

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 19, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEAN M. BARKLEY, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BARKLEY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that there be 2 minutes for debate, equally divided and controlled in the usual form, following the first vote in the sequence of votes already ordered for today's session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask that the 90 minutes begin running and that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. I thank the Chair.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

SCHEDULE

Mr. REID. Mr. President, we hope to complete action on the homeland security bill today. Also, as soon as we finish that, hopefully, we will do the Dennis Shedd nomination, and then the terrorism insurance conference report. We can complete all that today and, of course, also, we have the must-do legislation, the continuing resolution that we have to complete today. So we have a lot of work to do today.

I also note that I have been informed that the minority will allow no extensions of time during the 90 minutes already ordered.

HOMELAND SECURITY ACT OF 2002—Resumed

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Daschle (for Lieberman) Amendment No. 4911 (to Amendment No. 4901), to provide that certain provisions of the Act shall not take effect.

Daschle (for Lieberman) Amendment No. 4953 (to Amendment No. 4911), of a perfecting nature.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. shall be divided, with 30 minutes under the control of the two leaders or their designees, and 30 minutes under the control of the Senator from West Virginia, Mr. BYRD.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, how much time do I have under the order?

The ACTING PRESIDENT pro tempore. The Senator has 28 minutes.

Mr. BYRD. I thought I had 30 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Nevada asked that the time in the beginning be charged to both sides.

Mr. BYRD. OK. That is fair enough.

Mr. President, many Senators feel that they are under great pressure from the administration to pass this bill that is before us—a bill that contains 484 pages. Here it is. This is the 484-page bill that was passed by the House of Representatives—a new bill, passed by the House quickly, without adequate debate, dumped into the laps of Senators, and we contributed to our own problem by invoking cloture on the amendment last Friday. We are coming around the final lap of our 30-hour journey now. We have been unable to call up any amendments, other than the pending amendment by Mr. DASCHLE and Mr. LIEBERMAN.

As I say, many of our colleagues feel they are under great pressure from the administration to support this bill, and the White House is attempting to say that by adopting the amendment offered by Mr. DASCHLE on behalf of Mr. LIEBERMAN—the White House would have us believe and the Republican-controlled House would have Members believe that if this amendment by Mr. DASCHLE is adopted, this would mean the death of the bill. Well, I would hope that were true because I think this is a terrible bill. It has some good provisions in it, but it is a bad bill. So personally, I would hope that were true. But it is not true.

The House has a duty to return. The House has dumped this bill into the laps of the Senate and then walked away, gone home for Thanksgiving, gone home for Christmas, gone home for the year—if it can get by with it. But the House has a duty to come back and finish its work. So I hope Senators will not be moved, will not be pressured into believing that the adoption of this amendment will kill the bill. That is untrue.

Congress has not adjourned sine die yet. So we all have a duty to stay here and do our work.

I think we are going to get a pay raise very soon—perhaps early next

year—and so we can stay around and do our work. It is our duty to the people. We ought to try to improve this bill, and the amendment by Mr. DASCHLE will do that.

Do those who believe that the President—whatever party he is, Democrat or Republican—do those who believe that he is king under our Constitution—apparently some Senators here vote as though they think the President is king, although they know better than that. But still they believe they have to follow the President's direction.

The President did not bring any of us here. The President did not elect any of the Members of this body. This is an independent body. This is an independent branch of Government. This is a separate branch of Government. No President elects any Member of this body. The President is just the Chief Executive of the land. I say "just." It is a tremendous office, of course, with great power, but he is no king. And we are not sent here by our people to let the President or the White House or any party control us or dictate to us.

As a reminder of what a true Senator should be, I call attention to that ancient Roman Emperor whose name was Vespasia. He was Emperor of the Roman Empire from the years 69 to 79 A.D. A great Senator, one of the truly great Senators, was Helvidius Priscus.

For some reason, this Senator and the Emperor Vespasia got at cross-purposes, and the Emperor stopped Helvidius Priscus one day outside the Roman Senate and told him not to come in. "You can forbid me to be a Senator," said Helvidius Priscus, "but as long as I am a Senator, I must come in."

"Come in then and be silent," said the Emperor Vespasia.

"Question me not, and I will be silent," responded the Senator.

"But I am bound to question you," said the Emperor Vespasia.

"And I am bound to say what seems right to me," responded the Senator.

"But if you say it, I will kill you," the Emperor warned.

"When did I tell you that I was immortal? You will do your part, and I will do mine," responded the Senator. "It is yours to kill and mine to die without quailing."

So both did their parts. Helvidius Priscus spoke his mind. The Emperor Vespasia killed him.

In this effeminate age, it is instructive to read of courage. There are Members of the Senate and House who are terrified, apparently, if the President of the United States tells them, urges them to vote a certain way, which may be against their belief.

So in this day of few men with great courage—relatively few—let us take a leaf out of Roman history and remember Helvidius Priscus.

The Senate has rolled over with regard to the homeland security bill. The administration has sold a bill of goods to the American people that there is an

urgency for the Senate to pass this bill before another terrorist attack. There is no such urgency. The real danger is not when the reorganization will take effect but whether the reorganization will distract our homeland security agencies from their primary mission of protecting the homeland.

The Senate shares in the complicity in pushing this sense of urgency on the American people. The people who will be protecting the public, those who will be protecting us, Members of the House and Senate, once this reorganization is completed a year from now—a year from the date of passage of this legislation—are the same people who are out there on the northern border right now, right today. They were there last night. The same people are already on the southern border. They are already at the ports of entry. They are guarding the Atlantic coast. They are guarding the Pacific coast. They are guarding the gulf coast. They are the same people then who are out on those posts of duty now. So whether or not we pass this bill does not mean a great deal insofar as the safety of the American people is concerned.

The Appropriations Committee of the Senate and the Senate itself have provided funds for the protection of this country, billions of dollars, which have been turned down by the President of the United States. He has rejected these funds. He did so earlier this year when Congress passed an appropriations bill, making \$5.1 billion available for use, with only the flourish of a pen necessary on the part of the President.

These were designated as emergency funds by the Congress, but the President refused to likewise designate these items as emergency funds. So those funds have gone begging. Do not let anybody tell you we have to pass this bill in order to have the security of this country tomorrow or next week or the next month. The moneys have been there to provide homeland security for the American people. Those funds have been passed by this Congress months ago. This President—this President who is urging the Congress to act quickly on this bill—has not acted quickly on those funds. As a matter of fact, he has turned the back of his hand to those funds.

The Senate shares complicity in pushing this sense of urgency on the American people. Senators have pushed it so often and so hard that they now believe it. Last Friday, the Senate invoked cloture on the bill that is before the Senate, a bill that it had hardly read.

Most Senators, I believe, had not read that bill at that time. I had not been able to read the whole bill at that time.

This cloture limits the ability of the Senate to debate and offer amendments. We had 30 hours. What happened? One amendment is offered. Mr. DASCHLE offered one amendment on behalf of Mr. LIEBERMAN. That was it. The whole 30 hours have been spent on

that one amendment. Our Republican friends deemed it so, to have one amendment. You are going to spend the whole 30 hours on it. That is the only amendment you are going to have.

