Republicans aren't looking for a fight. We are appealing to common sense and a shared sense of responsibility for the millions of Americans who are looking to us to work together not on the priorities of the left, but on their priorities. And those priorities are clear.

Together, we must focus on the things Americans want us to do—not on what government wants Americans to accept. There is still time to do the right thing. The voters want us to show that we heard them, and Republicans are ready to work with anyone who is willing to do just that.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FDA FOOD SAFETY MODERNIZATION ACT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 510, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 510) to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply.

Pending:

Reid (for Harkin) amendment No. 4715, in the nature of a substitute.

Coburn motion to suspend rule XXII of the Standing Rules of the Senate, for the purposes of proposing and considering Coburn amendment No. 4696.

Coburn motion to suspend rule XXII of the Standing Rules of the Senate, for the purposes of proposing and considering Coburn amendment No. 4697.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 2 minutes of debate equally divided and controlled between the Senator from Oklahoma, Mr. COBURN, and the Senator from Hawaii, Mr. INOUYE.

The Senator from Illinois.

Mr. DURBIN. Mr. President, in the absence of Senator INOUYE, I ask unanimous consent to speak on his behalf for the 1 minute allocated.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MOTIONS TO SUSPEND

Mr. DURBIN. Mr. President, I am going to vote today against the Coburn effort to change our rules relative to earmark legislation.

I wish to tell you, as a member of the Senate Appropriations Committee, we have put in place what I consider to be the most dramatic reform of this appropriations process since I have served in Congress. There is full disclosure, in my office, of every single request for an appropriation. We then ask those who have made the request for the appropriation to have a full disclaimer of their involvement in the appropriation so it is there for the public record.

This kind of transparency is virtually unprecedented, and I think it is an effort to overcome some of the embarrassing episodes which occurred primarily in the House of Representatives under the other party's leadership, where people literally went to jail because of abuse of the earmark process.

I believe I have an important responsibility to the State of Illinois and the people I represent to direct Federal dollars into projects critically important for our State and its future. What the Senator from Oklahoma is setting out to do is to eliminate that option.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DURBIN. I hope my colleagues will join me in opposing the Coburn motion.

Mr. LEVIN. Mr. President, Senator COBURN has proposed an amendment to the badly needed food safety legislation now before the Senate that seeks to end congressionally directed spending, or earmarks. Senator COBURN described his amendment as an attempt to get spending under control, but it fails the test of accomplishing that goal and fails to meet Congress's constitutional obligation to exercise the power of the purse.

Article I, section 9 of the Constitution of the United States places the power of Federal spending in the Congress, the branch of government most directly connected to the people. The power of the purse is great, and therefore accountability for the exercise of that power should be great as well.

Our greater responsiveness in Congress to immediate public needs is essential. If the Coburn amendment passes, we would be barred from bringing that judgment to bear on some of the most pressing issues of the day. Instead, the executive branch—which is, in practice, the most bureaucratic and least responsive branch—would control these decisions. For example, under Senator COBURN's proposal, only the executive branch would have the power to initiate funding for disaster relief. Measures to appropriate funds in response to disasters would be prohibited because they would dedicate funding to specific locations. So, had this measure been in place when Hurricane Katrina struck the Gulf Coast, Congress would have been powerless to react. Similarly, had this restriction been in place when a Mississippi River bridge collapsed in Minnesota in 2007, Congress could not have appropriated the $195 million it set aside for repair and reconstruction.

This measure also would prevent Members from addressing the urgent needs of our communities. I and other Members from Great Lakes States have urged the Army Corps of Engineers and other agencies to address the growing threat that Asian carp will make their way from the Mississippi River watershed into the Great Lakes. These invasive species of fish would devastate the lakes, doing enormous harm to our States' economies. So long as the Army Corps continues to underfund this important work, only the action of Congress can prevent an economic disaster.

I would argue that each of these expenditures is important and necessary. But the wisdom or folly of these decisions lies in the merits of the projects themselves, not in the manner by which they were funded. Allowing the Congress to make these decisions allows the voters to judge them on their own merits, to reward their representatives when they make wise choices, and to render judgment in the voting booth when they do not.

Senator COBURN is rightly concerned about the long-term fiscal condition of the government. But it has been repeatedly pointed out, despite the fiction surrounding this issue, that this amendment would do nothing to improve our fiscal situation. Year after year, Congress works within the top line of budgets submitted by the President, readjusting priorities without increasing total spending. For this reason, the Coburn amendment would not reduce spending levels; it would simply shift greater authority for deciding how money is spent from the legislative branch to the executive.

There are two ways to close our fiscal gap. We can reduce spending or we can increase revenue. Banning congressionally directed spending does neither. It would create the impression that we have taken a step toward fiscal responsibility, without making any of the difficult choices that reducing the deficit will require. I applaud Senator COBURN's desire to address our debt. But this measure fails to do so and in the process abdicates our constitutional responsibilities. So I will oppose this amendment and urge our colleagues to do the same.

Mrs. FEINSTEIN. Mr. President, I rise today in opposition to the Coburn-McCaskill amendment, which would impose a 3-year moratorium on earmarks.

This amendment is a direct attack on the authority vested in the Congress to determine how Federal funds are spent, despite the fact that this power is clearly established in Article I of the U.S. Constitution.

I, for one, take great exception to this attack. It would set a dangerous precedent, in my view, to simply turn over a blank check to the executive branch and undermine the power that the Constitution grants Congress. What if an administration is not focused on the needs of a particular State, perhaps because that State didn't vote for that President?

For years I have fought for funding of flood control in Sacramento. Sacramento is one of the most endangered cities in the country when it comes to catastrophic risk of flooding. Neither Democratic nor Republican administrations have requested sufficient funding for the flood control improvements that will protect lives and property in that community.

As the Senator elected to represent the people behind those levees, shouldn't I be able to fight for the funding, whether or not the President agrees? I was elected by the people of California to represent the needs of California. And the people of Sacramento certainly believe they need flood control. This is my duty as a Senator. Isn't that why we have a Congress?

As a coequal branch of government, we shouldn't be forced to approach the administration with our hat in hand every time we believe something needs to be done.

Another flaw in this amendment is the well-trod idea that it will save this country money. Simply put, that is incorrect.

Discretionary spending is a popular target to attack. But the truth is that earmarks make up less than one-half of a percentage point of all Federal spending.

Earmarks are not the problem, so banning earmarks is not the solution.

The real problem is entitlement spending. But tackling entitlement reform is neither easy nor popular. So, instead, we attack earmarks. It sounds good, and it gets applause. But we all know that it doesn't solve the problem.

This amendment won't save this country one penny. It will merely shift the power of the purse from Congress to the White House and executive agencies.

If you want to reduce discretionary spending, it must be done through the budget process.

I am also concerned about the process the Coburn-McCaskill amendment sets forth for waiving this new rule.

