

when I served in the Wisconsin State Legislature. There, I spearheaded the effort to provide state funds for a lawsuit against the United States Department of Agriculture. Challenging the system, we argued that USDA had no sound and justifiable economic basis for their milk pricing system. The states of Wisconsin and Minnesota, working together, repeated that argument relentlessly in the courts for over ten years in an effort to beat back the system.

In November of last year, the people of Wisconsin and Minnesota won that case. Federal District Judge David Doty ruled in favor of a more equitable dairy pricing system and enjoined the Secretary of Agriculture from enforcing USDA's "arbitrary and capricious" Class I differentials. Madam President, in other words, a federal judge could find no rational justification for this archaic system and ruled the whole scheme illegal.

Although the case is now in the appellate court, I am optimistic that Doty's ruling will be upheld. As I said, Judge Doty found the current pricing system "arbitrary and capricious."

Most recently, the USDA came up with a proposed rule that included two different options to replace the old system: Option 1A is virtually identical to the status quo and is totally unacceptable to the majority of Wisconsin dairy farmers. Option 1B is a modest step in the right direction and a good place to begin reform efforts. I was optimistic when Secretary Glickman announced USDA's proposed rule for milk marketing order reform and his stated preference for Option 1B.

If there was any question of the intense, personal effect this discriminatory policy has on Wisconsin's dairy farmers, I would hope, after visiting with over 500 producers, consumer advocates, and local officials at an informal hearing in Green Bay, that USDA's doubts could be put to rest.

At the USDA listening session in Green Bay, more than 500 people showed up, demanding a fair shake. At the sessions in New York, Georgia and Texas, a total of 240 people showed up. Wisconsin had more than double the attendance than the other locations combined. That difference in attendance didn't happen just because of Wisconsin's tradition of good citizenship. They showed up in Green Bay by the hundreds because they know they are getting a raw deal. Those Wisconsinites showed up to demand reform. They showed up to demand a better system, a chance to preserve economic viability and the opportunity to continue their way of life.

Day after day, season after season, we are losing small farms at an alarming rate. While these operations disappear, we are seeing the emergence of larger dairy farms. The trend toward fewer but larger dairy operations is mirrored in most States throughout the Nation. The economic losses associated with the reduction in the number

of small farms go well beyond the impact on the individual farm families who must wrest themselves from the land.

The loss of these farms has hurt their rural communities, where small family-owned dairy farms are the key to economic stability. They deserve better: we need a system in which their farms are viable and their work can be fairly rewarded.

In conclusion, I will continue to work with Wisconsin family farmers and other concerned Wisconsinites in the fight to preserve and protect our family dairy farms by restoring some semblance of fairness and economic integrity to our outdated, out-of-touch, milk pricing system. In the process, we will save an important piece of American agricultural history and a priceless part of Wisconsin's culture.

As USDA considers Federal Milk Marketing Order reform, I urge the Department to set aside 60 years of inequality and senseless regionalism to do what is best for this nation's dairy industry. These policies are out-of-date, out-of-touch and, frankly, an outrageous way to treat Wisconsin dairy farmers. For those farmers, who are watching as their neighbors sell their livestock to cover their bills and abandon the land of their parents and grandparents, USDA's decision could mean the demise or the survival of their way of life. It is time to do the right thing on dairy pricing policy. Wisconsin farmers demand it, Wisconsin's consumers demand it, and, above all, Justice demands it.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

EXECUTIVE SESSION

NOMINATION OF SUSAN OKI MOLLWAY TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

VOTE

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider the nomination of Susan Oki Mollway to be United States District Judge for the district of Hawaii.

The question occurs on the confirmation of the nomination. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Rhode Island (Mr. CHAFEE), the Senator from New York (Mr. D'AMATO), the Senator from New Mexico (Mr. DOMENICI), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Wyoming (Mr. THOMAS) are necessarily absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Vermont (Mr. LEAHY), the Senator from Illinois (Ms. MOSELEY-BRAUN), and the Senator from Nevada (Mr. REID) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY), would vote "aye."

The result was announced—yeas 56, nays 34, as follows:

[Rollcall Vote No. 166 Ex.]