So Senators can now read it and weep. They voted to invoke cloture on themselves and they denied themselves the possible opportunity to offer other amendments. Senators no longer cared what bill passed as long as they voted for something that would create a new Homeland Security Department. In the process of trying to build a Homeland Security Department, this Senate has come dangerously close to building a massive chamber of secrets. This past weekend, Homeland Security Director Tom Ridge appeared on several of the Sunday morning talk shows to assuage concerns that the administration is planning to create a new domestic spy agency in the United States. When asked about his trip to London to study the British model domestic spy agency, Governor Ridge said his trip was very revealing, but that the administration was not likely to create such a domestic spy agency in the United States.

I must give Homeland Security Director Tom Ridge an A+ for invoking the Constitution. He mentioned the Constitution more than once. I compliment him on that. That is the first administration official that I have heard say anything about the Constitution in all of these debates with respect to the war on Iraq, the Iraq resolution, and with respect to homeland security. I am sure something could have been said that escaped my attention. I cannot hear every administration official. But for once the U.S. Constitution was mentioned—more than once—by Mr. Ridge. I almost stood in my family room and applauded him for doing so.

A number of Senators appeared on the Sunday morning talk shows and assured the show's viewers that, if such a domestic agency were created, the Congress would exercise appropriate oversight to ensure that abuses of power did not occur within it.

I remember hearing these same kinds of comments with regard to the creation of a new Homeland Security Department. "A new Department won't solve anything," said the White House spokesman. That was not too long ago. The White House spokesman said a new Department would not solve anything. Then to everyone's surprise, the President suddenly made the creation of a new Homeland Security Department his top priority.

The President sought broad authority in the plan he presented to the Congress. He wanted the authority to reorganize and run this new Department with limited congressional interference. He wanted to hide decision-making within the new Department from the American public and the press. He wanted what he called "managerial flexibility" to waive statutory protections, for example, for Federal employees within the new De-

partment. He wanted to free himself from as much congressional oversight as possible.

Members of Congress said they would exercise appropriate oversight to ensure this new bureaucracy could be reigned in, but what has the Senate actually done? What can it point out in all of these months and weeks of consideration? This homeland security bill authorizes this new Department to cloak its actions in secrecy. The President's plan, for example, for reorganization of this Department, has not been sent to the Congress. The President probably doesn't even know himself yet what he plans. He has several months in which to do that. Even then, the plan will not require congressional approval. The Congress will be informed by the President what the plan is under this bill. That is it. Just inform us, Mr. President. Let us know what you will do. No approval is required of Congress. So we are going to be a pig in a poke here. We are going to approve the President's plan in advance. Even before he knows what is in his plan, before he sends it to the Congress, we are going to approve it when this bill before the Senate is passed.

It provides broad new authorities to the President without any real mechanism to ensure that those powers are not abused. I sought to offer an amendment earlier when Mr. LIEBERMAN brought his bill from his committee when he and Mr. THOMPSON had worked in the committee to bring out a bill and did bring out a bill. I sought to amend it so as to keep Congress in the loop with respect to the President's organizational plan. I sought to have Congress continue to stay in the mix. But that amendment was rejected. It would have been well to have had such an amendment because it would have provided for an orderly process in the filling in of the Department by the various agencies. I understand there are about 28 agencies and offices that will go into the Department. Even Mr. LIEBERMAN, the author of that, one of the authors of the bill, and he is here in the Chamber, even he voted against my amendment.

Today I think that amendment would help. If that amendment had been adopted, I think it would have assured the American people that their elected Representatives in Congress were going to stay in the mix, and it was not going to relegate itself to the sideline. But that is water over the dam.

This legislation allows the President to rewrite the civil service code for Federal workers within the new Departments so that most new rules go into effect without any congressional approval. Congress has rolled over on almost every issue that would have provided the Congress with some oversight mechanism and the public with some transparency.

So here we are, on this day, we are going to vote in all likelihood on final passage, and the Congress has done precious little to make sure that appropriate safeguards are included in the

legislation to protect the privacy rights and civil liberties of the American public. What is more, we have endangered the constitutional doctrines of the separation of powers and checks and balances between the President and the Congress.

What do we hear from supporters of the bill? The American people should trust the President, they should trust their elected leaders to ensure the mass of new bureaucracy will not intrude upon their private lives. How can Senators make such arguments? The administration has told us it is not planning to create a new domestic spy agency in the United States. Yet within this bill, this language would fund the total information or authorize funding of this total information awareness program that is being developed by the Pentagon, apparently for one purpose: to peer into the daily transactions and private lives of every American.

I urge Senators to vote for this amendment. I hope they will vote for it, and I hope they will not be cajoled by disingenuous arguments that a vote for the amendment is a vote against the homeland security bill. I don't buy that argument. If we amend this bill, it is beyond our control in the Senate, but it is the Senate's last chance to show the American people that we are serious about placing some controls over this massive new bureaucracy.

I hope the Senate will support the amendment, and I urge its adoption.

How much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. BYRD. I thank the Chair. I reserve my 5 minutes.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. LIEBERMAN. May I inquire how much time the majority leader or his designee has?

The PRESIDING OFFICER. Twenty-eight minutes.

Mr. LIEBERMAN. I ask the Chair notify me when I have consumed 15 minutes so I can preserve the rest for the majority leader.

The PRESIDING OFFICER. The Chair will do so.

Mr. LIEBERMAN. Mr. President, I rise to voice my support for the motion to strike which Senator DASCHLE and I and others have introduced.

I do so, as my colleagues know, believing deeply in the urgent need for a Department of Homeland Security and believing deeply that the vast majority of the underlying bill rises to the difficult and critical challenge of organizing and equipping our Government to protect the American people from terrorism. Of course, there are parts of the bill that I wish had been somewhat different, but in the nature of the legislative process one never achieves everything one wants, and that goes particularly to the long-debated sections on the rights of Federal workers whom we will now ask to carry out the work of the Homeland Security Department.

But on balance, the core of this bill is not only urgently necessary, it is good. The core of the bill is smart, and the core of the bill is vital. But I must register my strong opposition to a number of provisions in the bill that now appears before us that have been inserted at the last moment and that threaten to do serious damage to this otherwise urgently necessary piece of legislation. I fear that some of our colleagues have seized upon the likely passage of this bill as an opportunity to load it up with unwise, inappropriate, and hastily considered provisions, many of which protect special interests. That is a shame, and it is an embarrassment.

A common cause as urgent and weighty as homeland security post September 11, 2001, should not be tainted by a bevy of last-minute favors, surprises, and slapdash attempts to address controversial problems, some of which are totally unrelated to homeland security. That should not be the way business is done in the Congress of the United States, especially not with so profound an underlying responsibility as protecting the American people from terrorism.

Let me dispense with two myths that have reared their heads on the floor of the Senate during this debate on the motion to strike. First, some opponents of the amendment have suggested that to alter the underlying bill in any way would be to kill homeland security legislation in this 107th session of Congress. That is just not right. The House passed a new homeland security bill, numbered H.R. 5710, which means they will have to return to act on the version of the bill sent to them by the Senate whether or not we make any changes. So we are certainly not killing this bill for this session. We are simply trying to clean it up.

