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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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September 23, 2004

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The Honorable Tommy G. Thompson
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Thompson:

On September 30, 2004, the Committee on Energy and Commerce is expected to mark up H.R. 2699, the "National Uniformity for Food Act of 2003." This bill was introduced more than a year ago, but no hearing has been held on this subject. As you know, this bill would amend the Federal Food, Drug, and Cosmetic Act to preempt states from continuing or implementing food safety warning programs. Because of the bill's implications for food safety and security, I would appreciate having your views on this legislation prior to its consideration by the Committee.

I note that the Association of Food and Drug Officials (AFDO) testified before the Subcommittee on Health on June 25, 2004, on the subject of implementing the food safety provisions of the Bioterrorism Response and Preparedness Act of 2002. According to that testimony "more than 80% of the food safety and security activities in the United States are performed at the State or Local levels. Consequently, it is clear that State and Local food safety programs provide the major portion of the shields that must be in place to detect any sort of terrorist act. With the increasing threat of terrorist activities against our food supply, it is paramount that this cooperative and highly integrated Federal, State, and Local food safety and security system be maintained and strengthened for the deterrence, prevention and detection of terrorist activities." The testimony then states that H.R. 2699 "threatens to eviscerate this system. The ramifications of this bill, intended or not, will dissolve our nation's biodefense capabilities."

The testimony goes on to state that H.R. 2699 "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 necessary authority for State and Local agencies to operate food safety and security programs. The pre-9/11 concept embodied in this bill is very much out of line with current threats that confront our food safety and security system." AFDO states that

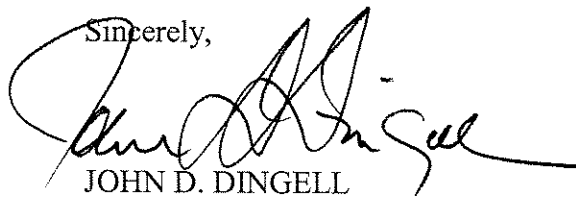
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H.R. 2699's preemption and invalidation of state and local food safety and security activities will "severely hamper" FDA's ability to detect and respond to acts of terrorism and that "Our current food safety and security system will be significantly disrupted . . . and our inability to track suspected acts of intentional adulteration will be exploited by those who seek to do harm to our nation."

AFDO concludes by stating that enactment of H.R. 2699 "will effectively eliminate our nation's food biosecurity shields, and will undermine our whole food safety and biosurveillance capability." It would be very helpful to me and the other Committee Members to have your views on the biosecurity concerns raised by state food and drug officials, as well as other issues raised by H.R. 2699, prior to next Thursday's markup.

Thank you for your consideration of this matter.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Michael Bilirakis, Chairman
Subcommittee on Health

The Honorable Sherrod Brown, Ranking Member
Subcommittee on Health