The PRESIDING OFFICER. The Senator from West Virginia.

NATIONAL MISSILE DEFENSE

Mr. BYRD. Mr. President, the President has recently concluded his trip to Europe, where he attempted to convince European leaders of the need for the United States to deploy a national missile defense system. It seems that our friends in Europe still have the same reservations about this apparent rush to a missile shield, and I can understand why. While I support the deployment of an effective missile defense system, there are a number of reasons why I believe it is not as easy to build such a system as it is to declare the intent to build it.

One cannot underestimate the scientific challenge of deploying an effective national missile defense system. The last two anti-missile tests, performed in January and July of 2000, were failures. In response to these failures, the Department of Defense did the right thing. The Department of Defense took a time-out to assess what went wrong, and to explore how it can be fixed. The next test, scheduled for July of this year of our Lord 2001, will be a crucial milestone for the national missile defense program. All eyes will be watching to see if the technological and engineering problems can be addressed, or if we have to go back to the drawing board once more.

It must also be recognized that no matter how robust missile defense technology might become, it will always—now and forever—be of limited use. I fear that in the minds of some, a national missile defense system is the sine qua non of a safe and secure United States. But the most sophisticated radars or space-based sensors will never be able to detect the sabotage of our drinking water supplies by the use of a few vials—just a few vials—of a biological weapon, and no amount of anti-missile missiles will prevent the use of a nuclear bomb neatly packaged in a suitcase and carried to one of our major cities. We should not let the flashy idea of missile defense distract us from other, and perhaps more serious, threats to our national security.

If deployment of a missile defense system were to be expedited, there is the question of how effective it could possibly be. Military officers involved in the project have called a 2004 deployment date ''high risk.'' That means that if we were to station a handful of interceptors in Alaska in 2004, there is no guarantee—none, no guarantee that they would provide any useful defense at all. Secretary of Defense Donald Rumsfeld has downplayed this problem, saying that an early system does not have to be 100 percent effective. I believe that if we are going to pursue a robust missile shield, that is what we should pursue. I do not support the deployment of a multi-billion dollar scarecrow that will not be an effective defense if a missile is actually launched at the United States.

The New York Times has printed an article that drives this point home. The newspaper reports on a study by the Pentagon's Office of Operational Test and Evaluation that details some of the problems that a National Missile Defense system must overcome before it can be considered effective. According to the New York Times, the authors of this internal Department of Defense report believe that the missile defense program has ''suffered too many failures to justify deploying the system in 2005, a year after the Bush administration is considering deploying one.''

The article goes on to state that system now being tested has benefitted from unrealistic tests, and that the computer system could attempt to shoot down inbound missiles that don't even exist. If the Department of Defense's own scientists and engineers don't trust the system that could be deployed in the next few years, this system might not even be a very good scarecrow. Let the scientists and engineers find the most effective system possible, and then go forward with its deployment.

Let us also consider our international obligations under the Anti-Ballistic Missile (ABM) Treaty of 1972. The President has begun discussions with Russia, China, our European allies, and others on revising the ABM Treaty, but so far the responses have been mixed. I suggest that it is because our message is mixed. On one hand, there is the stated intent to consult with our allies before doing away with the ABM Treaty. On the other, the Administration has made clear its position that a missile defense system will be deployed as soon as possible.

It is no wonder that Russia and our European allies are confused as to whether we are consulting with them on the future of the ABM Treaty, or we are simply informing them as to what the future of the ABM Treaty will be. We must listen to our allies, and take their comments seriously. The end result of the discussions with Russia, China, and our European allies should be an understanding of how to preserve our national security, not a scheme to gain acceptance from those countries of our plan to rush forward with the deployment of an anti-missile system at the earliest possible date.

What's more, Secretary of State Colin Powell said this past weekend that the President may unilaterally abandon the ABM Treaty as soon as it conflicts with our testing activities. According to the recently released Pentagon report on missile defense, however, the currently scheduled tests on anti-missile systems will not conflict with the ABM Treaty in 2002, and there is no conflict anticipated in 2003. Why, therefore, is there a rush to amend or do away with the ABM Treaty? Who is to say that there will not be additional test failures in the next two and a half years that will further push back the test schedule, as well as potential conflicts with the ABM Treaty?

