



**Testimony of Michael Roberson**

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Publix Super Markets, Inc.  
On Behalf of the Food Marketing Institute**

**"Keeping America's Families Safe: Reforming  
the Food Safety System"**

**U.S. Senate  
Committee on Health, Education, Labor, and Pensions  
Thursday, October 22, 2009**

**Publix®**

Chairman Harkin, Ranking Member Enzi and Members of the HELP Committee,

I am honored to appear before you today on behalf of the Food Marketing Institute (FMI) to present our views and suggestions on helping protect our food supply and on S. 510, the FDA Food Safety Modernization Act. FMI and its member companies share the common goal of enacting legislation this year that will have a genuine and positive impact on our food safety system.

I am Michael Roberson, the Director of Corporate Quality Assurance with Publix Super Markets, Inc. of Lakeland, Florida. I lead a team of dedicated professionals responsible for food safety and quality assurance systems throughout Publix and our integrated chain of manufacturing, distribution, and retail food stores. With a B.S. degree in Microbiology from Mississippi State University, and a M.S. in Food Safety from the College of Veterinary Medicine at Michigan State University, I possess a technical background and a thorough understanding of the microbial hazards associated with food and factors most frequently implicated in food-borne disease.

Publix is privately owned and operated by its 140,000 employees, with 2008 sales of \$23.9 billion. Currently, Publix has 1,013 stores in Florida, Georgia, South Carolina, Alabama and Tennessee and five separate food manufacturing facilities. The company has been named one of FORTUNE's "100 Best Companies to Work for in America" for 12 consecutive years. In addition, Publix's dedication to superior quality and customer service is recognized as tops in the grocery business, most recently by an American Customer Satisfaction Index survey.

Today I am representing FMI, a national trade association that has 1,500 member companies made up of food retailers and wholesalers in the United States and around the world. FMI members operate approximately 26,000 retail food stores with combined annual sales of roughly \$400 billion, representing three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of national and regional chains as well as independent grocery stores.

The American consumer has access to a selection of products in the grocery store that is unmatched. Our customers have products available to them everyday that are grown and made not only in the United States, but throughout the world. As a result, fresh fruits and vegetables are available for purchase year round and fresh seafood can be found in the middle of our country far from any ocean. The average grocery store has about 47,000 individual items on its shelves, with large supermarkets having over 100,000 items for sale. Regardless of the number of items in a store though, the most important goal of food retailers and wholesalers is to ensure that the food we sell is as safe as possible and of the highest quality possible.

Regrettably, high profile food safety outbreaks and recalls involving tomatoes, jalapenos, peanuts and pistachios have not only made headlines, but have caused illness and in some cases even death. While the causes of these problems were the result of poor food safety practices - and in some cases possibly criminal actions - they did reveal weaknesses in

the existing food safety system and highlighted the need to update the laws and culture necessary to adequately protect our food supply. As the purchasing agent for the consumer and the final link in the supply chain, our industry understands that it is vital to ensure that the FDA has the necessary authority, credibility and resources to meet the challenges of today's global marketplace.

As this process moves forward, consumer confidence is an essential factor in this debate. Food safety issues can be extremely complex and consumers vary greatly in their knowledge of the science and other issues affecting the safety of our food supply. However, as food safety issues draw national headlines, consumer awareness as well as concern about the safety of commercially prepared foods and products purchased at the supermarket heightens. As a result, shoppers may quickly alter purchasing decisions and will even go as far as avoiding an entire product category if they are not confident of its safety.

In FMI's annual survey of consumers, U.S. Grocery Shopper Trends report (Trends), 83 percent of shoppers say that they are either somewhat or very confident in safety of food in the supermarket. However, the vulnerability of consumer confidence is illustrated by the high percentage of shoppers who are only "somewhat" confident at 72 percent compared to those that are "very" confident at 11 percent. We believe that strengthening consumer confidence is the responsibility of both private industry and the government working together.

At the retail level, supermarkets have many prevention programs currently in place to protect our customers, including consumer education campaigns, employee food safety training, extensive sanitation programs, food safety management systems, and programs that involve working closely with our suppliers, especially those beyond our borders. I would like to share with the Committee some programs utilized by Publix and by many other companies in the food industry at both the retail and manufacturing levels to help ensure the safety of the products on our shelves.