Rather than putting into effect a traditional budgetary point of order, which requires a three-fifths vote to waive, this amendment calls for a two-thirds vote.

This means that if this amendment is approved, funding a public works project would require the same number of votes as constitutional amendments, impeachments, treaties, or the expulsion of Senators.

Why should the question of an earmark rise above the three-fifths requirement to invoke cloture on the very bill containing the earmark?

Finally, this amendment disregards the significant reforms that have already taken place to make the process transparent.

Since Democrats regained control of the Senate, the following reforms have been enacted: Members must publicly certify that they have no private interest in earmarks they request. Members must post their earmark requests on the internet. Every bill with earmarks includes a table listing the Senators who made the requests. This is the most transparent earmark process ever, and I believe the reforms have worked.

The earmark process has been abused in the past, but I firmly believe that eliminating the discretion of Congress to appropriate taxpayer dollars is folly. A knee-jerk reaction that tips the balance of power toward the executive branch is not the solution.

Let me say this: I am open to further reform if it will make the process even more transparent.

The House of Representatives already bans earmarks to most private firms, and I would support doing so in the Senate.

I believe the best use of earmarks is to provide funding for projects that are essential to the public good, such as water infrastructure improvements in a city such as East Palo Alto that cannot provide clean water to its residents without a funding share from the Federal Government, or interoperable communications equipment in Contra Costa and Alameda Counties, which can be used when an earthquake or other catastrophe strikes.

I believe this amendment is wrong for the Senate, it is wrong for our States, and it is wrong for the people we come here to serve.

Handing over a fundamental responsibility to the executive branch, at a savings of zero dollars to the taxpayer, is not the solution. Continued reform of a process that is important to so many of our communities is the better alternative.

Mr. DORGAN. Mr. President, I rise today to speak against the Coburn amendment that would impose a 3-year moratorium on Congress' constitutional responsibility to direct the spending of the Federal Government.

The amendment in question propounds a problem that doesn't exist, a solution that resolves nothing, and an argument that is factually baseless.

This amendment will not lead to deficit reduction. In fiscal year 2010, congressionally directed initiatives make up less than one-half of 1 percent of total Federal spending.

With total spending at $3.5 trillion it is irresponsible to tell the American people that congressionally directed spending of one-half of 1 percent of this total amount is the cause of our country's deficit problem.

Mathematically it is incorrect and mechanically it is incorrect. Doing away with congressionally directed initiatives does not guarantee deficit reduction—it guarantees members of the administration will make all the funding decisions.

Inherent in the arguments of the amendment's supporters is the contention that projects and activities selected by the administration are superior. The argument seems to rely on the notion that there is some objective formula used by the administration to select the best and most worthy projects to fund. This is false.

The fact is even in programs where some formula may be used, such as a cost-benefit ratio formula, the formula is not necessarily perfect and can often fail to capture all the facts.

A small port dredging project may not look worthwhile when just the commercial traffic is calculated. However, when the sport fishery impact is included it makes the calculation different. Further, if the fish processing plant reliant on the commercial fishery is the largest employer in the county that makes a difference.

While the formula may not capture these facts and thus the project fails to make the President's budget request, the areas congressional members and senators will know the facts and seek to modify the budget.

There was a recent news article using a Missouri project as an illustration of this debate. The project was not requested in the budget and the senior Senator from Missouri rectified this fact by adding an earmark.

The junior Senator from Missouri is quoted in this article saying the project would have been funded without such an earmark if funding had not been diverted to less worthwhile earmarks. I am sorry, but there is no basis for the junior Senator's claim.

We have no idea what the administration will send up in the budget. A very worthwhile project may come forward and it may not. And the reverse may be true. The administration may send up a project that is not currently justified.

During the George W. Bush administration the budget request one year included construction funding for a Corps of Engineers project. The problem was the chief engineer's report was not completed yet because the studies were still on-going. Thus there was no way for the administration to know based upon any objective criteria whether the project should move into the construction phase.

While the project may have proved to be worthy there was no objective basis for the administration making that assessment at that time. The fact is the administration added the project out of some political calculation, not an objective calculation.

Let me provide some facts on earmarks using the civil side of the Corps of Engineers and the Bureau of Reclamation which have two of the most highly earmarked budgets of any Federal agency due to the way projects are authorized and appropriated.

For fiscal year 2010, the President proposed spending $6.2 billion for these two agencies. In his request the President proposed 1,184 individual line items valued at $4.8 billion based on criteria of his choosing. This criteria is not based in law nor was the criteria coordinated with anyone outside of the administration.

The criteria was developed to ''get the biggest bang for the buck'' but how do we know that? Just because that is what the administration says.

Upon my review of the budget request, I was convinced that the administration had left many priorities unfunded. That is why in preparing the fiscal year 2010 Energy and Water appropriations bill, the subcommittee of

which I am the chair, we used the criteria established in law to determine what projects were eligible for funding.

Further, we gave particular credence to funding ongoing work. It is not prudent to fund a construction project in one year and not fund it in the next. Yet the administration did not propose funding for more than 175 ongoing construction projects that were funded in fiscal year 2009.

These termination costs were not accounted for in the budgets that the agencies provided to Congress. The Corps or the Bureau of Reclamation cannot walk away from a construction site because they are not funded for that project. They would have to reprogram funds from other projects to make the site safe for the public until it was funded again.

Funding projects in this manner delays completion of the projects, increases the costs and defers the benefits that these projects provide to the national economy.

For fiscal year 2010, Congress provided $6.58 billion for the COE and the Bureau of Reclamation. Congress directed $817 million of this total funding. All of this directed funding was disclosed in the required disclosure tables in the report that accompanied the bill.

Let me list just a few projects that would not be funded in fiscal year 2011 if we enacted the President's budget request as proposed:

Blue River Basin flood control project in Missouri; Swope Park Industrial Area flood control project in Kansas City, MO; the Puget Sound and Adjacent Waters Environmental Restoration project in Washington; the Charleston Harbor, SC, navigation deepening study; the Virginia Beach, VA, hurricane protection project; and the Western Sarpy and Clear Creek, NE, flood control project.

For that last project in Nebraska, the funds proposed in the fiscal year 2011 Senate report would complete the project, yet it did not make it into the President's budget. Imagine these objective criteria that the administration uses would leave the completion of a fully authorized and economically justified construction budget for another year.

I must also mention the issue of transparency. Today all Member requests are available on line for public review. All Members must certify that they and their family have no pecuniary interest in these projects.

If there are legitimate proposals on further improving transparency then I am sure they will be given consideration, but as of today the public knows who is backing the projects we fund. There is accountability and there is sunlight.

I fear that if Congress cedes its authority to direct spending then we will go back to a time when Members, staff, and entities outside of the Federal Government will begin to pressure the administration and bureaucracy on getting specific projects funded.

There will be no disclosure of these phone calls and meetings. We will not know if any trades have been made in exchange for project support.

Why would we give up sunlight and accountability for darkness and unaccountability?