Second, some of my colleagues are saying that a vote for this motion to strike is a vote against the President. That, unfortunately, reminds me of what became a familiar refrain in some States during the recently concluded elections, in which some seemed to suggest that any opposition to anything the President wanted was unpatriotic. Here is where I borrow from Senator BYRD in saying that the President is the President, not the king. And to question the President's judgment on one or another matter should not be described as a lack of patriotism. It is through free discussion and exchange of ideas that our Nation grows and that we have always believed we would achieve the truth. Was it Voltaire who said: I disagree with everything you said but will fight to the death to protect your right to say it? So, too, here.

I believe deeply that the seven extraneous provisions our amendment targets have hurt this bill, and that is why we are striking them. Six would be struck, and a seventh would be amended. None of these provisions goes to the heart of the Department that I believe so urgently should be created. I cer-

tainly would not want to do that, since Senator SPECTER and I and so many others of both parties have spent, now, more than a year in trying to achieve the creation of such a Department.

Let me speak about a few of the seven serious shortcomings in this current version of the homeland security legislation that our amendment would strike. First, the one that has received the most attention, is the one that attacks the childhood vaccine liability. This bill includes a surprise provision, one that was not in any version of homeland security legislation, and we have gone through, by my count, at least six versions: The original bill I cosponsored with Senator SPECTER in October 2001; the Governmental Affairs Committee reported-out bill in May; the President's proposal in June; the revised Governmental Affairs bill in July; the original House bill; and the original Gramm-Miller substitute. None of these contains this legislation which would dramatically alter the way certain vaccine preservatives are treated for liability purposes under the law.

As my colleagues have said, the bill would take complaints about vaccine additives out of the courts and require them to be made through what is called the Federal Vaccine Injury Compensation Program, which handles other vaccine-related claims. Incidentally, these provisions of the bill are retroactive, which would mean that a host of existing lawsuits would be interrupted, probably terminated, including claims involving the mercury-based preservative Thimerosal, which some have charged is related to autism in children.

This is just plain unfair. In the past, I have supported various tort reform or liability protections for companies—certainly the ones that design and manufacture lifesaving products. In 1998, for instance, Senator MCCAIN and I sponsored, and the Senate passed, the Biomaterials Access Assurance Act. In this Congress, I introduced a bill that would offer a comprehensive package of incentives to biotech and pharmaceutical companies that develop vaccines, antidotes, and other countermeasures for biological and chemical weapons, a package that included liability protections. But this amendment would strike a provision in this bill that goes well beyond that and ought to be pulled out of the underlying bill.

The fact is that committees of the House and Senate have been struggling to reach a consensus on this question of the childhood vaccines and liability for some period of time now. They have been trying to craft a broad and balanced bill on childhood vaccines. This provision in this bill, which we would strike, would pull the rug right out from under the committee deliberations, offering a quick but unfair answer that is sure to do more harm than good.

I received late last night—and we are going to try to distribute it to our colleagues this morning—a Dear Colleague letter from our friend and colleague in the other body, DAN BURTON, chairman of the House Committee on Government Reform, really crying out to us to strike from the underlying bill this provision on childhood vaccines. Congressman BURTON, to whom I have spoken, believes passionately that this is a terrible mistake and very unfair. I am far from expert on this question and cannot vouch for all that Congressman BURTON asserts, but his passion cries out from this letter and I wish to cite several excerpts to illustrate the depth and complexity of this debate. For instance, Congressman BURTON says:

During the past 24 hours, a number of incorrect statements have been made about the vaccine provisions in the Homeland Security Act. The facts are simple. These provisions severely restrict the legal rights of parents who believe their children have suffered neurological damage due to vaccines. The scientific debate remains unresolved. These provisions do not belong in the Homeland Security Act. I hope the following points will help separate fact from fiction.

Again, from DAN BURTON:

In 2001, the respected Institute of Medicine concluded that a connection between thimerosal and autism, while unproven, is “biologically plausible.” The IOM called for further research, stating, “the evidence is inadequate to accept or reject a causal relationship between exposure to thimerosal from vaccines and neurological developmental disorders of autism, ADHD, and speech and language delays.”

Another fiction, according to Congressman BURTON, is that the sections that we intend to strike with our motion from this underlying bill do not eliminate the rights of vaccine-injured individuals to sue manufacturers of vaccines and their components. Congressman BURTON says proponents of these provisions have stated that once individuals have gone through the Vaccine Injury Compensation Program, they can still choose to file a civil lawsuit. And Congressman Burton feels very strongly that is wrong. As he says as a fact, “for many families who believe their children were injured by mercury-based Thimerosal, these provisions do eliminate their right to file suits. The Vaccine Injury Compensation Program has a narrow 3-year statute of limitations. Because many families were unaware of the program, they were unable to file a petition on time. Sections 1714-1717, which we would strike, take away their only remaining legal recourse.”

I would add that I have received today a statement of opinion from the staff of the Senate Finance Committee which points out another problem. It states, “the Joint Committee on Taxation has advised the Committee on Finance that absent changes to the Internal Revenue Code, these changes would not be effective to change the approved disbursement purposes from the Fund.”

In other words, by keeping this childhood vaccine provision in this home-

land security legislation, we would not only remove the families’ rights to sue, we would force them to go to the compensation fund. But barring additional changes in the law, they couldn’t receive any funds from that fund.

This is not only wrong but shows how quickly and hastily and incompletely this provision was put together.

Congressman BURTON’s words speak loudly to us of how critical it is to strike this provision from the law.

Some of our colleagues have tried to make the case that the provisions are necessary to maintain a plentiful vaccine supply in case of a bioterror attack, including a smallpox attack. Wrong. This has nothing to do with those bioterrorism provisions of the law, including one that provides liability protections for the makers of smallpox vaccines.

Our motion to strike doesn’t touch those provisions. It only goes to the childhood vaccine rights of families of children who are suffering from autism.

I also want to strongly refute the suggestion about this part of our motion to strike by the senior Senator from Texas that we will suddenly have to throw away all of our smallpox vaccine doses if we strike this narrow provision. With all respect, that bears no relationship to the amendment. The Vaccine Injury Compensation Program doesn’t cover claims against smallpox vaccine or any other vaccine used in the fight against terrorism—bioterrorism in this case. Moreover, Thimerosal has not been used at all since 1999, and the NIH confirms that none of the stores of smallpox vaccine nationwide contain it.

Excuse the pun on a serious matter, but this provision is an additive, and it is a harmful additive that ought to be removed from the bill by this motion to strike.

We in the Senate owe the parents, the children, and frankly, the companies on all sides of this issue a serious solution—not some last-minute patchwork change in the law which deprives people of their rights.

Second, another extremely problematic provision our amendment and motion to strike would remove is the one involving companies that shift their headquarters offshore to avoid paying American taxes and then turn around and seek to do business with the Federal Government.

The ACTING PRESIDENT pro tempore. The Senator has used 15 minutes.

Mr. LIEBERMAN. Mr. President, I ask you to let me know when I have consumed an additional 3 minutes, and then I will yield the floor.

