

Under the bill, as it is now written, we are treating smallpox vaccine as an instrument of the war on terrorism. Before, we had dealt with it as a response to a disease. We had a liability fund for vaccines in the past, but now that we have eradicated smallpox, the only fear we have of it is the reintroduction by terrorist elements. So we bring smallpox vaccine under this liability limit.

Those of my age will remember, if you get a smallpox shot, you get a skin reaction which produces a permanent scar. I say to my colleagues that this is pretty terrorism specific because no one would take a smallpox vaccination except for the terrorist threat because there are risks involved. Some small percentage of people have very negative reactions, some people die, and almost everybody has a scar from smallpox.

This bill would require people who sue to enter into a negotiation with the Justice Department before they file suit, and to negotiate the possibility of a payment out of an indemnity fund.

Some of our colleagues have said: Why did you make it retroactive? Wasn't that some kind of benefit to some vaccine producer? I remind my colleagues that nobody is taking smallpox vaccine now, nor would anybody take it unless there was an imminent threat. But we do have some of the vaccine stockpiled.

Why would you make it retroactive to cover that stockpile that has already been produced? The reason you do that is, if you give a protection against liability for all vaccine produced in the future but not for what we have stockpiled, the manufacturers will destroy the stockpile and produce more vaccine. And if we had a sudden threat, we would not have the stockpile.

So if this were a vaccine that was routinely taken, then I think the criticism would be well founded. But I think it is a total mischaracterization to say this is some kind of pharmaceutical bailout when it is targeted toward smallpox vaccine and the stockpile now has relevance only in terms of terrorism.

In terms of manufactured products to use in the war on terrorism, I simply say, in every major conflict in modern history, we have had some liability limits for the people producing things for wartime use.

The fourth provision that would be stricken has to do with the Wellstone amendment. Senator Wellstone offered an amendment to the bill that said, if you had a company that had ever been domiciled in the United States, and it was now domiciled anywhere else in the world, that company could not participate in contracts for the war on terrorism. In the bill that is before us, a couple of provisions were added to the Wellstone amendment that allows the President some flexibility in cases where the application of the Wellstone amendment would actually cost Amer-

ican jobs, where it might leave only a sole bidder, or where the absence of competition could drive up costs.

You might say, how could it cost America jobs? Well, let's say you have a company that was once based in America and still has very heavy presence in America but has its headquarters in France. Many companies are now international companies and where their home office is has ceased to have a lot of relevance, in my mind. In any case, the product made by the French-headquartered company might actually be produced in America. We could not buy it because the company is now domiciled in France but once was domiciled in America—maybe in 1812—but yet we could buy a product that was produced in another country by a company that never had an American presence.

There might be national security reasons or job reasons to have a waiver. The amendment before us would strike that waiver. I think it is a good waiver. I think it is a good government provision. And I think it is one we should have.

Another amendment has to do with advisory committees. I couldn't care less about advisory committees. I think sometimes they serve a productive purpose. I think in most cases they do not. But I think we are foolish to be striking advisory committees when the House has adjourned and may not come back to agree to the change if we make it. I do not think we ought to jeopardize this bill.

Finally, there is a provision that establishes a broad authorization outline. No funds are appropriated for participating in the management of research. There is a definition that is written into the law that, as I understand it, would cover roughly 12 major research universities.

I just ask my colleagues to look at these overall seven provisions, and to ask themselves a question: Would the bill be better off without all seven, because they are all stricken in one amendment? I think the answer is no. I think there is a logical justification for the amendments in general. And I urge my colleagues to get the whole story before they cast their vote.

Finally—and I think this is of equal importance—this is an important bill. We are getting toward the end. This has been progress that has been hard coming. And I think we take a risk, one that we should not take, by making these changes. I do not think they are good changes.

I think, overall, we are better off with these seven provisions in the bill than we are without them. I think, overall, they are defensible. Any changes you get in bringing the two Houses together in negotiation often are subject to criticism, but I think these are defensible.

I think we would be taking an unnecessary risk by changing the bill. I hope we will not do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that morning business be extended until the hour of 1 o'clock today.