Let me close by reiterating the basic points.

First, this amendment will not reduce the deficit. At less than one-half of 1 percent of total spending congressionally directed spending is simply not going to make a difference, particularly when that funding will be left for the administration to direct its allocation.

Second, there is no objective formula that makes sure funding goes to the most worthwhile projects. It simply doesn't exist. The Constitution gives Congress the power of the purse. This ensures the President's power is checked and assures Federal elected officials closest to the people are making these decisions. It is absurd to give to an unelected bureaucracy that may never have been in your state the final decision on what projects to fund.

Third in project based accounts such as the Corps of Engineers the administration already earmarks the vast majority of projects funded. Congress is not abusing the power of the purse.

Lastly, we have greater transparency today on congressionally directed spending than ever before. If we do away with this transparent process we will be left with a dark, unknown process of congressional Members, constituent groups, and lobbyists seeking to influence the administration. We should not trade transparency for darkness.

Mrs. BOXER. Mr. President, I oppose the Coburn amendment to impose a 3-year moratorium on spending for local priorities, or ''earmarks.'' Those who support this amendment claim that it will help reduce the deficit and put us on the path to fiscal responsibility. This is just incorrect.

Eliminating earmarks would not reduce spending and does nothing to decrease the deficit. This amendment would merely transfer spending authority away from elected members of Congress to the executive branch.

The Coburn amendment would strip elected leaders' ability to direct funding to their constituents' priorities. We should all agree that elected Members of Congress have a much better understanding of what is needed in our cities and towns, and across our States than those sitting in Washington, DC.

In addition, since 2006, Democrats have instituted a series of major reforms that have made earmarks more transparent than ever, and have reduced earmark levels by 50 percent. Members of Congress are now required to list their names next to requested projects and to post all requests on their official Web site. Through these initiatives Congress has taken significant steps to improve transparency and allow for greater scrutiny of these requests.

I am proud to say that I have helped fund hundreds of local priorities across my home State of California: priorities that have helped build safer roads, increased commerce, prevented homes from flooding, improved health care services, spurred job creation and helped veterans recover from combat injuries.

I oppose the motion to suspend the rules and allow for consideration of the Coburn amendment.

Mr. LEAHY. Mr. President, I rise today to express my opposition to the Coburn amendment. The legislative branch has a constitutional duty to make modifications and adjustments to the budget for the Federal Government. As a U.S. Senator and a member of the Appropriations Committee, I take very seriously the responsibility of the Senate to help craft the annual Federal budget. Members of Congress have a duty to their constituents to preserve their role in working with the executive branch, whether Democratic or Republican, about how, where, and in what manner Federal dollars are spent.

The U.S. Constitution gives the responsibility of spending and taxation to the Congress, not to unelected bureaucrats in the executive branch. The notion that individuals who are completely unaccountable to the American people will make spending decisions undermines the most basic principle of democracy. Instead, the Founding Fathers correctly put this burden on the shoulders of individuals who have to answer to voters at the ballot box.

Over the last few months, and particularly in the days since the election, some Members of Congress and Members-elect have been tripping over themselves to take a stronger position in opposition to so-called earmarks. Proponents of this amendment claim that it targets earmarks. I would argue otherwise. This amendment strikes at the heart of the balance that our Founding Fathers established between the executive and legislative branches of our government.

Every single State would be shortchanged by the proposed moratorium on earmarks. The Founders knew better. They knew that a Washington bureaucracy would not always make decisions that were best for country, including people working and living in small towns and big cities across America.

That also includes making better decisions for the men and women who serve in our military. There is no better example than the National Guard and Reserve Equipment Account. Republican and Democratic administrations alike have short-changed the Guard equipment budget for decades and have done so even as the Guard has been called to provide as much as half of the troops needed for operations in Iraq and Afghanistan. Without the National Guard and Reserve equipment account, our National Guard units would still be going into battle without

equipment like body armor and blast-protected vehicles. Congress insisted on providing funding to our National Guard and that has saved countless lives and enabled them to carry out their missions more effectively.

Adopting this amendment is a vote for less transparency. It is a vote for backroom dealing and less sunlight on how decisions regarding Federal spending are made. One need only look back to when Congress has in the past failed to pass the appropriations bills and the government operated under a continuing resolution for the year. Federal spending did not go down by a single dime. Instead, unelected administration appointees made decisions on which projects they wanted to see funded.

It is my hope that before the next Congress a measure of sanity returns to discussion of the Federal budget. Everyone agrees that we must make serious changes to our Federal balance sheet and bring our fiscal house in order. But it was not earmarks that created our alarming Federal debt. Eliminating earmarks is not going to get our fiscal house in order. Instead it is going to expand the power of the executive branch and its employees. It also rolls back all of the transparency that Congress has embedded into its budget process.

Congress and the administration need to work together to address our Federal deficit. Adopting this amendment banning earmarks is a publicity stunt that has serious ramifications that actually moves our country in the wrong direction toward solving our problems in an open and constructive way.

Ms. KLOBUCHAR. Mr. President, I rise today to discuss the amendment offered by the senator from Oklahoma that would prohibit congressionally designated spending items from being included in any authorization, appropriations, or other bill for 3 years.

I firmly believe the appropriations process needs to be changed. I have supported strong reforms to increase transparency and accountability, and have pushed hard for these necessary reforms while ensuring that my State of Minnesota is not put at a competitive disadvantage.

In fact, before being sworn in as a U.S. Senator, I promised Minnesotans that I would fight to fund their priorities in an open manner and pledged to include these requests on my official Web site. At that point in time, the posting of requests online was not a rule of U.S. Senate.

Since arriving in the Senate, I have supported several important reforms to how Congress directs spending. I have voted for limitations on earmarks, including voting to ensure that American Recovery and Reinvestment Act funds would be competitively bid. I also voted to rescind funds directed to certain transportation projects that have not been spent.

Clearly, there is more we can do to improve this process and I will continue to push for necessary reforms.

However, I believe that congressional appropriations help provide much-needed resources for important programs and projects across my State. All of the projects I sponsor are based on Minnesota constituent requests and are available for the public to review.

Many of the requests I receive come from my visits to all 87 counties in Minnesota every year. A local mayor will show me a busy road that children in the community must cross many times a day to reach their school and baseball fields. And the mayor will ask me to request funds to help build an underpass that will allow these kids to safely get to school and their games.

Or a sheriff will show me how the local law enforcement's outdated communications equipment interferes with emergency response and endangers lives. And the sheriff will ask me to earmark funds to upgrade the department's radios.

In my State of Minnesota, we remember all too well how on August 1, 2007, the I–35W bridge across the Mississippi River in Minneapolis collapsed without warning. After we mourned the loss of 13 lives and the shock of the disaster had subsided, we got to work with enormous task of constructing a new bridge.