Mr. President, this is the amendment to our committee bill that was offered by our esteemed colleague, our dear friend, the late Senator Paul Wellstone, and accepted by the Senate, which would have barred companies that set up offshore tax havens from getting Federal homeland security contracts with the Secretary of the De-

partment retaining the singular important right to waive the prohibition for national security reasons. Now the underlying bill, at the last minute, would essentially nullify Senator Wellstone’s provision by expanding the list of criteria the Secretary can use in granting a waiver beyond national security reasons to include a host of other provisions that gut the Wellstone proposal.

It is just wrong that companies that are going out of the way to circumvent the tax laws of the United States should be allowed to do business and basically to get the money that the taxpayers who pay their taxes have put into the Treasury of the United States, unless there is a national security reason that would be so. Our amendment would strike that provision as well.

Our amendment would also move to strike from the bill a measure that would require the Transportation Security Oversight Board to ratify within 90 days emergency security regulations issued by the Transportation Security Agency. If the oversight board does not ratify the regulations, under this bill, they would automatically lapse. Despite the TSA having decided that they are necessary, 90 days later, lacking the Board’s approval, they’d disappear.

This doesn’t make any sense. In the current climate, shouldn’t we be trying to find new ways to expedite and implement TSA rules, not ways to disrupt and derail them? This bill is contrary to new procedures that the Senate passed just a year ago in the aviation security bill. Under that law, regulations go into effect and remain in effect unless they are affirmatively disapproved by the Board. I think that’s a better system.

My esteemed colleague from Texas, Senator GRAMM, has claimed that our amendment would strike from the underlying bill the one-year extension of the deadline by which all airlines must install new security scanning equipment. I don’t know whether he got that idea based on this provision or not; regardless, he is mistaken. We keep that extension in tact, and striking the new cumbersome approval process, as our amendment seeks to do, would have no effect whatsoever on it.

I urge my colleagues to strike this provision.

Another provision would extend liability protection to companies that provided passenger and baggage screening in airports on September 11.

But we in the Senate already decided against extending such liability protection—in at least three different contexts. First, the airline bailout bill limited the liability of the airlines—but not of the security screeners, due to ongoing concerns about their role leading up to September 11. Then, the conference report on the Transportation Security bill extended the liability limitations to others who might have been the target of lawsuits, such as aircraft manufacturers and airport operators, but again not to the baggage and passenger screeners.

The earlier Gramm-Miller substitute and the bipartisan Governmental Affairs Committee-approved legislation also left this provision out for the very same reasons.

Now, somehow, this provision is back again. Like that little mole you hit with the mallet in a whack-a-mole game, somehow this provision has reappeared. At this late hour, in this context, it is just inappropriate to reverse the Senate's carefully considered judgment without clear justification.

We must strike this provision.

Another unnecessary and overreaching provision our amendment seeks to strike would give the Secretary of the new Department broad authority to designate certain technologies as so-called "qualified anti-terrorism technologies." His granting of this designation—which appears to be unilateral, and probably not subject to review by anyone—would entitle companies selling that technology to broad liability protection from any claim arising out of, relating to, or resulting from an act of terrorism, no matter how negligently—or even wantonly and willfully—the company acted.

The bill goes well beyond what Republicans were advocating just last month in the Gramm-Miller substitute, which would have provided sellers with indemnification, but wouldn't have left many victims without any compensation at all, as this bill does. This bill seems to say that in many cases, the plaintiff can't recover anything from the seller unless an injured plaintiff can prove that the seller of the product that injured him or her acted fraudulently or with willful misconduct in submitting information to the Secretary when the Secretary was deciding whether to certify the product.

Even in cases where a seller isn't entitled to the benefit of that protection, the company still isn't fully—or in many cases even partially—responsible for its actions, even if it knew there was something terribly wrong with its product. Let me say that again. This bill gives protection even to those sellers who knowingly put anti-terrorism products on the market that they know won't work to keep people safe against an attack. Perhaps worst of all, this measure would cap the seller's liability at the limits of its insurance policy. In other words, if injured people were lucky enough to get through the first hurdle and even hold a faulty seller liable, they still could go completely uncompensated even if a liable seller has more than enough money to compensate them.

Again, I ask, is this really the kind of provision we want to fold up and cram into this vital legislation? I urge my colleagues on both sides of the aisle to stop, carefully consider the consequences, and then vote for our amendment, which would strike this provision.

The substitute bill also unwisely and unnecessarily allows the Secretary to

exempt the new Department's advisory committees from the open meetings requirements and other requirements of the Federal Advisory Committee Act (FACA). I am well aware that this isn't a provision that will get big headlines but it ought to raise some eyebrows.

Agencies throughout government make use of advisory committees that function under these open meetings requirements. Existing law is careful to protect discussions and documents that involve sensitive information in fact, the FACA law currently applies successfully to the Department of Defense, the Department of Justice, the State Department even the secretive National Security Agency.

So why should the Department of Homeland Security alone be allowed to exempt its advisory committees from its requirements? Why should its advisory committees be allowed to meet in total secret with no public knowledge?

Again, if those rules work for the Department of Defense and the National Security Agency, I think they can work for the Department of Homeland Security.

What is the harm? Conceivably, this could allow the Secretary to create forums that operate in secret in which lobbyists for various special interests could advance their agendas and get back channel access with this and future Administrations, without concern that the public would ever find out—and that's regardless of whether their discussions were about security, business, or anything else. I am not suggesting that this is what the Administration intends, or what the authors of the bill intend, but the danger is real and must be recognized.

We all say, and say often, that we're for "good government"—for openness, integrity, and accountability. But if we pass this bill unamended, few of us will be able to say with confidence that the new Department's advisory committees are designed to be as independent, balanced, and transparent as possible. I know full well that the Homeland Security Department will deal with sensitive information involving life and death, but so does the National Security Agency. So does the FBI. So does the Department of Defense. Their advisory committees aren't allowed to hide themselves away from the public.

I hope my colleagues join with me to reject this unfortunate and short-sighted provision.

Finally, our amendment would alter a provision in the substitute bill creating a university-based homeland security research center. Now, I have nothing against creating a university research center focused on homeland security.

There are currently many effective university center programs—centers for expertise and excellence—established through competitive processes by the National Science Foundation and other science agencies. And the science and technology division in this homeland security bill closely tracks

what we proposed in the legislation that came out of the Governmental Affairs Committee—which would give the Department many exciting new tools to harness talent in our universities and companies and focus it on meeting the unprecedented challenge we face to out-think and out-innovate our enemies.

But there is a problem with this particular proposal as it is written. Based on the fifteen criteria outlined in the bill, the research center that it would create is described so narrowly, through fifteen specific criteria, that it appears Texas A&M University has the inside track, to say the least, to get the funding and house the center. House aides have admitted as much to *The Washington Post*.

Texas A&M is a fine school that may be perfectly suited to run such a federal research center—but there are many other fine schools that may also be well suited to run a homeland security research center, and Congress should not predetermine the best site.

Science in this country has thrived over the years because, by and large, Congress has refused to intervene in science decisions. Science has thrived through peer review and competition over the best proposals—which are fundamentals of federal science policy. We are violating them here. This is nothing short of "science pork."

This provision was strongly opposed by the Chairman of the House Science Committee. And it has been roundly criticized by the university community as an inappropriate Congressional intervention in science program selection.