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

UNANIMOUS CONSENT REQUEST

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the cloture vote on the Shedd nomination be vitiated and that following today's debate on the nomination, the nomination be laid aside, and that upon the disposition of H.R. 5005, the homeland defense bill, the Senate proceed to executive session and vote, with no intervening action or debate, on confirmation of Dennis Shedd to be a United States Circuit Judge; further, that if the nomination is confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate return to legislative session; that if the nomination is not confirmed, the Senate return to legislative session with no intervening action or debate.

I extend my appreciation to the Presiding Officer with whom we worked for several hours Friday and this morning. I have spoken personally with the minority leader, and he has acknowledged that this is the best way to proceed. I ask that the consent be granted.

The PRESIDING OFFICER. Is there objection? The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, I did not understand the distinguished whip's request with respect to H.R. 5005.

Mr. REID. What I said is that when that debate is completed, we would move forward to vote on the Shedd nomination.

Mr. BYRD. Even if that debate entails 30 hours in the train of a favorable vote on cloture on H.R. 5005?

Mr. REID. That is right.

Mr. BYRD. So that, indeed, the request has no impact whatsoever on H.R. 5005.

Mr. REID. I would also ask that the previous order with respect to terrorism insurance remain in effect following the Shedd vote. The order in effect now is that we would do the terrorism bill immediately following homeland security. Now what we would like to do is dispose of the Shedd nomination and then finish terrorism.

Mr. BYRD. Very well. I have no reservation.

The PRESIDING OFFICER. Is there objection? The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding that our staffs are talking. Someone just handed me this. If the Senator could wait for about 2 minutes, I think we are trying to run one

more trap. I believe this is acceptable, and I am sorry to inconvenience him.

Mr. REID. Mr. President, I am happy to do that. I withdraw the unanimous consent request.

The PRESIDING OFFICER. The request is withdrawn at this time. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I understand we are still in morning business.

The PRESIDING OFFICER. The Senator is correct.

HOMELAND SECURITY

Mr. THOMAS. Mr. President, I just listened to the two Senators who are probably most involved with the details of this homeland security bill—very interesting comments. I have been, frankly, disappointed that it has taken us as long as it has. We have been on this measure, I understand, now for about 7 weeks, and we are still not finished—a bill that needs to be finished. It needs to be there for security. Yet we continue to debate and worry over issues that are not as significant as the passage of this bill.

I hope we are getting closer to passing a homeland security bill. It is our responsibility to do that. I am almost embarrassed that we are not.

I am pleased that cloture was invoked and that we can move forward on this bill that gives the President the tools he needs to protect our homeland.

We have talked about the details. That is good. On the other hand, there are provisions in there that generally most everyone would agree we ought to be moving forward with: Immigration, to change the reorganization of that department so that you have more emphasis on the immigration aspect with regard to terrorism; reorganization of the Bureau of Alcohol, Tobacco, and Firearms so that it can work better in terms of terrorism as opposed to law enforcement activities.

Personnel flexibility has been one we have talked about for a very long time. Certainly, the President ought to have as much authority for flexibility as others have had and as he has in other departments.

We also need to have, obviously, some protection for the union representatives, and it is there; research and development, aiming it more toward terrorism, that is one of the amendments; critical infrastructure protection, of course, so that we get into helping with the private infrastructure such as dams, such as oil refineries, these kinds of things—important stuff to do—the Coast Guard, strengthening their position with respect to terrorism; the one on corporate inversion where there was concern about being offshore. The fact is it is only there to be used as long as it has specific economic security reasons to be used. I think that is reasonable. Airport security—all these things are there.

Again, I thought during the last month or so it became pretty clear

that this session of the Congress has been exceptionally slow in moving forward. It has not accomplished many of the things we should have accomplished. I had hoped that with that in our background, we would be ready to move forward to accomplish this one that is so obvious in need. I hope we can do that.

