. They would have to comply with both. But what

this deals with is labeling. If there is a label that is necessary for your people in Oregon to protect their safety, then it ought to be necessary for the people of my State of Georgia, and it ought to be uniform in that regard, and that is what we are saying.

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

And in response to the gentleman's point, which I think is an excellent one, industries in this country often have to meet State standards as well as Federal standards. I have always heard that if it ain't broke, why fix it. And I have never heard a reason why we need this bill. What are we fixing? What is the problem? I do not see what the problem is, except some people would like to overturn State laws. And if they have the case to do that, they ought to make it at the State level, or they ought to come to the Federal Government and say this particular law is too burdensome; we ought to have a Federal law in its place.

But that is not what we are having proposed to us today. We are having proposed to us a bill that just would, in a blanket way, allow the preemption of all duly adopted laws at the State level.

Madam Chairman, I reserve the balance of my time.

Mr. DEAL of Georgia. Madam Chairman, I yield 2 minutes to the gentleman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Madam Chairman, the National Uniformity for Food Act would actually foster greater cooperation among the States and the Federal Government on an issue that I honestly believe is very important to every American family, and that is food safety. Consumers across the country deserve a single set of science-based food warning requirements, not the confusing patchwork that we have today.

I am a supporter of States' rights, and our friends across the aisle have not stood up for States' rights many times in the past, and I really don't think they are doing so today. They are standing up for what they love most, which is lots of government regulations.

The bill before us, the National Uniformity for Food Act, strikes an important balance between States' rights and Federal responsibility. The bill really enhances the model for a Federal-State regulatory cooperation that already occurs in many areas of food safety. The bill gives the FDA authority where it would have authority and should have authority, which is general and scientific oversight over packaged food safety.

It leaves to the States the fundamental tasks that are best handled at that level, ensuring proper sanitation and making sure that the manufacturing plants, refrigeration facilities, and food transportation all meet or exceed minimum standards.

I encourage my colleagues to vote in favor of the bill.

Mr. WAXMAN. May I inquire of my colleague how many speakers he has remaining?

Mr. DEAL of Georgia. I am prepared to close.

Mr. WAXMAN. Madam Chairman, I yield myself such time as I may consume.

I will close the debate on our side.

Madam Chairman and my colleagues, let me just go through the kinds of laws we are talking about. There are 50 State laws regulating the safety of milk. They are not identical. And I don't know if there will be one uniform law for the safety of milk at the Federal level, and I am not sure that it would make sense to have it. There may be differences that are justified. But that debate could go on, and it could be resolved by itself. But meanwhile, we shouldn't jeopardize 50 laws on the subject when there is no Federal law to take its place.

There are 50 State laws regulating safety of food in restaurants. Why should the restaurants in a State be regulated by Washington if their State chooses to have a food safety disclosure or other food law?

There are 10 State laws regulating the safety of shellfish. Why should those laws be eliminated?

There is an Alabama law regulating infested, moldy, or decayed pecans and other nuts. That may be a problem that Alabama has. Why shouldn't they be able to act on it, and why should we have to have that same law elsewhere or have no law anywhere on the subject?

California law requiring consumers to be notified when food contains contaminants that cause cancer or birth defects, a California law limiting the amount of lead in candy, a Florida law regulating labeling of citrus fruit and citrus products, a Maine law requiring disclosure of the risk of eating smoked alewives, whatever that may be. A Maryland law, prohibiting the sale of frozen food that has been previously thawed. A Minnesota law requiring labeling of the types of wild rice. A Mississippi law requiring the labeling of farm-raised catfish. A Virginia law prohibiting the removal of sell-by date labels, a Wisconsin law requiring a label showing the age and type of cheese made in Wisconsin.

I don't know whether those are all good laws or not, but the legislatures probably had hearings, and they got the input from people who are supporting it, and opposing it. And they adopted it and their Governors signed the laws.