Publix is committed to working with the supplier community, including our own manufacturing plants, to constantly improve the safety of the food they manufacture and process, and to this end participates in the Safe Quality Food (SQF) Program. SQF provides independent certification that Publix's suppliers' food safety and quality management systems comply with domestic and international food safety regulations. Recognized by the Global Food Safety Initiative (GFSI), accredited third party certification programs, such as SQF, are objective, independent bodies that are highly qualified to help enable suppliers to assure their customers that food has been produced, processed, prepared and handled according to the highest possible standards, which meet or exceed the standards set by the U.S. government. Publix has chosen to use GFSI recognized accredited third party certification programs like SQF because they represent the cultural change that is needed in our food safety system. It provides an additional layer of review above anything that is required by local, state or federal government and helps ensure our brand integrity and the protection of our consumer.

Within the domestic retail setting, training store managers and workers in food safety is an important tool for protecting public health. Currently, Publix makes extensive use of the SuperSafeMark program to train and certify our retail management associates on the importance of food safety. SuperSafeMark is the most comprehensive food safety and sanitation instruction and certification program ever offered to food retail employees. This program includes methods for combating food-borne illness with time and temperature controls, measures to prevent cross contamination, and programs for personal hygiene, and cleaning and sanitizing best practices.

When a problem is identified, we take immediate action and remove recalled product from the distribution chain and retail shelves as quickly as possible. To help assist in the process, the food retail and manufacturing community collaborated and developed the *Rapid Recall Exchange*, an online resource that includes a secure and automated alert system allowing suppliers to send information to retailers and wholesalers about products that must be recalled and to do so rapidly and accurately in a standardized form 24 hours a day, seven days a week. The *Exchange* has recently been introduced and we are encouraged that it will prove to be a useful tool to our industry.

The final link in the supply chain is the consumer. Publix has long provided our customers with practical, science-based guidance on safe food handling at home through the Partnership for Food Safety Education. The Partnership brings together consumer advocacy groups, the FDA, U.S. Department of Agriculture, Centers for Disease Control and Prevention, national industry associations and health and scientific groups. FMI President and CEO Leslie Sarasin is the current Chairman of the Partnership's Board.

The Partnership created the award-winning "Fight BAC!" education program to teach children about food safety as part of their school curriculum. The Partnership's "BAC Down!" program urges consumers to use thermometers to ensure their refrigerators remain at safe temperature levels – no higher than 40 degrees F. Most recently, the Partnership launched the "Be Food Safe" campaign in cooperation with USDA to provide retailers with a wide range of resources to educate their customers about safe food practices. The campaign encourages the use of colorful, modular icons and photography to illustrate the basic and most important safe food-handling practices:

- Clean — Wash hands and surfaces often.
- Separate — Do not cross-contaminate foods.
- Cook — Heat foods to proper temperatures.
- Chill — Refrigerate foods promptly.

All of these prevention programs at the retail level cannot ensure that we deliver safe food to our customers if the food coming into our stores isn't already produced and processed to the highest standards. While the entire food industry continues to work together in developing stronger and innovative food safety programs, FMI and its members recognize the crucial and evolving role for government to play in assuring the safety of our food supply.

Mr. Chairman, I applaud you, Mr. Enzi and all the members of the Committee for your commitment to improving our food safety system by holding this hearing and exploring the ways to achieve this common goal. I would like to specifically comment on S. 510, the FDA Food Safety Modernization Act introduced by Senator Durbin and cosponsored by a diverse bipartisan group, including your HELP Committee colleagues, Senators Dodd, Gregg, Alexander, Burr, and Isakson. Upon its introduction FMI sent a letter to Senator Durbin expressing support<sup>1</sup> for his bipartisan effort and the legislation's recognition that all points in the supply chain play an important role in food safety which we would like to include in the record.

Many of the proposals in S. 510 are consistent with our approach to improving the food safety system by emphasizing the need to have preventive measures as the foundation on which any food safety system should be built. The bill also recognizes that we need to focus the majority of our resources on facilities and products that pose the greatest risk of contamination that could result in food-borne illness or injury. We must continue to be sure that any changes meet certain criteria:

- Be supported by science;
- Have measurable benefits;
- Be affordable;
- Be realistic; and
- Be implemented without unintended consequences.

It is also imperative that mitigating risk is the guiding principle for changes and that our focus is on actions that will have the greatest impact in reducing food-borne illness. There are many policy initiatives in the legislation that we support because of their clear focus on preventive measures.