I worked hard with my colleagues in the Senate, especially Majority Whip DICK DURBIN, Transportation Appropriations Chairman PATTY MURRAY and Senator Norm Coleman, to provide up to $195 million in funds to help with the cost of constructing a new bridge. Under Senator COBURN's amendment, this funding would be considered an earmark, and Minnesota would have been left looking for other ways to recover from this tragic event.

Earmarks have done more than build bridges in Minnesota. Earmarks have provided critical funding to the Minnesota National Guard's groundbreaking ''Beyond the Yellow Ribbon Program,'' which is nationally recognized for the assistance it provides our service men and women who bravely served our nation and are now transitioning to civilian life.

Congressionally directed projects protect communities against annual flooding across my State from Roseau in the north to Moorhead in the west to Owatonna in the south. And congressionally initiated spending funds an innovative program in Stearns County, Minnesota to help protect women and children who have been the victims of domestic violence, provides much-needed resources to improve law enforcement communication and interoperability, and is building a new highway interchange in Blue Earth County, MN, that will improve safety and ease congestion while helping generate economic development.

Congressionally initiated spending cannot be discussed without also considering the grave financial situation we face as a nation. It is clear that we will need to make very tough decisions in the coming years to restore fiscal responsibility and get our nation on a path towards strong growth. Yet the Coburn amendment would not direct any savings from the elimination of earmarks to be used for deficit reduction.

We need a serious commitment to deficit reduction, and I believe we need real reforms. I look forward to the report by the President's National Commission on Fiscal Responsibility and Reform and others who are taking a comprehensive look at government spending. It is my hope that we can come together to consider these recommendations carefully and reduce our nation's debt.

I am committed to serious fiscal discipline, and will continue to support real reforms to increase transparency to the appropriations process.

Mr. VOINOVICH. Mr. President, I rise today to express my opposition to the moratorium on earmarks that has been proposed by many of my colleagues.

We have done a lot of crusading around here against these so-called earmarks, or congressionally directed spending items, in our appropriations bills. They are often criticized by Members of Congress when discussing the unsustainable fiscal path of the Federal Government or its irresponsible overspending of taxpayers' dollars.

But my colleagues who oppose the use of earmarks miss the point. Earmarks, whether good or bad, are not the problem with our government. According to data from the Congressional Research Service and the Congressional Budget Office, in fiscal year 2010 earmarks accounted for 0.009 percent of the Federal budget. That is nine one-thousandths of 1 percent. Total earmarks amounted to $32 billion, while the entire Federal budget was over $3.5 trillion. And by the way, I would like to point out that the President-himself requested $22 billion in earmarks.

But the biggest threat we face as a nation is not a special request for this or that project. The biggest threat we face is an unsustainable fiscal course caused by explosive and unchecked growth in entitlement spending and no money to pay for it. We have got an outdated tax code that does not sufficiently encourage economic growth, and a skyrocketing national debt that puts our credit-rating is serious jeopardy. In fiscal year 2010, entitlement spending accounted for 55 percent of the budget, compared with the 0.009 percent for earmarks I just referred to.

Now, I will say that I do agree with much of the criticism expressed in this chamber over bad earmarks. I don't support wasteful use of any taxpayer money, especially for egregiously useless projects that my colleagues often highlight as examples of why we should eliminate earmarks altogether.

But why throw out the baby with the bathwater? Certainly there is both

good and bad government spending. I support the kind of government spending that facilitates activity that is helpful to my State of Ohio and to our national economy: transportation and infrastructure, for example. And I am perfectly willing to defend that kind of spending and let the public decide whether my decision to help build roads and bridges in Ohio is an outrageous—or a proper—function of Federal Government. The Senate appropriations earmark process is transparent, and I welcome the public review of the projects I support, which I find constructive especially for hardworking, economically challenged families in Ohio.

The truth is Congress has a constitutional obligation to determine how the Nation spends its money. Banning earmarks cedes this power to unelected Federal bureaucrats in the administration. Congress should not be criticized for spending money, but only for spending it wastefully or irresponsibly, be it through earmarks or other spending. But the media loves to single out earmarks; they are hoodwinking people into thinking that by cracking down on earmarks, Congress is doing something responsible to solve this looming fiscal crisis staring us in the face. It's a disingenuous approach. And Congress is fooling the public by pretending that earmarks are the problem, when the real issues are spending and tax and entitlement reform.

It is interesting to note that many of my colleagues who are so strongly opposed to earmarks voted against the Conrad-Gregg fiscal commission that could very well have forced Congress to act upon tax and entitlement reform recommendations. How could one be so outspoken against earmarks in the name of fiscal responsibility and then oppose the commission that would propose reforms to the tax code and entitlements in order to put the country on a fiscally sustainable path?

So if my colleagues want to demonstrate true fiscal responsibility, if they admit that earmarks they have supported in the past are good use of tax dollars, and if they admit that banning earmarks would cede this control of spending from Congress to the administration, then why take such a blunt approach? Why don't we take more thoughtful and nuanced steps outlined by Senator INHOFE, who suggested we reform the already transparent earmark process and offered specific ideas on how to do it? Some of my colleagues practically admit that banning earmarks is not a very good idea per se, but that eliminating them is only politically expedient, as the public has come to see earmarks as a symbol of Washington's irresponsibility.

I don't want the public to be fooled by this. I don't support every earmark. There will always be examples of some wasteful projects somewhere. But earmarks are not the problem that gravely threatens our country's way of life, and the future of our children and grandchildren. This is why for over 5 years I have worked to create a commission to solve our Nation's real fiscal problems, and why I hope that the commission created by the President can produce a final legislative proposal that will effectively address our unchecked entitlement growth, our outdated and overly complex Tax Code, and return our Nation to a sustainable fiscal path.

The ACTING PRESIDENT pro tempore. Under the previous order, the question is on agreeing to the Coburn motion to suspend the rules with respect to amendment No. 4697.

Mr. GRASSLEY. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Maryland (Ms. MIKULSKI), and the Senator from New Hampshire (Mrs. SHAHEEN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Kansas (Mr. BROWNBACK).

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

The yeas and nays resulted—yeas 39, nays 56, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—39

Alexander	Ensign	McCain
Barrasso	Enzi	McCaskill
Bayh	Feingold	McConnell
Bennet	Graham	Nelson (FL)
Brown (MA)	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Snowe
Coburn	Isakson	Thune
Corker	Johanns	Udall (CO)
Cornyn	Kirk	Vitter
Crapo	Kyl	Warner
DeMint	LeMieux	Wicker

NAYS—56

Akaka	Gillibrand	Murkowski
Baucus	Hagan	Murray
Begich	Harkin	Nelson (NE)
Bennett	Inhofe	Pryor
Bingaman	Inouye	Reed
Brown (OH)	Johnson	Reid
Cantwell	Kerry	Rockefeller
Cardin	Klobuchar	Sanders
Carper	Kohl	Schumer
Casey	Landrieu	Shelby
Cochran	Lautenberg	Specter
Collins	Leahy	Stabenow
Conrad	Levin	Tester
Coons	Lieberman	Udall (NM)
Dodd	Lincoln	Voinovich
Dorgan	Lugar	Webb
Durbin	Manchin	Whitehouse
Feinstein	Menendez	Wyden
Franken	Merkley	

NOT VOTING—5

Bond	Brownback	Shaheen
Boxer	Mikulski	

The PRESIDING OFFICER. On this vote, the yeas are 39, the nays are 56. Two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

Under the previous order, the question is on the Coburn motion to suspend the rules with respect to amendment No. 4696. There will be 2 minutes of debate equally divided prior to the vote.