My friend, the Senator from Texas, has suggested that a few other institutions conceivably could assemble the qualifications to meet the 15 criteria that Texas A&M has specified. But I urge him to look at the list, which is breathtaking in the particularity of its detail. And even if a handful of schools might meet in theory these requirements, that does not solve our problem. We face grave dangers here, lives are at risk. We should all agree that we need to apply the most competitive possible process, the one that brings our best scientific brainpower brought to bear on this problem.

Suppose for the sake of argument that a few other schools technically do qualify. Then think about the agency employee, sitting at his desk at the new department, who receives the application from Texas A&M. A&M meets all the criteria specified in the statute, and meets them to a tee. The employee knows that Representative DELAY wants this done. Realistically, how do we think this decision will turn out? We know how it will turn out.

When it comes to making these research funding decisions, we need a playing field that is truly level—not one that only looks level when you tilt your head.

Perhaps that is why previous versions of this bill were wise enough

not to include this provision. The bipartisan Senate Governmental Affairs Committee bill did not make this mistake. Nor did Senator GRAMM include them in his earlier Gramm-Miller substitute. I have worked over the years on science policy issues and legislation with Senator GRAMM, and I hasten to point out that this provision certainly did not originate with him. He has a strong understanding of the importance of strong science to our nation's economic and social well-being, of strong federal support for science, and of the need for competitive funding decisions that are based on sound peer review. These provisions did not originate with him.

Our amendment keeps the university-based science center program. However, it removes the list of highly-specific criteria that appear to direct it to a particular university. That is the way we will get the best science, not by making Congressional allocations to particular institutions.

I was under the impression that this homeland security bill would be clean. What does that mean? That it wouldn't be, for lack of a better word, mucked up with lots of extraneous provisions that are marginally relevant or irrelevant to the central mission of this department, which of course is protecting the American people from Twenty-first Century terrorism with every ounce of talent, every tool, every technology at our disposal.

I understand the legislative process. I know that, as a wise person once said, compromise is what makes nations great and marriages happy. I did not expect this substitute bill to look exactly like the bipartisan bill approved by the Governmental Affairs Committee I am privileged to chair.

But I did expect that this bill would be clean—and clean it is not. I believe passionately in the need to create a Homeland Security Department. And I recognize and appreciate the many good things in this bill. It has moved much closer to our vision of how to combine our strengths and minimize our weaknesses on intelligence to protect the American people from terrorism. So too has it embraced our creative and comprehensive vision of the new Department's science and technology division. And when we step back and look at the big picture, it looks pretty good. And more important than looking good, it looks and is necessary to protect the American people.

But these flaws are real. They are serious. And they are utterly unnecessary.

Luckily, they are easy for us to fix. One amendment, one vote. I once again urge my fellow Senators to pass this amendment.

There are other colleagues who wish to speak. I would, therefore, ask for the support of my colleagues for the motion to strike.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Mr. BREAUX. Mr. President, what is the time situation?

The ACTING PRESIDENT pro tempore. There are 10 minutes 20 seconds remaining to the majority leader or his designee.

Mr. BREAUX. Mr. President, I rise to indicate my support for two things: No. 1, for the homeland security legislation which I think is very important. We fought for weeks about what it was going to look like. We made some suggestions about what should be in the bill with regard to worker protections in the area of collective bargaining. The White House was not willing to accept our recommendation. And I understand that is not going to be possible. I thought that the bipartisan recommendation we had on collective bargaining was the right way to go. That did not work out. What we have in the bill is what the President wanted from the very beginning. I accept that. The concept of homeland security bringing these agencies together is very important.

It is clear that after 9/11 we found out that the Federal Government was not working very well together, that agencies were not sharing information that they should have been sharing with each other, and we could have been doing a much better job.

Under the leadership of the distinguished Senator from Connecticut, Mr. LIEBERMAN, a proposal came about for a homeland security agency. Quite frankly, at the very beginning the White House didn't think the idea was a good one. They were worried about it creating too large a bureaucracy, but they came to the realization that I think all of us have come to that, yes, this is in fact the right thing to do. That is where we are right now.

What has happened in the course of this process is interesting but not unusual. The House loaded up the homeland security bill with a whole bunch of things that were concocted in the middle of the night and not the subject of any hearings or not brought through the normal committee process and not voted on by the House and not voted on by any committee in the Senate and not passed by the Senate.

But, lo and behold, all of these provisions are now attached to the bill, and the House announced that they are going out of town, and take it or leave it.

I understand that some of them may be in Paris or London or Japan or doing things that are important. But we are not finished yet. This bill—no matter what happens—is going to have to go back to the House of Representatives for consideration. It is going to have to go back to the House for consideration even if this amendment to strike out these add-ons is not adopted because the bill still has to be—after we adopt the Thompson substitute—approved by the House. What is wrong with the House at that time saying we understand that the Senate is not going to accept these provisions and, therefore, we will pass homeland security such as the President requested it?

The President, himself, in the White House said don't load this thing up with unnecessary items.

I would suggest that having a homeland security research center at Texas A&M University is a good idea, if you are from Texas. But how about the other 49 States that would like to also participate in the process? LSU would make a great center for homeland security research. They have already been working on it. But this legislation just cuts them out, sticks one university in the process, and says: This is it. Take it or leave it. We're gone. We're out of town.

That is not the way things are supposed to work. It is not the way they should work. I hope it will not work that way after we vote this morning.

There is nothing wrong with taking these items out of the legislation and having the House take the bill up without it and have them pass it. They can do it by voice vote. We could finish it this afternoon. The President can get the homeland security bill as he has requested. I will support that effort.

I think it is very important to do homeland security, but don't let it become a vehicle for special interest provisions which the Congress has never considered. I think it is wrong.

Mr. DORGAN. Will the Senator from Louisiana yield for a question?

Mr. BREAUX. I am happy to yield.

Mr. DORGAN. I ask the Senator from Louisiana, is one of the provisions you are describing a provision that makes it easier for a corporation that has renounced its citizenship, and moved to the Bahamas in order to save on its tax bill in the United States, to get contracts with the U.S. Government? Is that one of the provisions they stuck in at the hour of midnight?

Mr. BREAUX. The Senator makes a good point. In addition to spelling out one university that all of a sudden will get all the work in the entire country, the other earmark is it takes away the Wellstone amendment, which prohibits contracting with corporate expatriates.

What does that mean, expatriates? People who have left the country. People who said: I don't want to be a citizen of the United States any longer. I am taking my business overseas. But, oh, by the way, I would still like to do business with the Federal Government while I am in another country not paying taxes to the United States.

That really strikes me as being something we should not allow. I think the Senator is correct in pointing it out. That is not the way we should do business. If you want to provide homeland security, I would suggest giving business to companies that have left the United States is not in the interest of homeland security. It may be in the interest of the Bahamas, but it is certainly not in the interest of the United States of America.

Mr. DORGAN. If the Senator will yield for one additional question, isn't it a fact that the provision that would prevent corporations that renounce

their U.S. citizenship in order to avoid paying taxes to the U.S. Government—the Senate actually passed a provision that said: Well, if you don't want to be an American citizen, then maybe you ought not be contracting with the Federal Government. We set a date by which that would be the case. That was in the legislation that moved out of the Senate. My understanding is it is the case that the House of Representatives put one of these special provisions in and said: Oh, we don't agree with that. We want to weaken that to make it easier for these companies that renounced their citizenship to get U.S. Government contracts once again. Isn't that the case?