There is also the issue of the high cost of building a national missile defense system. This year, the United States will spend $4.3 billion on all the various programs related to missile defense. From 1962 to today, the Brookings Institution estimated that we have spent $99 billion, and I do not believe that for all that money, our national security has been increased one bit.

The Congressional Budget Office in an April 2000 report concluded that the most limited national missile defense system would cost $30 billion. This system could only hope to defend against a small number of unsophisticated missiles, such as a single missile launched from a rogue nation. If we hope to defend against the accidental launch of numerous, highly sophisticated missiles of the type that are now in Russia's arsenal, the Congressional Budget Office estimated that the cost will almost double, to $60 billion.

We have seen how these estimates work. They have only one way to go. That is always up.

However, that number may even be too low. This is what the Congressional Budget Office had to say in March 2001: ''Those estimates from April 2000 may now be too low, however. A combination of delays in testing and efforts by the Clinton administration to reduce the program's technical risk (including a more challenging testing program) may have increased the funding requirements well beyond the levels included in this option [for national missile defense systems].'' Is it any wonder that some critics believe that a workable national missile defense system will cost more than $120 billion?

Tell me. How does the Administration expect to finance this missile defense system? The $1.35 trillion tax cut that the President signed into law last month is projected to consume 72 percent of the non-Social Security, non-Medicare surpluses over the next five years. In fact, under the budget resolution that was passed earlier this year, the Senate Budget Committee shows that the Federal Government is already projected to dip into the Medicare trust fund in fiscal years 2003 and 2004. The missile defense system envisioned by the Administration would likely have us dipping into the Social Security trust funds as well—further jeopardizing the long-term solvency of both Federal retirement programs. This is no way to provide for our nation's defense.

I must admit that I am also leery about committing additional vast sums to the Pentagon. I was the last man out of Vietnam—the last one. I mean to tell you, I supported President Johnson. I supported President Nixon to the hilt.

I have spoken before about the serious management problems in the Department of Defense. I am a strong supporter of the Department of Defense. When it came to Vietnam, I was a hawk—not just a Byrd but a hawk. I

am not a Johnny-come-lately when it comes to our national defense.

As Chairman of the Appropriations Committee, I find it profoundly disturbing that the Department of Defense cannot account for the money that it spends, and does not know with any certainty what is in its inventory. These problems have been exposed in detail by the Department's own Inspector General, as well as the General Accounting Office. Ten years after Congress passed the Chief Financial Officers Act of 1990, the Department of Defense has still not been able to pass an audit of its books. The Pentagon's books are in such disarray that outside experts cannot even begin an audit, much less reach a conclusion on one!

Although it does not directly relate to this issue of national missile defense, I was shocked by a report issued by the General Accounting Office last week on the Department of Defense's use of emergency funds intended to buy spare parts in 1999. Out of $1.1 billion appropriated in the Emergency Supplemental Appropriations Act for Fiscal Year 1999 to buy urgently needed spare parts, the GAO reported that the Pentagon could not provide the financial information to show that 92 percent of those funds were used as intended. This is incredible. This Senate passed that legislation to provide that money for spare parts. That is what they said they needed it for. That is what we appropriated it for. Congress gave the Department of Defense over a billion dollars to buy spare parts, which we were told were urgently needed, and we cannot even see the receipt!

If the Department of Defense cannot track $1 billion that it spent on an urgent need, I don't know how it could spend tens of billions of dollars on a missile defense system with any confidence that it is being spent wisely.

As a member of the Armed Services Committee and the Administrative Co-Chairman of the National Security Working Group, along with my colleague, Senator COCHRAN, who was the author of the National Missile Defense Act of 1999, I understand that ballistic missiles are a threat to the United States. I voted for the National Missile Defense Act of 1999, which stated that it is the policy of the United States to deploy a national missile defense system as soon as it is technologically possible. Now, I still support that act. But I also understand that an effective national missile defense system cannot be established through intent alone. Someone has said that the road to Sheol is paved with good intentions. Good intentions are not enough. I think there might be a way toward an effective missile defense system, and it is based on common sense. Engage our friends, and listen to our critics. Learn from the past, and invest wisely. Test carefully, and assess constantly. But most of all, avoid haste. We cannot afford to embark on a folly that could, if improperly managed, damage our national security, while costing billions of dollars.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator from West Virginia withhold his request for a quorum?