Who yields time? The Senator from Iowa.

Mr. HARKIN. Mr. President, we are rapidly approaching the final vote on the Food Safety Modernization Act. For the first time in seven decades, the Congress has addressed this issue. It has taken several years to get to this point. We have had involvement from Republicans and Democrats, from the business community, and from the consumers groups. It is widely supported by both the business sector and the consumer groups. We have had good bipartisan support on this bill with Senator ENZI and others on our committee. This is the product of a long effort to reach the compromise we needed to get good legislation through.

The vote we are about to have now is on a substitute offered by my friend, the Senator from Oklahoma. This substitute would basically kill all of this work we have done. It eliminates a lot of the provisions we have in this bill, such as the preventive control provisions that I think is one of the most important parts of this bill, to get preventive measures in and to prevent the contamination of food in the first place.

It also eliminates the important trace-back provisions that we have in this bill that we have worked on on a bipartisan basis. It would eliminate the important foreign supplier verification provisions which say they have to verify that the food coming into this country is the same as this.

I ask Senators to reject the substitute.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, Senator HARKIN and many on the HELP Committee have worked hard on the bill that is before us. But it has fatal flaws, especially at a time when there is a $14 trillion debt and a $1.3 trillion deficit, and it doesn't fix the real problem. We can spend $1.4 billion in this bill. We can cause food prices to go up at least $300 million to $400 million. We can put unfunded mandates on the States for $141 billion a year. That is what we will do if we reject this alternative. This accomplishes the same thing, given that we have the safest food in the world. We will continue to have the safest food in the world, we will move forward, but we won't do it by creating layers upon layers of additional costs and regulations. The problem with food safety is that the agencies don't do what they are supposed to be doing now. They need less regulation, not more.

I yield the floor.

Mr. ALEXANDER. Mr. President, 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 the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Kansas (Mr. BROWNBACK).

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

The yeas and nays resulted—yeas 36, nays 62, as follows:

[Rollcall Vote No. 256 Leg.]

YEAS—36

Alexander	Crapo	Kyl
Barrasso	DeMint	LeMieux
Bennett	Ensign	McCain
Brown (MA)	Enzi	McConnell
Bunning	Graham	Murkowski
Burr	Grassley	Risch
Chambliss	Gregg	Roberts
Coburn	Hatch	Sessions
Cochran	Hutchison	Shelby
Collins	Inhofe	Snowe
Corker	Isakson	Thune
Cornyn	Johanns	Wicker

NAYS—62

Akaka	Hagan	Nelson (NE)
Baucus	Harkin	Nelson (FL)
Bayh	Inouye	Pryor
Begich	Johnson	Reed
Bennet	Kerry	Reid
Bingaman	Kirk	Rockefeller
Boxer	Klobuchar	Sanders
Brown (OH)	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Specter
Carper	Leahy	Stabenow
Casey	Levin	Tester
Conrad	Lieberman	Udall (CO)
Coons	Lincoln	Udall (NM)
Dodd	Lugar	Vitter
Dorgan	Manchin	Voinovich
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	

NOT VOTING—2

Bond	Brownback

The PRESIDING OFFICER. On this vote, the yeas are 36, the nays are 62. Two-thirds of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mrs. BOXER. Mr. President, I move to reconsider the vote by which the motion was rejected and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE EXPLANATION

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I was unavoidably delayed on vote No. 255, the Coburn motion to suspend the rules as to the Coburn amendment on earmarks. I would have voted a very strong no because I believe that authority should remain with the elected representatives and not go to bureaucrats.

SAVINGS CLAUSES

Mr. DURBIN. Will the distinguished floor manager for this bill yield in order to enter into a colloquy to clarify the meaning of certain provisions in the legislation?

Mr. HARKIN. I am pleased to yield to the distinguished majority whip and lead sponsor of this legislation.

Mr. DURBIN. Mr. President, I wanted to clarify an important part of this bill. While this bill does grant FDA many new authorities, the savings clauses in this bill—in particular, sections 403(3), 418(1)(3)(B), and 41900(3)(B)—preserve all of FDA's existing authority under both the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, am I correct?

Mr. HARKIN. That is correct.

Mr. DURBIN. So while the bill does provide for certain exemptions from FDA authority for small farms and food processing facilities, these exemptions are based only on the specific provisions added by S. 510; they do not prevent FDA from taking appropriate actions against specific farms or facilities—or from issuing regulations in the future that might affect those exempted farms and facilities—based on existing authorities that are currently in effect and will continue to be in effect after enactment of S. 510. Am I understanding this correctly?

Mr. HARKIN. My colleague is correct. The exemptions for small farms and facilities in S. 510 do not in any way circumscribe FDA's existing authority under current laws. As my distinguished colleague has just stated, this existing authority is expressly preserved in the savings clauses in the bill. Over the past 15 years, FDA has relied on a number of provisions in existing law in establishing preventive control, or ''HACCP,'' and other preventive requirements for seafood, eggs, and juice. These authorities include section 402(a)(4) of the Federal Food Drug and Cosmetic Act, which gives FDA the authority to take action against ''adulterated food'' when that food has been subjected to ''insanitary conditions.'' In adopting these regulations, FDA has also relied on section 701(a) of the food and drug law, which gives it broad authority to issue regulations ''for the efficient enforcement'' of that law, as well as its authority to ''prevent the introduction, transmission, or spread of communicable diseases'' under section 361 of the Public Health Service Act.

Mr. DURBIN. I thank my distinguished colleague for clarifying this important matter.

Mr. LEVIN. Mr. President, each year, 76 million Americans are sickened by foodborne illness. More than 300,000 become so sick they must be hospitalized. More than 5,000 die of their illness. These statistics are deeply worrisome. And behind each number is a family dealing with tragic loss or expensive hospital bills or concern for a sick child.

The situation cries for action, which is why I support passage of the legislation we are now considering, the FDA Food Safety Modernization Act. This legislation seeks to address major deficiencies in the system that protects Americans from foodborne illnesses. It includes provisions recommended by Republicans and Democrats, by government experts and outside groups. It should have strong bipartisan support.