Mr. BREAUX. The Senator is exactly right. In order to have homeland security, we need to protect the citizens of this country. Giving financial assistance to companies overseas that have left this country because they don't like to be citizens of the United States is the wrong way to do this.

Let's pass this bill clean. The President will get the homeland security bill he desires. He will sign it. I will support it. That is the right way to do business.

Mr. DURBIN. Will the Senator yield?

Mr. BREAUX. I am trying to save time for Senator DASCHLE.

Mr. DURBIN. For just 30 seconds?

Mr. BREAUX. I will yield.

Mr. DURBIN. The point was made last week that within this bill is a provision that benefits the Eli Lilly Pharmaceutical Company that says pending lawsuits brought on behalf of parents who believe their children are suffering ill effects from a preservative which the company made and put in vaccines, causing harm to these children—physical and mental harm to these children—that pending lawsuits against this pharmaceutical company would be wiped away by the language of this homeland security bill.

Does this amendment we are about to vote on eliminate that provision and say that these parents and families and children will still have their day in court against this major pharmaceutical company?

Mr. BREAUX. Just briefly, the Senator is correct in his observation. It does exactly that. There may be an argument whereby companies that make a vaccine should not be subject to liability suits. There is a provision for a fund for people who make vaccinations, that if they are being sued, they will recover against a fund. That is current law. But that should be prospective, not retroactive. It should not wipe out legitimate litigation that has already been filed. It is like saying here is a legitimate lawsuit, but all of a sudden, by this action, we wipe out all court proceedings against that particular company. That is not the right way to proceed.

The company, as I understand it, did not ask for it, did not lobby to put it in this bill, but all of a sudden, here it is, in the middle of the night. It should

not be in the bill, and this amendment would take it out.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, how much time is left for Senator DASCHLE under the order previously entered?

The ACTING PRESIDENT pro tempore. Two minutes twenty seconds.

Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from South Dakota, the majority leader.

Mr. DASCHLE. Mr. President, I will use leader time to augment the time allotted for me to make some remarks with regard to the amendment.

The ACTING PRESIDENT pro tempore. There is an order for the Republican leader to be recognized at 10 o'clock.

Mr. DASCHLE. Mr. President, I ask unanimous consent that I be allowed to speak and to complete my speech prior to the time the Republican leader addresses the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I did not hear my colleagues speak to one of the greatest myths that I have heard in the debate about this amendment. That myth is, if we pass this amendment, somehow it makes it impossible for us to reconcile this amendment with the House of Representatives; that somehow it would put some chink in the process.

But I think, as my colleagues have noted already this morning, regardless or whether this amendment is adopted, this bill must go back to the House. There will be another vote in the House. So do not let anyone persuade any colleague, any Senator, that somehow there a procedural impediment is created if we pass this amendment.

This legislation will go back to the other body. And when it does, if the House does the right thing, they will accept this language, and we will send the bill to the President as we should.

I must say, Mr. President, this has been a difficult debate for many of us, a very difficult debate. All of us, of course, want to do the right thing. Many of us think perhaps supporting some new infrastructure with regard to homeland security is right. We have worked and worked and worked to reach a consensus.

Much of what is in this bill reflects a consensus. But I must say, this language, these additions to the bill, added at the eleventh hour, is arrogance, is an atrocious demeaning the legislative process. They ought to be ashamed of themselves. At the eleventh hour, when nobody was watching, when most people had gone home, those people with deep political pockets, those people with the resources to make a difference, had inserted in this bill items that the House itself had already voted against.

In July of this year, the House voted 318 to 110 to cut off those corporations that move offshore to avoid paying taxes—318 to 110, 3 months ago. They said: If you are going to do that, you will not be able to contract with the new Department. You ought to be ashamed of yourself. How can you be so unpatriotic?

They did the right thing in July. But what did they do at the eleventh hour? Well, at the eleventh hour, when nobody was watching—when they thought nobody was watching—they quietly said: We didn't mean it. Now the elections are over. Now we will make a mockery of the tax law. We will make a mockery of the homeland defense bill. We will reopen the treasury to corporate expatriates, thinking nobody could possibly call attention to it.

Mr. President, that is just the beginning. Why would we possibly want to give liability protection to a company that made a pharmaceutical product that may cause autism in children? Why would we do that?

Why would we possibly slow down the process by which the new Transportation Security Agency issues new emergency rules to protect travelers? We do it to help out airlines and other transportation companies. That is why we are doing it.

The House inserted the liability protection for vaccine additives to help out a company. The House inserted the expatriate corporate exemption to help out a lot of companies with deep pockets. Why would the House put a university earmark in the homeland defense bill, earmarking Texas A&M for special treatment? Why, because some lobbyist got the job done at the eleventh hour. That is why it happened.

These items make a mockery of the legislative process. Everybody who has their fingerprints on these issues ought to be ashamed of themselves. We have one opportunity to make it right, and that is in about a half hour. We will have an opportunity to strike these, to send a bill to the President that better reflects the consensus we have worked so hard to achieve. We want to do that; some of us want to do that. But I must say, it is a sad day for the legislative process. It is a sad day for homeland security. It is a sad day for the institutions of the House and the Senate when we can insert language such as this unabashed.

I hope each Senator will think very carefully about the consequences of this vote. We ought to feel good about passing this bill. We ought to feel good about making some new contribution to reorganizing the Government, if indeed that will move us to a better sense of confidence about our own security.

But how do you feel good, how do you feel positive, how do you feel that you could in any way explain what the House has done?

I say to my colleagues in a bipartisan way, let's reject these provisions. Let's ensure we send the clearest message

possible that this kind of legislating will not be tolerated. Let's do it now before it is too late. Let's not have to explain this weeks or months later. We have the opportunity to rectify bad decisions made at the last hour, made without any scrutiny, made without any real public attention, made for all the wrong reasons. We can do it today. We can do it in a half hour. I urge my colleagues to join us in getting this right.

I yield the floor.

THE PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from West Virginia still has 5 minutes.

Mr. BYRD. Mr. President, how much time remains before the vote?

THE PRESIDING OFFICER. The Senator has 5 minutes, and the Republican leader has 28 minutes.

Mr. BYRD. And does the time come out of both Senators, if no unanimous consent request is made?

THE PRESIDING OFFICER. A quorum call will be charged to the party who suggests the absence of a quorum. If no quorum call is in place, both sides are charged.

Mr. BYRD. Does the distinguished majority leader want more time? I would like to give him my remaining time. I don't want to see that time whittled away simply because somebody is not taking the floor.

I ask unanimous consent that I may yield my remaining time to the majority leader.

THE PRESIDING OFFICER. The Senator has that right.

Mr. DASCHLE. Mr. President, I am very grateful to the distinguished Senator from West Virginia. I ask unanimous consent that I be recognized for that time just prior to the vote.

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

Mr. DASCHLE. I thank the President and thank the Senator from West Virginia.

Mr. BYRD. Mr. President, might I have just 30 seconds of my time back?