We are now about to overturn those State laws with a bill that had no hearing here in the Congress of the United States, and will turn it over to the FDA, a Federal bureaucracy, to decide whether those States may have those laws in their States still in effect. I think it is wrong. I do not see the problem it is solving. I think that this is

legislation that has been poorly thought out. I hope we get a chance to offer amendments to the bill next week when we start considering it. Especially since it has never had a day of hearings, we ought to have an open rule. There are a limited number of issues to debate. We ought to at least be able to debate them and have votes on those issues so that Members can make a determined judgment as to whether this bill ought to pass the House of Representatives.

I urge a "no" vote on the bill.

Madam Chairman, I yield back the balance of my time.

□ 1345

Mr. DEAL of Georgia. Madam Chairman, I yield myself such time as I may consume.

First of all, this has been a good debate, and I appreciate the interest and concern.

And to my good friend, Mr. WAXMAN, who has handled it on the other side, I am glad he has now become converted to being a States' righter. Back in 1990 when he was the author of the Nutrition Labeling and Education Act of 1990, we heard exactly the opposite arguments. I was not here, but I am told those were the opposite arguments because as far as nutrition labeling, it does require uniformity across the country.

Now, if labeling on nutrition requires consistency, why should not there be consistency in warning labels of the foods that people eat?

Mr. WAXMAN. Madam Chairman, will the gentleman yield?

Mr. DEAL of Georgia. I yield to the gentleman from California.

Mr. WAXMAN. I do recall and I can explain the situation.

Mr. DEAL of Georgia. Does it require uniformity?

Mr. WAXMAN. It does because there was no nutritional labeling at the State level. It had been done by the industry voluntarily, and they had different kinds of labels, and it was not in a way that we could compare the calorie content, the carbohydrate content, the fat content. So we decided that since this was all under Federal jurisdiction anyway, we ought to standardize the labeling.

It was not an issue of usurping the power from the States because the States look to the FDA to make that decision.

Mr. DEAL of Georgia. You would not advocate repealing that law and giving it back to the States, I would assume?

Mr. WAXMAN. No, of course.

Mr. DEAL of Georgia. All right. Thank you.

Mr. WAXMAN. You would not, however, want the Federal Government to legislate in every area that any State thinks ought to be done in their State?

Mr. DEAL of Georgia. No.

Reclaiming my time, let me give the Members of this body examples of some of the things that are excluded from it.

The gentleman mentioned shellfish. Shellfish are specifically excluded from

the provisions of this act. Some of the ones that I think most of us think of as the kinds of labels that may have peculiar application to locales that may not have application nationwide and that are therefore not included or prohibited from being placed on products are some of the following: open date labeling, grade labeling, State inspection stamps, religious dietary labeling, organic or natural designations, returnable bottle labeling, unit price labeling, and statement of geographical origin. Those all still continue to be allowed; they are not preempted by this legislation.

I believe we have heard from a wide variety of people who represent points of view from their committee assignments on the Democrat side as well as the Republican side. The gentleman quoted my Democrat commissioner of agriculture from the State of Georgia. I called on my Democrat Member from the State of Georgia, who has served on the Agriculture Committee here in the House of Representatives, who said exactly the opposite of what our State agriculture commissioner says.

Now, I think that the overall conclusion that we should reach is that this is a good piece of legislation. It is time that we recognize that there is a necessity for uniformity in labeling of food products, and this legislation moves us in that direction. I would urge the adoption of the bill when it is considered next week.

Madam Chairman. I ask that this exchange of correspondence be included in the debate on H.R. 4167.

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 28, 2006.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR CHAIRMAN BARTON: In recognition of the desire to expedite consideration of H.R. 4167, the "National Uniformity for Food Act of 2005," the Committee on the Judiciary hereby waives consideration of the bill. There are several provisions contained in H.R. 4167 that implicate the rule X jurisdiction of the Committee on the Judiciary. Specifically, the legislation contains a number of judicial review provisions.

The Committee takes this action with the understanding that by foregoing consideration of H.R. 4167, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment to any House-Senate conference on this legislation and requests your support if such a request is made. Finally, I would appreciate your including this letter in your Committee's report for H.R. 4167 and in the CONGRESSIONAL RECORD during consideration of H.R. 4167 on the House floor. Thank you for your attention to these matters.