The bill would give FDA authority to initiate food recalls even when producers of unsafe foods refuse to do so voluntarily. It would strengthen FDA's ability to trace harmful products to their source. It would crack down on the unsafe food imports that have been the source of many health-risk incidents. It would increase FDA's authority to inspect food-producing facilities to prevent illnesses. And it would require greater diligence on the part of those producers to prevent foodborne illnesses and other health threats.

Passing this legislation will make our food safer and protect Americans from harm. I will vote to approve it, and I hope for a strong bipartisan vote in favor of this bill.

Mr. WHITEHOUSE. Mr. President, I rise today in support of the FDA Food Safety Modernization Act. I commend Senator DURBIN, Senator HARKIN, and the many other Senators who have worked so hard for so long on this important legislation. It is long past time that we make improvements to our food safety procedures in the United States, and we can see by the diversity of interests that have come together to support this bill from industry to farm to consumer groups that the time to address this issue is now.

Like so many Rhode Islanders, I have been appalled by the stories of deaths and serious illnesses from seemingly benign foods such as peanut butter and spinach. These are foods we bring into our homes, expecting them to nourish our families. We shouldn't have to worry that they might make our children sick. American families need to know that their government is protecting the food supply.

This bill goes a long way toward improving the Food and Drug Administration's food inspection and recall system. First, the bill improves our ability to prevent food safety emergencies through better record keeping, hazard analysis, controls, and food safety plans. These standards are also applied to imported foods, which is increasingly important in our global economy. Second, FDA's ability to react to foodborne illness outbreaks is significantly enhanced by increasing inspection and surveillance, making food more traceable in order to more quickly pinpoint the source of an outbreak. Furthermore, the bill grants the FDA the authority to order a mandatory recall of food if a company refuses to participate in a voluntary recall. Finally, this bill enhances FDA's capability to protect the American food supply from terrorist threats and from intentional contamination through building cooperation with the Department of Homeland Security at our ports.

I am very pleased that all of this is accomplished while protecting small farmers and producers. Rhode Island is

very proud of its small farms, local produce, and the wonderful farmers markets that can be found throughout the State. Our farmers are proud to feed families in Rhode Island and the surrounding States, and I know they do everything possible to ensure the food they sell is safe. I thank Senator TESTER for his work on a compromise to protect farmers like those in Rhode Island, and throughout Nation, who believe in the value of locally grown food.

It has been disappointing that the process to bring this bill about has taken so long. The bill's sponsors have been trying to bring it to the floor of the Senate for a vote for months, during which time the outbreak of salmonella in eggs made the need to improve our food inspection system even more clear. This is not a perfect bill, but it is a necessary one. Once it is passed, we must continue to build upon it. The matter of our families' safety is not a partisan issue; ensuring food safety is a fundamental function of our Federal Government.

Mr. CASEY. Mr. President, the next time we sit down to eat dinner with our families, are we sure that the food on our tables is safe to eat? I understand that many Americans are concerned about food safety issues. We all want food for our families that is nutritious and free from foodborne pathogens and contaminants. Ensuring that our food supply, both domestic and foreign food products, is safe is a high priority for me. I am focused on food safety not only as a lawmaker but also as a consumer and a father.

Americans have every right to expect a safe food supply. We need solutions to give Americans peace of mind that the foods they eat and give to their families are safe to consume. There are 76 million cases of foodborne illness in this country every year. These illnesses send an estimated 300,000 Americans to the hospital each year and they kill an estimated 5,000 individuals yearly. Many of these deaths occur in vulnerable members of our communities: young children, the elderly, or those with chronic illnesses.

I will share with you the story, a real story, of Kevin Kowalcyk, a 2-year-old boy, who was sickened with an E. coli O157:H7 infection that he acquired from eating a common food. I want to speak about Kevin because I want to be clear that when we are not talking about statistics today, we are talking about real people, real lives. Kevin's illness started with vomiting and diarrhea, but soon he was passing large amounts of blood. On the third day of his illness, he was diagnosed and hospitalized. On the following day, his kidneys started to fail. The medical staff, while brutally honest about how hemolytic uremic syndrome, HUS, affected children, felt that Kevin would live. They told Kevin's parents that he would go to the brink of death—which he did on several occasions—because ''this is the way it is for HUS kids.''

On day 12 of his illness, this normally healthy little boy looked as sick as a child can look. His body was swollen to three times its normal size, and he was hooked up to a dialysis machine and a respirator. His heart raced at 200 beats per minute, and light from huge sun lamps focused on him, in attempt to raise his body temperature. Kevin could not speak or cry. His loving family could not hold him. He suffered three heart attacks as they struggled to put him on a heart-lung machine. And then Kevin died. The autopsy later showed that his entire intestinal tract had been destroyed by gangrene.

One month after Kevin's August 11, 2001, death, America experienced the horrible 9/11 attack, and the Kowalcyk family were told that they were having another baby. Kevin's grandmother, Pat Buck, a Pennsylvania resident, was very concerned about her daughter and her new grandchild, and she was horrified by the type of death that her grandson had endured. So Pat did what any teacher would do and started studying foodborne illnesses. What she learned shocked and appalled her.

By March 2002, Kevin's family was actively involved in food safety advocacy. In April 2003, Senator HARKIN declared that the Meat and Poultry Pathogen Reduction and Enforcement Act would be renamed Kevin's Law. In 2006, after the spinach outbreak, Barbara Kowalcyk, Kevin's mother, and Pat Buck founded the Center for Foodborne Illness Research & Prevention, CFI, a national nonprofit dedicated to preventing foodborne illness through research, education, advocacy, and service. In 2007, Barbara and Pat were asked to participate in the filming of the Oscar-nominated documentary, ''Food Inc.'' Today, CFI is viewed as a credible organization that is looking for science-based solutions to America's food safety challenges.

I tell you about Kevin's story because it is a powerful reminder that real people are being affected by foodborne disease, not just once in awhile but every day. I want to thank Barbara and Pat Buck for sharing their story and becoming involved in such an important issue that affects all of our lives. In particular, I am thankful to them for turning their family's tragedy into an action that will help to ensure no child would ever again go through Kevin's horrible experience.

As Pat said to me once while visiting my office, ''It is time to move forward. Too many people are being sickened, too many are suffering negative, long-term health consequences and too many are dying because they ate a common food, such as peanut butter, cookie dough or fresh produce. The 1938 law governing the Food and Drug Administration is too obsolete and it does not provide the Agency with the authorities or resources needed to develop a proactive approach to food safety. S. 510 will help FDA to become more proactive. This legislation is needed to help America meet the food challenges of the 21st century.''

The U.S. Senate must modernize the U.S. system of food safety and inspection. That is why I am pleased to support passage of S. 510, Senator DURBIN's Food Safety Modernization Act. We must provide the agencies that regulate food safety with additional authorities to ensure the safety of our Nation's food supply. We must provide increased resources to the FDA so that it can hire more personnel and so it can invest in improvements to domestic and imported food products inspection systems. We must mandate science-based regulations to ensure the safety of food products that carry the most risk. We must improve coordination between USDA, FDA, and the various other Federal and State agencies charged with regulating food safety. We must implement a national traceability system so we have consistency and know where our food comes from. And we must ensure the safety of both domestic and foreign food products.