Mr. DASCHLE. Mr. President, I yield whatever time the Senator from West Virginia may require.

Mr. BYRD. I thank the Chair. I thank my leader.

I have just heard from the Budget Committee, CBO has scored the vaccine amendment as increasing direct spending by \$100 million in the first year, \$2 billion over 10 years. In other words, it is a gift to drug companies by this amount that would increase the deficit by this amount.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum, reserving the final time, as has been indicated in the previous order, to Senator DASCHLE.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. GRAMM. Mr. President, we are reaching the moment where we are going to vote on homeland security. I rejoice that we have found our way here. It has been a long and difficult debate. I commend to my colleagues that they vote for the homeland security bill. There will be an amendment that will be offered prior to that bill.

I yield myself 10 minutes.

THE PRESIDING OFFICER. The Senator has that right.

Mr. GRAMM. I want to take my 10 minutes to talk about the amendment that we will have prior to the final vote. I remind my colleagues that over the last weekend, as we tried to bring this 7-week debate toward cloture, the President reached a compromise with several of our Democrat Members to give additional power and input to government employees and their representatives, not the power to veto the President's decision but the power to have input, the power to have review. Also, to get a bill we could vote on and hopefully conclude this debate, we had to meet with Members of the House who had a separate bill.

What we have before us is the old Gramm-Miller amendment with the amendments that we adopted; 95 percent of the Lieberman bill is in this stack of paper. And then we had to reach an agreement with the House.

A great harangue has come forth against that final agreement. There is an amendment pending that would strike seven provisions. In striking those seven provisions, we would endanger the bill and, if we were fortunate, we would have a conference in December.

That is a risk that is not worth taking and, further, I believe the bill is a better bill with the seven provisions in it. Let me just address them.

The one that has gotten the most discussion is the provision with regard to liability on vaccines.

Let me state it in the simplest possible form. We have always had separate treatment for vaccines because some people react differently to vaccines.

In 1986, we set up a comprehensive program to compensate people who are harmed by vaccines that are used for general purposes. We have paid \$1.6 billion out of that fund. Under that fund, you go through a process of arbitration and, if you settle, you settle; if you don't, then you can go on to court. The vast majority of people settle.

A loophole has been found in that process. Plaintiff attorneys are now arguing that damage is being done by a mercury derivative, which is a preservative in these vaccines. The plaintiff attorneys are arguing this preservative is not covered under the compensation program. Nobody has proved scientifically one way or another where the harm comes from. But plaintiff attorneys have now reached around the arbitration process and have filed suits

that total 10 times the aggregate value of all the vaccine sales in the world combined.

This bill, recognizing that the stockpiling of new and powerful vaccines will be important to the war on terrorism, seeks to close that loophole by making it clear in law these preservatives that have always been part of vaccines are covered by the current arbitration process.

Now, many people have tried to label this into everything from a political payoff to you name it. We have a process that is working. People are satisfied with it. Plaintiff attorneys are trying to go around this process. Unless some order is brought to it, we are going to end vaccine production in the world. We don't want to do that. This is a good government provision that brings this process under the 1986 act, which was written by Senator KENNEDY and Congressman Waxman.

Now, the second provision—and there are two that are criticized—has to do with liability limits. Senator WARNER and Senator ALLEN introduced an amendment, which we accepted, that puts the taxpayer on the hook for paying any liability that occurs from items produced for fighting the war on terrorism. It is something we have done since the Civil War to try to indemnify manufacturers that are producing cutting-edge items that are desperately needed on a time-sensitive basis for the war effort. The House had similar language, but with liability limits included in the Transportation Safety Act. When it came to a choice between the taxpayer being at risk or having previously established liability limits, we accepted those liability limits from the House bill.

Another provision that has been criticized is a change in the Wellstone amendment. The Wellstone amendment originally said any company that has ever been domiciled in the U.S. that is domiciled somewhere else cannot sell items to be used in the war on terrorism. We thought there had to be some moderation on this language, so we added three points. One, if the language produced a situation where you actually lose American jobs because a product was produced here, even though the company's headquarters is in France, you could have a waiver. Two, if you have a sole source bidder and no competition, you can have a waiver. And three, if the product is cheaper with higher quality, a waiver can be given under those circumstances.

That is a good government provision. It makes eminently good sense. If a company in France is producing something in Cleveland and selling it for the war on terrorism, why should we put people in Cleveland out of work to buy something produced in Japan by a company that has no employees in the United States? It makes absolutely no sense. Those waivers represent good government.

There are two final provisions in the bill. One doesn't matter, and that is advisory councils. I don't know if they have any value or not. I don't see jeopardizing the bill to strike them.

The final provision has been referred to as a "Texas A&M" provision—a provision I did not write and didn't have anything to do with, and it doesn't specifically have anything to do with Texas A&M.

I have a letter from the University of California supporting the provision. I ask unanimous consent that it be printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA,
OFFICE OF THE PRESIDENT,
Washington, DC, July 25, 2002.

Hon. NANCY PELOSI,
Ranking Member, House Select Committee on
Homeland Security, House of Representatives,
Rayburn House Office Building,
Washington, DC.

DEAR REPRESENTATIVE PELOSI: As you prepare to vote on H.R. 5005, the Homeland Security Act of 2002, the University of California encourages your support for provisions in the bill that aim to strengthen the role of science and technology in the new Department and that ensure that the capabilities of the U.S. Department of Energy's National Laboratories are made available to the new Department. UC supports the establishment of an Under Secretary for Science and Technology and provisions to strengthen the important role that academic research institutions play in protecting our homeland.

As you are aware, UC is actively engaged in activities associated with homeland security and our nation's war on terrorism, including conducting ongoing research and providing scientific expertise. UC faculty and researchers, including those at the UC managed national laboratories, have testified before Congress, developed bio-agent detection devices, aided in the anthrax clean-up effort on Capitol Hill, and analyzed the World Trade Center structure, among many other activities.

Section 307 of H.R. 5005 calls upon the Secretary to establish university-based centers for homeland security. This section provides the Secretary with a list of merit contingent criteria from which to base the selection of colleges or universities as centers. The criteria range from strong affiliations with animal and plant diagnostic laboratories to expertise in water and wastewater operations. UC would welcome the opportunity to compete for such an important center. As the public research institution serving the state of California, the ten-campus UC System, with its three national laboratories, is uniquely qualified to address all of the selection criteria. To improve the selection process, UC would like to work with you and the conference committee to ensure that the final version of the legislation provide that the Secretary shall make the designation of university centers with the advice of an academic peer review panel.

I commend you for your leadership on this landmark legislation and for your continued service to the people and institutions of our state. If you need further information about the issues raised in this letter, please contact me.

Sincerely,

A. SCOTT SUDDUTH,
Assistant Vice President.

Mr. GRAMM. Mr. President, that provision is similar to provisions we have at the Department of the Interior and the Department of Energy. It basically says the major research universities in the country will be eligible to participate in a center or centers. It also says the agency and the President have the power to set up centers and do research wherever they want to. This is a provision that provides no money. It does say major research universities will be part of the process, but it doesn't say they will be the only part of it.