Sincerely,

F. JAMES SENSENBRENNER, JR.,
Chairman.

COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, February 28, 2006.
Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary, House
of Representatives, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter concerning H.R. 4167, the

National Uniformity for Food Act of 2005, which the Committee on Energy and Commerce reported on December 15, 2005.

I appreciate your willingness not to seek a referral on H.R. 4167. I agree that your decision to forego action on the bill will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or future legislation. Further, I recognize your right to request conferees on those provisions within the Committee on the Judiciary's jurisdiction should they be the subject of a House-Senate conference on this or similar legislation.

I will include our exchange of letters in the Committee's report on H.R. 4167, and in the Congressional Record during consideration of the bill on the House floor.

Sincerely,

JOE BARTON,
Chairman.

Mr. MOORE of Kansas. Madam Chairman, I rise today in support of H.R. 4167, the National Uniformity for Food Act.

Food safety labeling standards currently vary from state to state, which has created a patchwork of different and inconsistent requirements. H.R. 4167 would amend the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide for national, uniform food safety standards and warning requirements. I am co-sponsor of this bipartisan legislation because it will enhance consumer protection through coordinating and harmonizing federal, state, and local food safety requirements. Consumers deserve the same high level of protection against unsafe food regardless of where they may live.

While H.R. 4167 would provide for national, uniform food safety standards and warning requirements, the legislation, however, does not affect state authority in several areas that are traditional local food enforcement matters, including: freshness dating, open date labeling, grade labeling, state inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, and statement of geographic origin. Further, states would be exempted from national food safety standards to respond during times when substantial concerns are raised about the safety of food. I support H.R. 4167 because it provides these important exceptions to national standards, which will ensure authority of states in traditional local food enforcement matters and allow states to act if presented with an imminent food safety crisis.

Food safety labeling standards are an important public health issue, and I support H.R. 4167 because it will provide uniform, national standards to ensure greater consumer protection.

Mr. WILSON of South Carolina. Madam Chairman, the National Uniformity for Food Act deserves our full support.

This act is consistent with our long tradition of cautious Congressional oversight of interstate commerce to protect American consumers. The act is simple. By requiring states and the FDA to provide consumers with a single standard for food safety, this important legislation delivers protection to American consumers.

I strongly believe the National Uniformity for Food Act is the best way to apply the safeguards we now have over meat, poultry, drugs, and many other products to packaged food. Under the bill, states would retain their important functions such as sanitation, inspections and enforcement. The act also contains

mechanisms to review state food safety laws and consider them for national application.

This act provides important federal protections, while retaining valuable input from states and coordination between state and federal food safety experts. I strongly appreciate my good friend Congressman MIKE ROGERS' efforts to ensure that Americans are confident that packaged food they find on our store shelves is safe for them and their families. I urge all my colleagues to join me in supporting this important act.

In conclusion, God bless our troops and we will never forget September 11th.

Mr. PALLONE. Madam Chairman, I rise in strong opposition to H.R. 4167, the National Uniformity for Food Act of 2005. I am opposed to this legislation for two reasons.

First, and foremost, this legislation would completely eliminate any State or local food safety law that is not identical to requirements established by the FDA. Even laws that go beyond the federal requirements to protect their citizens would be pre-empted. For example, in my home state of New Jersey, a number of labeling requirements for milk, restaurant food safety and many other State laws would be completely negated, thereby placing the health and well-being of our citizens at increased risk. How is that good public policy?

I also have to oppose this legislation for the way it has completely violated the legislative process. This bill has escaped any real scrutiny from the Energy and Commerce Committee, which has jurisdiction over such food safety matters. No hearings were held, no witnesses were called to testify, and no effort was made to determine the actual impact this bill will have on the safety of our nation's food supply. It is clear that this bill was insufficiently reviewed and I fear that Congress is acting far too quickly to enact legislation that will have such sweeping affects.

I believe improving the quality of our nation's food supply is one of the most important challenges facing Congress today. A vote for this legislation, however, would put consumers at increased risk. I urge my colleagues to vote "no."

Mr. UPTON. Madam Chairman, I rise in support of H.R. 4167, the National Uniformity for Food Act.

This is common sense legislation that will benefit both consumers and businesses— and particularly small businesses.