With Senator GRASSLEY, I introduced the EAT SAFE Act, which is designed to address a critical aspect of the food and agricultural import system: food being smuggled into the United States. The greatest threat of smuggled food and agricultural products comes from the companies, importers, and individuals who circumvent U.S. inspection requirements or restrictions on imports of certain products from a particular country. Some examples of prohibited products discovered in U.S. commerce in recent years include unpasteurized raw cheeses from Mexico containing a bacterium that causes tuberculosis and strawberries from Mexico contaminated with hepatitis A. These smuggled food and agriculture products present safety risks to our food, plants, and animals and pose a threat to our Nation's health, economy, and security.

I am grateful to Chairman HARKIN, Ranking Member ENZI, Senator DURBIN, Senator DODD, Senator GREGG, and Senator BURR for incorporating portions of the EAT SAFE Act into S. 510. These provisions would add personnel to detect, track, and remove smuggled food, call for the development and implementation of strategies to stop food from being smuggled into the United States, and require data sharing amongst Federal agencies dealing with food safety and foodborne illnesses. I am thankful that this important issue is being addressed so that mothers and fathers across the Nation won't have to be concerned when they pack their children's lunches, sit down to eat a family dinner, or give their child a snack.

In the Senate, we owe it every American consumer to make needed improvements to our food safety system before another outbreak sickens our citizens, and we need to make sure that we are vigilant and vigorously monitor and update our food safety system so that Americans can continue to be confident that the food they eat is safe.

Mr. GREGG. Mr. President, I rise to speak briefly about S. 510, the FDA

Food Safety Modernization Act, which we will be voting on today.

This bill incorporates the best ideas from food safety experts, farmers, small business owners, the Bush administration's Food Protection Plan, the Obama administration's Food Safety Working Group, and Members on both sides of the aisle.When enacted, it will transform America's approach to food safety by emphasizing prevention and by strengthening our capacity to detect and rapidly respond when food safety emergencies occur in the future.

I would especially like to thank Senator DURBIN for all of his efforts on the issue of food safety and his commitment to working on this issue in a bipartisan manner. We originally teamed up to begin this effort in the spring of 2008, and after numerous drafts and twist and turns, I am hopeful that we are close to getting this bill across the finish line.

None of this would have been possible without a core group of bipartisan Members who have helped shepherd this bill since its inception. Senator BURR has been a key leader on food defense issues and has worked tirelessly to ensure that this bill is not burdensome for small farmers and food producers. Senator DODD, along with Senator ALEXANDER, contributed greatly to the bill as a whole, and were instrumental in providing a key provision relating to the need for schools to be more prepared to protect children with life-threatening food allergies.

We have also been extremely fortunate to have the tireless support of both Chairman HARKIN and Ranking Member ENZI, who assisted in moving the bill through the HELP Committee with unanimous support roughly a year ago, and who, in the last year have helped us navigate our way to the floor.

Finally, I would like to thank our staffs who have put so much time into this legislative effort. Although it has been a long and sometimes arduous process, they have shown time and again that almost every problem is solvable when you get a group of hard working folks around a table. I would like to especially recognize and thank my own lead staffer on this bill, Liz Wroe, as well as the following:

Dave Lazarus, Candice Cho, and Albert Sanders with Senator DURBIN; Jenny Ware, Jenn Alton, Josh Martin, Margaret Brooks, and Anna Abram with Senator BURR; Jenelle Krishnamoorthy, Tom Kraus, and Bill McConagha with Senator HARKIN; Amy Muhlberg, Travis Jordan, Keith Flanagan, and Chuck Clapton with Senator ENZI; and Tamar Magarik Haro and Anna Staton with Senator DODD.

Mr. LEAHY. Mr. President, the Senate is poised to pass the FDA Food Safety Modernization Act, which will take much needed and long overdue steps to protect Americans from unsafe food. I am disappointed that the Senate will not consider, however, an important amendment I proposed that would have held criminals who poison our food supply accountable for their crimes. My amendment would have greatly strengthened the ability to deter outrageous conduct that puts Americans at risk. It received unanimous, bipartisan support when it was reported by the Judiciary Committee as the Food Safety Accountability Act. It is unfortunate that, despite this bipartisan support in committee, Republican objections prevented the amendment from being considered by the full Senate.

This legislative proposal would increase the sentences that prosecutors can seek for people who knowingly violate our food safety laws in those cases where there is conscious or reckless disregard of a risk of death or serious bodily injury. If it were passed, those who knowingly contaminate our food supply and endanger Americans could receive up to 10 years in jail.

Just this summer, a salmonella outbreak caused hundreds of people to fall ill and triggered a national egg recall. The cause of the outbreak is still under investigation, but salmonella poisoning is too common and sometimes results from inexcusable knowing conduct. The company responsible for the eggs at the root of this summer's salmonella crisis had a long history of environmental, immigration, labor, and food safety violations. It is clear that fines are not enough to protect the public and effectively deter this unacceptable conduct. We need to make sure that those who knowingly poison the food supply will go to jail. This amendment would have done that in the most egregious cases.

Current statutes do not provide sufficient criminal sanctions for those who knowingly violate our food safety laws. Knowingly distributing adulterated food is already illegal, but it is merely a misdemeanor right now, and the Sentencing Commission has found that it generally does not result in jail time. The fines and recalls that usually result from criminal violations under current law fall short in protecting the public from harmful products. Too often, those who are willing to endanger our children in pursuit of profits view such fines or recalls as merely the cost of doing business.

Last year, a mother from Vermont, Gabrielle Meunier, testified before the Senate Agriculture Committee about her 7-year-old son, Christopher, who became severely ill and was hospitalized for 6 days after he developed salmonella poisoning from peanut crackers. Thankfully, Christopher recovered, but Mrs. Meunier's story highlighted improvements that are needed in our food safety system. No parent should have to go through what she experienced. The American people should be confident that the food they buy for their families is safe.

After hearing Mrs. Meunier's account last year, I called on the Department of Justice to conduct a criminal investigation into the outbreak of salmonella that made Christopher and many others so sick. In that case, the outbreak was traced to the Peanut Corporation of America. The president of that company, Stewart Parnell, came before Congress and invoked his right against self-incrimination, refusing to answer questions about his role in distributing contaminated peanut products. These products were linked to the deaths of 9 people and have sickened more than 600 others.

It appears that Mr. Parnell knew that peanut products from his company had tested positive for deadly salmonella, but rather than immediately disposing of the products, he sought ways to sell them anyway. The evidence suggests that he knowingly put profit above the public's safety. Our laws must be strengthened to ensure this does not happen again. My amendment would increase the chances that those who disregard the safety of Americans and commit food safety crimes will face jail time, rather than a slap on the wrist, for their criminal conduct.