YEAS—56

Akaka	Feinstein	Lieberman
Baucus	Ford	Lugar
Biden	Glenn	Mack
Bingaman	Graham	Mikulski
Boxer	Gregg	Moynihan
Breaux	Hagel	Murray
Bryan	Harkin	Reed
Bumpers	Hatch	Robb
Byrd	Hollings	Rockefeller
Cleland	Inouye	Roth
Cochran	Jeffords	Sarbanes
Collins	Johnson	Smith (OR)
Conrad	Kennedy	Snowe
Daschle	Kerrey	Stevens
DeWine	Kerry	Thompson
Dodd	Kohl	Torricelli
Dorgan	Landrieu	Wellstone
Durbin	Lautenberg	Wyden
Feingold	Levin	

NAYS—34

Abraham	Frist	McCain
Allard	Gorton	McConnell
Ashcroft	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Santorum
Burns	Helms	Sessions
Campbell	Hutchinson	Shelby
Coats	Hutchison	Smith (NH)
Coverdell	Inhofe	Thurmond
Craig	Kempthorne	Warner
Enzi	Kyl	
Faircloth	Lott	

NOT VOTING—10

Bennett	Leahy	Specter
Chafee	Moseley-Braun	Thomas
D'Amato	Murkowski	
Domenici	Reid	

The nomination was confirmed.

Mr. INOUE. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senate will now return to legislative session.

Mr. THOMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

The Senate continued with the consideration of the bill.

Mr. THOMPSON. Madam President, I ask unanimous consent that the pending motion and amendments be laid aside and it be in order for me to call up amendment No. 2813 relative to tax compensation at Fort Campbell and no second-degree amendment be in order.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Madam President, I object.

Mr. THOMPSON. Madam President, I regret the objection of my colleague. At this time, I put Members on notice that I will attempt to get this issue agreed to on the next available bill. This is an important issue to many people in my State. Consequently, I hope to have the cooperation of a majority of colleagues when I move next to enact this legislation.

I yield the floor.

Mr. FEINGOLD. Madam President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

EFFORT TO REMOVE FEC GENERAL COUNSEL

Mr. FEINGOLD. Madam President, I rise to talk about an effort under way in this Congress to hamstring the agency charged with enforcing the Federal election laws—the Federal Election Commission. This effort is happening very quietly under the guise of routine agency appropriations, but it has deadly serious consequences in terms of the independence of the Federal Election Commission. I think it is important to call the Senate's attention to it and give notice that I intend to do everything in my power to make sure it doesn't happen.

Here is what is happening. The Appropriations Committee of the other body has included a provision in the funding bill for the FEC that would result in the firing of the Commission's general counsel and staff director. That's right, Madam President. The Congress is now going to get involved in the personnel decisions of the FEC, the agency that we have charged with overseeing us and the way we conduct our reelection campaigns. Some in the Congress want to fire two career civil servants who are simply trying to do their job to make campaign information available to the public and enforce the election laws.

Lawrence Noble, the General Counsel, has served the agency since 1987. John Surina, the Staff Director, has been in that position since 1983. These are not political appointees. They were put in their jobs by a bipartisan majority vote of the Commission, as required by law. In fact, both of these individuals were unanimously approved by the FEC when they were appointed. They provide crucial institutional continuity, especially now that, as of last year, we have put a one-term limit on the Commissioners themselves.

But now, unfortunately, some members of Congress apparently don't like some things that the Commission has done. And so they are trying to engineer, what I would call, a quiet coup. They want to require that these two staff positions be refilled every four years by an affirmative vote of four Commissioners. And they specify that this requirement will apply to the cur-

rent occupants of the positions. So Mr. Noble and Mr. Surina will lose their jobs at the end of this year, unless the Commission votes to reappoint them.

Of course, the Commission itself is in great turmoil. Only two members are serving the terms to which they were appointed. Two members are holdovers, their terms having expired in April 1995. A fifth member is also a holdover, although the President has resubmitted his name. And the sixth slot has been vacant since October 1995. So the Congress has hardly been blameless if the Commission seems at times to be at sea. And now here we are about to create two other vacancies, more turmoil and lack of direction at this crucial agency.