I am glad we do have Members on both sides who recognize the importance of doing this. We have carefully crafted language that will be there. It is time for us to move forward. Whether there is anything else that we really need to do in this lame duck session, I wouldn't argue that. We obviously have to have a CR. Apparently there is movement toward doing something with terrorism liability. But this is the one. This is what we need to do, and we need to move forward.

I do appreciate the work that has been done. Particularly Senator THOMPSON and Senator GRAMM have worked tirelessly in putting something together that will ensure homeland security and a department that will be capable of moving forward to do the things that everybody understands we need to do. Frankly, there are no more excuses to delay this bill. I certainly urge my colleagues to oppose the amendment and pass the compromise bill so the President can sign this into law.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, is the Senate presently in a period for the transaction of morning business?

The PRESIDING OFFICER. The Senate is in morning business until 1 o'clock.

Mr. BYRD. I thank the Chair.

TRIBUTE TO SENATOR MAX CLELAND

Mr. BYRD. Mr. President, it is sad and unfortunate that I and this chamber must say farewell to Senator MAX CLELAND. As a student, a soldier, a public servant, and a U.S. Senator, MAX CLELAND has always personified the best of this country. His has been a life of patriotism and sacrifice, of struggle and of triumph.

After graduating from college, which included an internship on Capitol Hill, and receiving a master's degree in American history, MAX CLELAND volunteered for the Army and then volunteered for service in Vietnam. In that brutal conflict, he lost both of his legs and an arm in a grenade explosion. But MAX CLELAND never gave up. He refused to become simply a tragic symbol of an unwanted and unpopular war.

At the age of 28, MAX CLELAND became the youngest State Senator in Georgia. In 1977, President Jimmy Carter appointed him to head the Veterans Administration, the youngest person ever to hold that post, and one of the best. In that position, among his many accomplishments, MAX CLELAND

helped to improve the VA hospital system and reduce delays in paying veterans' benefits.

After that, he was elected to four terms as Secretary of State of Georgia.

In 1996, Senator CLELAND was elected to the U.S. Senate. After being sworn into office, he told supporters:

Your dreams can come true if you continue to believe in them long enough, hard enough, and never give up on them.

What a role model MAX CLELAND is, not only for disabled Americans but for all Americans. His life demonstrates what overcoming adversity—probably adversity at its worst, or almost that, at least—really means.

As a triple amputee, life and work have not come easily. I have read it takes him 3 hours just to prepare for work each day. I would imagine it takes him longer than that, because it takes me that long many days. But I cannot imagine the amount of pure grit it takes for this man just to live. At times I get up from my bed at 1 o'clock in the morning, 3 o'clock in the morning, whatever, and adjust the temperature in my room. If it is a little too cold or a little too warm, I have to get up and go outside my room and adjust the temperature. I think of that poor man, MAX CLELAND, and how it is for him if he gets too cold or too warm and has to adjust the temperature in the room. He has to get out of bed with much more difficulty than I, and go to the thermostat and do that. So what grit it must take of him just to live.

Well, one of MAX CLELAND's heroes is the great Franklin Roosevelt who, confined to a wheelchair because of paralysis, encountered many of the same obstacles and challenges that face MAX. Still, Franklin Roosevelt was elected President four times and, as President, saw this country through the Great Depression and World War II.

I am proud to point out that another one of MAX CLELAND's heroes is one of my heroes, a Senator who is one of my mentors in this Chamber, Senator Richard B. Russell of Georgia. MAX CLELAND met Senator Russell while serving as a congressional intern. When MAX returned from Vietnam several years later, with both legs gone and only one arm, he met Senator Russell again. That grand old Senator was so impressed with the young soldier that he had his driver give the young man a tour of the Nation's capital.

During his tenure in the U.S. Senate, Senator CLELAND has used Senator Russell's old telephone number, and has often taken his visitors to see the statue of Senator Russell in the Russell Senate Office Building, telling them, "So much of me is tied up in Dick Russell."

MAX CLELAND truly knows the horrors of war. Knowing that "war is hell," he has been one of the Chamber's leading skeptics about the use of military force abroad and has always proved cautious when it comes to committing American troops overseas. In the 106th Congress, for example, he was