Consumers will benefit from being able to rely on scientifically-based national food safety and warning standards, just as they now rely on national standards for nutrition labeling.

When we think of the food manufacturing industry, we may not realize that small manufacturers account for the bulk of the industry. Specifically, nearly 73 percent of food manufacturers have fewer than 20 employees. These smaller firms are especially burdened by having to comply with up to 50 different food safety and warning regimens if they are in or wish to enter interstate commerce.

I know many of us have heard from our governors about important state food safety and warning requirements that could be pre-empted by a national standard. But it is important to underscore that this bill provides for a 180-day period after enactment for states to petition the FDA and make their cases for either permitting a state requirement to remain in place or to make a state requirement a national standard. Further, the state require-

ments will remain in place until the FDA makes a determination on the state's petition.

Mr. DEAL of Georgia. Madam Chairman, I yield back the balance of my time.

The ACTING CHAIRMAN (Mrs. DRAKE). All time for general debate has expired.

Under the rule, the Committee rises. Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DEAL of Georgia) having assumed the chair, Mrs. DRAKE, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4167) to amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes, had come to no resolution thereon.

ADJOURNMENT TO MONDAY,
MARCH 6, 2006 AND HOUR OF
MEETING ON TUESDAY, MARCH
7, 2006

Mr. PRICE of Georgia. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Monday next, and further, when the House adjourns on that day, it adjourn to meet at 12:30 p.m. on Tuesday, March 7, 2006, for morning hour debate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

DISPENSING WITH CALENDAR
WEDNESDAY BUSINESS ON
WEDNESDAY NEXT

Mr. PRICE of Georgia. Madam Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore (Mrs. DRAKE). Is there objection to the request of the gentleman from Georgia?

There was no objection.

APPOINTMENT OF HON. MAC
THORNBERRY AND HON. FRANK
R. WOLF TO ACT AS SPEAKER
PRO TEMPORE TO SIGN EN-
ROLLED BILLS AND JOINT RESO-
LUTIONS THROUGH MARCH 7, 2006

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, March 2, 2006.

I hereby appoint the Honorable MAC THORNBERRY and the Honorable FRANK R. WOLF to act as Speaker pro tempore to sign enrolled bills and joint resolutions through March 7, 2006.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointments are approved.

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

NO PLACE BUT TEXAS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Madam Speaker, today is my favorite day in Texas history. March 2 marks Texas Independence Day. On this day, 170 years ago, Texas declared independence from Mexico and its evil dictator, Santa Anna, the 19th century Saddam Hussein, and Texas became a free nation.

In 1836, in a small farm village of Washington-on-the-Brazos, 54 "Texians," as they called themselves in those days, gathered on a cold rainy day like today to do something bold and brazen: They gathered to sign the Texas Declaration of Independence and once and for all "declare that the people of Texas do now constitute a free, sovereign, and independent republic."

As these determined delegates met to declare independence, Santa Anna and 6,000 enemy troops were marching on an old, beat-up Spanish mission that we now call the Alamo. This is where Texas defenders stood defiant and determined. They were led by a 27-year-old lawyer by the name of William Barrett Travis. The Alamo and its 186 Texans were all that stood between the invaders and the people of Texas. And behind the dark, dank walls of that Alamo, William Barrett Travis, the commander, sent a fiery, urgent appeal requesting aid.

His defiant letter read in part: "To all the people in Texas and America and the world, I am besieged by a thousand or more of the enemy under Santa Anna. I have sustained a continual bombardment and cannon fire for the last 24 hours, but I have not lost a man.

"The enemy has demanded surrender at its discretion; otherwise, the fort will be put to the sword. I have answered that demand with a cannon shot, and the flag still waves proudly over the wall. I shall never surrender or retreat.

"I call upon you in the name of liberty and patriotism and everything that is dear to our character to come to my aid with all dispatch. If this call is neglected, I am determined to sustain myself for as long as possible and die like a soldier who never forgets what is due to his own honor and that of his country.

"Victory or death," signed William Barrett Travis, commander of the Alamo.

Madam Speaker, after 13 days of glory at the Alamo, Commander Travis and his men sacrificed their lives on the altar of freedom. The date was March 6, 1836.