Mr. BYRD. I withhold my suggestion.

BIPARTISAN PATIENT PROTECTION ACT—Continued

AMENDMENT NO. 810

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. I thank my good friend and colleague from West Virginia and thank the Chair. I also thank my good friend from Iowa who has agreed to let me speak for a few minutes and who is also helping with the easel. He is what you would call a full service Finance Committee ranking member.

I am here today to talk about the Gramm amendment to the McCain-Kennedy patient protection bill. I have been in this Chamber before to talk about this issue as it affects small businesses.

In my role as ranking member, and formerly as chairman, of the Small Business Committee, I have had the opportunity to hear from lots of small businesspeople, men and women from around the country. There are an awful lot of them from Missouri who have called me to express their concerns. Let me tell you they have some very real concerns about this McCain-Kennedy bill.

The particular issue before us today deals with whether or not employers should be able to be sued through new lawsuits permitted by the McCain-Kennedy patient protection bill which is supposed to be targeted against HMOs.

We keep hearing how they want to sue the HMOs. Our colleagues on the other side of the aisle seem to be of two minds on this issue. Some adamantly refuse to admit that their bill actually permits litigation against employers at all. They claim that only HMOs can be targeted. That is simply flat wrong. This has been pointed out numerous times in this Chamber by me and by my colleagues who have actually read the language from the McCain-Kennedy bill, which I have before me.

I encourage any American who has been confused by the claims and counterclaims on whether the McCain-Kennedy bill allows any suits against employers to get a copy of the legislation. Go to the bottom half of page 144 and read the truth for yourself. Page 144 has the good news that:

> Subject to subparagraph (B), paragraph (1)(A) does not authorize a cause of action against an employer or other plan sponsor maintaining the plan. . . .

That is the good news.

The bad news is that part (B) says: ''Notwithstanding subparagraph (A), a cause of action may arise against an employer or other plan sponsor'' under certain clauses and pages and exceptions; and it goes from the bottom of page 144 to pages 145, 146, 147, and 148. That is how you can be sued if you are an employer.

There are some on the other side of the aisle who admit their legislation allows trial attorneys to go after employers but claim these lawsuits are only permitted in narrow circumstances. I give those colleagues and friends credit for greater honesty, but I fault them, nevertheless, for bad analysis because the fact is, the so-called employer exemption from lawsuits in the McCain-Kennedy bill is an extremely complicated and confusing piece of legislative language that will inevitably subject large and small employers to lawsuits and the high cost of defending them.

Before I came to this body, I practiced law. I know what a gold mine of opportunity rests in this language. Oh, boy, if I were on the outside and this were the law, and I wanted to sue an employer, this would be an interesting but not difficult challenge.

We all know you really cannot protect anyone 100 percent from being sued. For better or for worse, any American, with just a little help from a clever attorney, or just an average attorney, can file a lawsuit against any person or any business. The case may be dismissed almost immediately, but they can still file it.

What this means is, if we want to protect employers from frivolous litigation—and this is what everybody says they want to do—we need to give employers protection that will help them get the frivolous lawsuits dismissed immediately, before the lawyers' fees really start to build up. To get these immediate dismissals, you really need clear, distinctive language that makes 100 percent clear what types of lawsuits are and are not allowed.

How does the Gramm amendment make that clear distinction? By saying that you cannot sue your employer, period.

How does the McCain-Kennedy bill try to make a clear distinction on which they say employers can rely? They have a basic guideline that says employers can't be sued, but then they have four entire pages of exceptions, definitions, and clarifications that substantially weaken and confuse that protection. In those four pages there are enough ambiguous words, phrases, and concepts to keep trial attorneys in business for years.

If a plaintiff's lawyer is clever enough—and whatever else I think about them, I know my friends in the trial bar are clever—they are going to find ways to bring lawsuits against employers. In their zeal to get at deep-pocket employers, trial lawyers are going to poke and prod at every word of these four pages looking for weaknesses. Many, or most, will be able to find something to convince a judge not to dismiss a case. The result: A raft of new lawsuits against employers, added expenses, and an enhanced fear of being sued.

That scares the devil out of employers all across the country, as it should,