On behalf of the hundreds of individuals sickened by this summer's and last year's salmonella outbreaks, we must repair our broken food safety system. The House has already passed a provision similar to my amendment. I am sorry that partisan objections from a few Senators prevented the Senate from quickly adopting this important amendment. I will continue to try to pass this commonsense legislation even if it cannot be coupled with the FDA Food Safety Modernization Act, and I hope the Senate will act quickly to pass it separately.

Mr. HARKIN. Mr. President, one of the most difficult issues I have had to face as manager of S. 510 is the balance between small growers and processors and larger producers and food companies. This is always a tough issue in agriculture. Those of us who work with our food system know that one size does not fit all. It is always hard to get it right.

In this case, I know that some of my colleagues think the Tester-sponsored language goes too far to help small growers and processors. I don't think we have, and here is why I say that. There are some very important limitations on the Tester provisions in S. 510. First, small businesses as we define them here are really small—a company that does $500,000 of sales a year is very small. We can't say exactly how much food these small companies sell, but here is a good example that shows how small these eligible companies are: The smallest member of the California League of Food Processors reports between $2.5 and $3 million a year in sales or five times as much as any company eligible under the Tester provisions.

Second, many food companies that buy product from eligible producers will tell them: Hey I want you to follow FDA regulations. I want all my suppliers to follow FDA rules. Some may even require their suppliers to do

more than FDA requires. That decision is part of a private contractual relationship. This bill does not affect these arrangements. They will continue to exist and will limit the application of any exemptions provided in this bill.

Third, processors that want to be exempted will have to document that they meet the exemption. There are two ways to do that. First, they must show they are in compliance with State law or second, they must show that they have completed a food safety plan of their own. Many processors will simply decide that for competitive reasons or lack of capacity they will simply stick with whatever FDA requires. This is another pragmatic limitation on the Tester provisions.

Fourth and finally, FDA is specifically authorized to take action and revoke an exemption if it determines that the food presents a public health risk, and FDA can act to prevent an outbreak if needed. This provision creates a ''one-strike-you are out'' exemption: once a farm or food processing facility has lost its exemption, it may never be reinstated.

Mr. President, it is not the intent of this legislation to include in the definition of ''facility,'' for purposes of either FFDCA Sec. 415 or for the pending bill, seed production or storage establishments as long as they do not manufacture, process, pack, or hold seed reasonably expected to be used as food or feed. Further, we note that seeds not used as food or feed have historically not been subject to oversight by FDA.

The PRESIDING OFFICER. Under the previous order, amendment No. 4715 is agreed to.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask unanimous consent that after adoption of the substitute amendment to S. 510 and now, after the third reading, the Senate then proceed to Calendar No. 74, H.R. 2751; that all after the enacting clause be stricken and the text of S. 510, as amended, be inserted in lieu thereof; that no further amendments or motions be in order; that the bill, as amended, be read a third time, and after the reading of the Budget Committee pay-go letter, the Senate then proceed to vote on the passage of H.R. 2751, as amended; further, that the title amendment, which is at the desk, be considered and agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. COBURN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Under the previous order, the clerk will read the pay-go statement.

The legislative clerk read as follows:

Mr. Conrad: This is the Statement of Budgetary Effects of PAYGO Legislation for S. 510, as amended.

Total Budgetary Effects of S. 510 for the 5-year statutory PAYGO Scorecard: $0.

Total Budgetary Effects of S. 510 for the 10-year Statutory PAYGO Scorecard: $0.

Also submitted for the Record as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act, as follows:

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR SENATE AMENDMENT 4715 IN THE NATURE OF A SUBSTITUTE TO S. 510, FDA FOOD SAFETY MODERNIZATION ACT

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
	Net Increase or Decrease (−) in the Deficit											
Statutory Pay-As-You-Go-Impact[a]	0	0	0	0	0	0	0	0	0	0	0	0

[a] S. 510 would increase federal efforts to ensure the safety of commercially distributed food. S. 510 would stipulate that the failure to comply with new requirements, such as mandatory recalls and risk-based preventive controls, could result in the assessment of civil or criminal penalties. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. Enacting S. 510 could increase revenues and direct spending, but CBO estimates that the net budget impact would be negligible for each year.

Source: Congressional Budget Office.

The ACTING PRESIDENT pro tempore. Under the previous order, the cloture motion with respect to the bill is withdrawn and the question is on passage of S. 510, as amended.

Ms. LANDRIEU. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Kansas (Mr. BROWNBACK).

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

The result was announced—yeas 73, nays 25, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—73

Akaka	Collins	Inouye
Alexander	Conrad	Johanns
Baucus	Coons	Johnson
Bayh	Dodd	Kerry
Begich	Dorgan	Kirk
Bennet	Durbin	Klobuchar
Bingaman	Enzi	Kohl
Boxer	Feingold	Landrieu
Brown (MA)	Feinstein	Lautenberg
Brown (OH)	Franken	Leahy
Burr	Gillibrand	LeMieux
Cantwell	Grassley	Levin
Cardin	Gregg	Lieberman
Carper	Hagan	Lincoln
Casey	Harkin	Lugar
Manchin	Reed	Udall (CO)
McCaskill	Reid	Udall (NM)
Menendez	Rockefeller	Vitter
Merkley	Sanders	Voinovich
Mikulski	Schumer	Warner
Murkowski	Shaheen	Webb
Murray	Snowe	Whitehouse
Nelson (NE)	Specter	Wyden
Nelson (FL)	Stabenow	
Pryor	Tester	

NAYS—25

Barrasso	DeMint	McConnell
Bennett	Ensign	Risch
Bunning	Graham	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Corker	Isakson	Wicker
Cornyn	Kyl	
Crapo	McCain	

NOT VOTING—2

Bond	Brownback

The bill (S. 510), as amended, was ageed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote and move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

PASSAGE OF S. 510

Mr. HARKIN. Mr. President, today with the passage of the Food Safety Modernization Act by this overwhelming vote of 73 to 25, we have taken momentous steps to help strengthen food safety in America. The Food Safety Modernization Act will bring America's food safety system into the 21st century.

This bill gives the FDA the authority the agency needs to help protect America from foodborne illnesses. While this bill is a historic step forward in ensuring that our food supply is safe and protecting Americans from foodborne illnesses, we have to now ensure that the FDA has adequate resources to fulfill their profound responsibilities.

I look forward to working with my colleagues on the Appropriations Committee and the entire Senate to ensure that they have the necessary resources to fulfill the provisions of this legislation.

As the primary cosponsors of the bill, Senators DURBIN and GREGG deserve a great deal of thanks for their outstanding leadership. I asked Senator DURBIN when he started working on this bill. He said back in the House 18 years ago. So sometimes it takes a long time to get these things done. But this is the first time in 70 years we have ever had a major revision of our food safety laws. Senator GREGG has also worked at least a dozen years,