## **Title I – Improving Capacity to Prevent Food Safety Problems:**

### **Sec. 103. Hazard Analysis and Risk-Based Preventive Controls**

We support the requirement that every registered food facility design, conduct and maintain an evaluation of food safety risks in their business that identifies potential sources of contamination, identifies appropriate food safety controls, and documents those controls in a food safety plan. The correct development and use of a food safety plan goes a long way toward developing a culture within the company that is critical to ensuring food safety. We commend the legislation for recognizing the low-risk nature of warehouse facilities that store packaged food that is not exposed to the environment by allowing the Secretary to modify the requirements for these facilities.

At Publix, the food safety systems designed in our manufacturing operations have redundant food safety control processes. This begins with ingredient suppliers. Prior to producing new product, the food safety requirements and ingredient controls are verified. Pre-requisite food safety programs along with cleaning and sanitation elements lead into the Hazard Analysis and Critical Control Points (HACCP) food safety system. We

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<sup>1</sup> FMI Letter to Senator Durbin March 2, 2009

recognize the importance of a quality-first food safety system and understand that food safety is everyone's mutual responsibility.

#### **Sec. 105. Standards for Produce Safety**

We support directing FDA, in consultation with USDA and state departments of agriculture, to establish science-based standards for the safe production and harvesting of fruits and vegetables. Publix expects all suppliers of fresh produce to maintain strong food safety compliance programs to address the management of Good Agricultural Practices (GAPs) and minimize the microbial hazards associated with fruits and vegetables. Recent industry best practices guidance has been developed for fresh leafy greens, melons, and tomatoes. We support these collaborative efforts to improve food safety associated with fresh produce and believe standards can be designed that can be implemented on any size farm.

### **Title II – Improving Capacity to Detect and Respond to Food Safety Problems**

#### **Sec. 201. Targeting Inspection Resources**

We support directing FDA to allocate limited inspection resources depending on the “risk profile of the facility.” The risk of food-borne illness and contamination varies greatly depending on the type of product that the facility produces. For example, at Publix one manufacturing facility may produce bottled water while a different facility produces spinach and artichoke dip. Understandably, the spinach and artichoke dip is comprised of many additional ingredients, requires refrigeration control, and would be considered a food with greater risks than bottled water. We would also encourage that FDA be allowed to develop a separate classification for warehouse facilities that only hold foods that are not exposed to the environment as is allowed in Section 103.

In addition, we would encourage FDA be directed to consider the inspections performed by state and local officials. Our retail stores are inspected by state departments of agriculture and local health departments. Our manufacturing facilities and distribution centers are inspected by the USDA, FDA, and state departments of agriculture. With proper training and coordination, we believe that state and local inspections should assist FDA with its responsibilities in a cost-effective and efficient manner.

#### **Sec. 204. Enhancing Traceback and Recordkeeping**

We support the legislation's establishment of pilot projects to test and evaluate new methods for rapidly and effectively tracking fruits and vegetables. Our industry recognizes that current traceability systems are not uniformly meeting the needs of industry, the consumer, and government. Enhancing systems that will help minimize the time required to identify, isolate and remove product that may cause injury, illness or adverse health consequences is the most important goal of a traceability system.

Moving forward, this is not a static process as technology improvements that may revise procedures both on the information side and the food processing side are constantly being updated. Improving traceability is a long term commitment among all commodity

groups. The food industry has proactively undertaken a number of strong pilot projects addressing the unique needs of a particular product or industry that are already resulting in improvements in best practices. We understand there will be technical challenges and significant costs associated with the implementation of traceability throughout the supply chain's infrastructure and that is why we see the pilot approach as being critical to developing best practices. Collaboration with FDA is necessary to ensure that industry initiatives will better assist in the event of a food safety outbreak.

### **Sec. 205. Surveillance**

We support the enhancement of food-borne illness surveillance systems to improve the collection, analysis and reporting of data. Federal, state, and local food safety and health officials must be able to work together in an effective manner in order to quickly recognize a pattern of food-borne illness and identify the cause.

The tomato scare in the spring and summer of 2008 exemplifies the importance of surveillance. When tomatoes were targeted as the cause of the salmonella outbreak, the food retail industry reacted to ensure our customer was protected. At Publix, this resulted in over 350,000 tomatoes being removed from sale within a three hour time frame. After millions of dollars of losses across the food industry, tomatoes were still in question until a team of experts at the University of Minnesota identified jalapenos as the culprit.