Madam President, specifying by law that top staff positions in the agency must be refilled every four years is unprecedented. The Congressional Research Service has told me that there are three independent agencies—the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and the National Labor Relations Board—where the General Counsel is actually a political appointee, nominated by the President and confirmed by the Senate. In each of these cases, the General Counsel has direct statutory authority.

But in every other independent agency, including the FEC—and there are lots of agencies, Madam President—the FCC, the SEC, the CPSC, the FTC, the CFTC, and many more. In all of these agencies, the General Counsel is appointed by either the Chairman or the entire body.

And guess how many of those General Counsels are required to be fired after four years unless they are reappointed and reconfirmed by the appointing entity. The answer is none. Not one.

Madam President, I ask unanimous consent that a memorandum from the Congressional Research Service on this issue be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: Honorable Russell D. Feingold, Attention: Bob Schiff.

From: Rogelio Garcia, Specialist in American National Government, Government Division.

Subject: Appointments to Positions of General Counsel and of Staff Director on Independent Regulatory and Other Collegial Boards and Commissions.¹

This memorandum responds to your request for information regarding appointments to the position of general counsel and of staff director, or its equivalent, or independent regulatory and other collegial boards and commissions. Specifically, you inquired about the number of such positions to which the President makes appointments with the advice and consent of the Senate. You also wanted to know if the positions included a fixed term of office, and, if they did, what happened to the incumbent when the term expired.

¹ See footnotes at end of memorandum.

The position of general counsel at three of 32 independent regulatory and other collegial boards and commissions is subject to Senate confirmation. (The position of staff director, where it exists is not subject to Senate confirmation in any of the 32 agencies.) The three requiring Senate confirmation are the Equal Employment Opportunity Commission (EEOC), Federal Labor Relations Authority (FLRA), and National Labor Relations Board (NLRB). The general counsel positions at the three agencies are for fixed terms of office. At the EEOC, the general counsel is appointed to a 4-year term, and remains in office at the end of the term until replaced (42 U.S.C. 2000e-4(b)); at the FLRA, the general counsel is appointed to a 5-year term, and must leave office when the term expires (5 U.S.C. 7104(f)(1)); and at the NLRB, the general counsel is appointed to a 4-year term and must leave office when the term expires (29 U.S.C. 153(d)).

It appears that the above three general counsel positions were made subject to Senate confirmation because of the special responsibilities assigned directly to them by statute. The general counsel for the EEOC is charged directly with responsibility for the conduct of litigation regarding the commission's enforcement provisions and civil actions.² The general counsel for the FLRA has direct statutory authority to investigate alleged unfair labor practices and file and prosecute complaints, as well as "direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices . . ." ³ Finally, the general counsel for the NLRB "exercise[s] general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices, and has final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under [29 U.S.C. 160], and in respect of the prosecution of such complaints before the Board . . ." ⁴

The general counsels at the other 29 agencies, and the staff director, where the position exists, are appointed either by the agency's governing board, i.e., the board of directors, or the chairman, subject to the general policies, directives, or approval of the governing board. In at least nine agencies, the governing board appoints the general counsel, staff director, and other employees.⁵ In at least five agencies, the chairman, governed by the policies and directives of the governing body, makes the appointment.⁶ In two agencies, the chairman makes the appointment on "behalf of the commission."⁷ In one agency, the chairman appoints the general counsel and staff director, as well as certain other officers, subject to the approval of the commission.⁸ Finally, in one agency, the chairman makes the appointment subject to disapproval by a majority vote of the commissioners.⁹ None of the appointments is for a fixed term of office. They are all indefinite appointments, and, with two exceptions, the incumbents may be removed at any time by the appointing authority.¹⁰

If I may be of further assistance, please call me at 7-8687.

FOOTNOTES

¹ The position of general counsel in large independent agencies, and at the department level as opposed to the administration or bureau level, in each executive department is subject to Senate confirmation. None of the positions, however, is for a fixed term of office.

² 42 U.S.C. 2000e-4(b)(1).

³ 5 U.S.C. 7104(f) (2) and (3).

⁴ 29 U.S.C. 153(d).

⁵ Commodity Futures Trading Commission (7 USC 4a (c) and (d)), Federal Communications Commission