Based on previous success, FMI has endorsed legislation introduced by Senator Klobuchar and Senator Chambliss that would establish regional food safety centers of excellence modeled on the system at the University of Minnesota. We believe S. 1269, the Food Safety Rapid Response Act, will enable the Centers for Disease Control and Prevention to;

- Better coordinate food-borne illness surveillance systems, and
- Better support state laboratories in outbreak investigations with needed expertise.

We would encourage its inclusion in S. 510.

### **Sec. 206. Mandatory Recall**

In 2007, FMI's Board of Directors adopted a policy urging Congress to grant the Food and Drug Administration the authority to require a recall of seriously adulterated food when the entity responsible for its adulteration refuses to or delays in recalling the food. The provision in S. 510 requires FDA to give a responsible party the opportunity to cease distribution of an adulterated or misbranded food product while authorizing the Agency to issue a cease distribution order and a mandatory recall order if necessary.

We support the mandatory recall provision and the procedural limits in the bill, including the direction to FDA to work with state and local public health officials, who are often valuable resources, and the limitation that the authority may only be exercised by the Commissioner. Mandatory recall is a significant action and should only be directed by the highest knowledgeable authority within the Agency and the Agency should be accountable for executing that authority.

We support the requirement for FDA to notify the public about a recall, but would recommend that Congress direct FDA to notify the public with the most specific information available. General alerts can sometimes be misleading to consumers and do not provide sufficient direction for retailers to execute a recall. In order to recall foods effectively retailers need the greatest amount of specific information as possible.

### **Title III – Improving the Safety of Imported Food**

#### **Sec. 301. Foreign Supplier Verification Program**

Food retailers are extremely reliant on imports as our customers demand a wide range of products - such as fresh produce - regardless of the season. However, importers play a mutually important role to import product into our country with the assurance that it is safe. At Publix, we only source food from suppliers that are able to meet our strict requirements for food safety and product quality. For Publix branded products, this includes an in-depth review of total quality systems through audits and evaluations. We believe that food safety supplier verification activities will further assist to mitigate food safety risks associated with imported foods.

#### **Sec. 302 Voluntary Qualified Importer Program**

We believe it is appropriate to establish systems to encourage the use of additional measures of assurance by importers and foreign producers. We support the use of incentives to encourage food producers to take steps beyond those that are required by law to ensure the safety of the food supply and the use of a variety of factors to determine the risk posed by different foods.

#### **Sec. 306. Building Capacity of Foreign Governments with Respect to Food**

All food in the United States must meet the same high standards for safety, regardless of where the food was produced. Nonetheless, not all countries have the same standards for food production as exist in the United States. Accordingly, we commend S. 510 for including a provision that requires FDA to develop a plan within 2 years of the bill's enactment to assist foreign governments in building their technical, scientific and regulatory capacity.

#### **Sec. 308. Accreditation of Third-Auditors and Audit Agents**

Properly constructed accredited third party certification programs provide rigorous, objective evaluations of a food producer's safety programs. Although these programs cannot replace government oversight, certification from an accredited third party can provide some assurance that the certified company has received extensive and objective scrutiny for compliance with food safety standards that often exceed the legal requirements.

We support the legislation's recognition of certification by accredited third party auditors, but we would encourage that the Committee further amend this section to ensure that all terminology is consistent with internationally recognized language and terms. We also support the use of certification programs in the assessment of risk that FDA must perform in allocating its enforcement resources. Specifically, accredited third party certification

programs are appropriate tools for use in both the Voluntary Qualified Importer Program (Section 306) and in the Import Certification Program (Section 303).

However, these programs should not replace government oversight or attempt to deputize private-sector auditors as an enforcement arm of the federal government. As an example, we are concerned with the provision that audits be “unannounced” – the same manner that a government inspection is conducted. Audits performed under an accredited third party certification program are different than a “snapshot-in-time” governmental inspection. During a third party certification audit, the auditor is watching and observing how the company manages safety as a part of its regular operations. It is a thorough rigorous assessment of the systems that are in place. Even announced, a company cannot just “cover up” fundamental procedural flaws.

Most audits involve two parts: (1) a “desk” audit which is a review of all of the plant’s documentation, written food safety plans, risk and hazard assessments, etc. and (2) an on-site evaluation. These two audits, together help, to verify compliance with federal food safety standards and internationally recognized best practices. Announcing the audit ensures that the necessary people and documents will be available to the auditing company’s auditors at the appropriate time and place.

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Mr. Chairman, thank you for the opportunity to testify. We appreciate the efforts of this Committee to help restore confidence in the food safety system and reduce food-borne illness. I look forward to your questions and remain available for further discussion and information should you need it.