Let me conclude and then keep the balance of my time, because others may need it if I have not used it up. The seven amendments that would be stricken by the Daschle amendment are amendments that improve the bill. A couple of them didn't have to be there. They do no great harm. Five of them improve the bill by dealing with problems directly related to terrorism, and they all trace back to a provision, in one form or another, that was in both the Senate and House bills.

I know this is going to be a close vote. I urge my colleagues to vote against the amendment, A, on substance—the bill will be better if the amendment fails—and, B, I think there is a substantial probability that we will not get a bill this year, though we will certainly get one next year. It simply would mean a 3-month delay.

So I urge colleagues to vote no on the amendments and to vote for the underlying bill. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, how much time do the opponents have?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mr. THOMPSON. Mr. President, I ask the Chair to notify me at the end of the consumption of 7 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. THOMPSON. First of all, Mr. President, with regard to the comments that have been made concerning the inversions, a couple of colleagues on the other side said our amendment takes out the Wellstone amendment to bar companies who leave the U.S. to evade taxes.

This doesn't eliminate the Wellstone amendment. That amendment to bar the Department of Homeland Security from contracting with inverted companies is included in our amendment. What our amendment does, though, is give the Secretary of Homeland Security the ability to waive the bar if U.S. jobs would be lost, or if it would cost the Government more taxpayer dollars because there would be less competition.

On this issue, I know this is extremely important politically for many of our colleagues. When you examine it from the standpoint of social policy, or policy as it affects the U.S., it does not

bear scrutiny. We in the Governmental Affairs Committee, I think on a bipartisan basis, over the years have tried our best not to interject social policy in our procurement process.

Our Government needs to be able to get the best and cheapest goods for the taxpayers. One can think of many different things companies might do that are totally legal, totally proper, that we might disapprove of. We wish they were different kinds of companies, had different kinds of social policies. But if we say, with regard to all of them, that if there would be a new batch every year under consideration, we are not going to do business with them, we are going to cut off our nose to spite our face, even though their products are better, they are cheaper, and we are trying to protect homeland security, we are not going to do business with them because we do not approve of your policies, even though they are perfectly legal, that would hurt this country.

It is more important to have a viable Homeland Security Department to protect this country than it is to make a political point or punish some company. We are punishing, in some cases, companies that have thousands of domestic employees working in the United States. What we would be doing is depriving them of contracting with the Department of Homeland Security and allowing a French company or a German company that has always been a foreign company, always with foreign employees, getting the contract.

That makes absolutely no sense. However, it apparently is an idea whose time is come and is included in the amendment Senator GRAMM, Senator MILLER, and myself offered a while back.

What we do is this: We do not necessarily agree with the underlying policy, but we are going to include it in the amendment. But at least let's have some exceptions if it really benefits our country in terms of homeland security, our jobs, our costs. Let's give the Secretary the discretion to make some exception with regard thereto. It is just common sense and it focuses where we need to get, not for short term political gain but to punish some company.

Bermuda, for example, is the home of Intelsat from whom our Department of Defense gets satellite services. Do we want to cut ourselves off from that? There are not that many companies like that around the world. Intelsat is an inversion. Why limit it to homeland security?

Let's get away from the idea of punishing somebody or punishing some company when it hurts our country to do so. It does not say you have to do business with them. It says let them compete. We are not giving them anything if it is not the best thing for our country. That is the philosophy behind our approach, and it is incorporated in this amendment. No one should have to make any apologies for this provision

being in the Thompson amendment the way it is.

With regard to the other point Senator GRAMM made concerning vaccines—and Senator FRIST spoke eloquently about this. This is an incorporation. What the Lieberman amendment seeks to remove is the incorporation of a portion of a bill that was submitted by Senator FRIST.

If one looks back at the history of vaccines, it is obvious vaccines have been special cases in this country for years. We have treated them in a special way because the profit margin on vaccines is lower than most drugs, and the risk is higher, and we need vaccines. As a part of our governmental policies, as part of our national policies, it has always been that way.

We addressed that when the swine flu epidemic came about, and we made some changes to the Federal Tort Claims Act. Back in the 1950s, an Executive order was put forward that would provide some indemnification for companies to produce vaccines. We have a long history of that practice.

Finally, in 1986, Congress created the National Vaccine Injury Compensation Program which said basically this to plaintiffs: Look, plaintiffs, you are not getting anywhere the way it is in the court system. Nobody ever gets any recovery off this because you cannot prove causation. You cannot prove your injuries were actually caused by this vaccine. So we are going to set up a separate system so you do not have to prove causation; basically a no-fault situation.

If plaintiffs do not have to prove causation, on the other hand, there is some limitation to the amount of damages they can get. Instead of a special court, you go to a special master. If you do not like the results, then you can go to court. We think that is a pretty sound deal. Congress thought it was in 1986 when it passed that legislation and it was signed into law.

Lawyers look at this and say: OK, we are cut out from suing in court if it has to do with a vaccine. So we will take this particular additive and say it is not really a vaccine. It is an adulterant, a pollutant in this vaccine; therefore, it is not covered by this compensation process. That is the way they got to court.

We have scads and scads of lawsuits as a result of it, and it resulted in two U.S. companies left producing vaccines in this country. What Senator FRIST was trying to do and what we are trying to do in our amendment is to effectuate the intent of the 1986 law which was to roll all this in to the compensation program.

Mr. President, I ask for an additional 2 minutes.

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

Mr. THOMPSON. The intent was to roll these new lawsuits of the future into this compensation program, so that in the future, not only with regard to vaccines, but components of vac-

cines, have a new definition, a more comprehensive definition of vaccine and make that a part of the system.

It is not cutting plaintiffs off, it is putting them in the same position we thought we were putting plaintiffs in in 1986, anyway, and that is go through a special master and prove your case. You do not have to prove your injury was actually caused by a vaccine, as one would in a court of law; on the other hand, there is some limitation on recovery. Then if you are not satisfied, you can sue in court.

A benefit to a company? When are we going to stop looking at who gets some little benefit, who is able to survive, and start looking at what is in the interest of our national security? Sometimes I believe we had rather make some small point and put some company or group of companies out of business who are not in favor at the moment, even if it hurts us as a nation. And vaccines are a classic case. We have to have more.

We are trying to figure out what to do with smallpox. It is not going to be in our country's interest to drive these companies out of business, and it does nothing to harm qualified plaintiffs to require them to go through the compensation program we set up in 1986 and which most people thought these plaintiffs would be a part of, anyway.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Six minutes 41 seconds.

Mr. HATCH. Will the Chair interrupt me after 4 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. HATCH. Mr. President, today I rise to speak in opposition to the Daschle Lieberman amendment. There are some provisions that I consider very important to the Department of Homeland Security and which Senators DASCHLE and LIEBERMAN seek to strip from the House-passed language—thus, in my opinion, making their amendment more about abusive litigation security rather than homeland defense security.

In order to provide for our homeland defense, we must take necessary steps to promote research and development of important technologies and vaccines, and ensure their accessibility. We will have failed the American people if the development and deployment of needed technologies and vaccines is prevented by the threat of unreasonable exposure to overwhelming lawsuits.

To foster quality research, the House established criteria to ensure that when selecting universities as centers for the development of homeland security technologies, we partner with the highest quality programs. Many of these criteria mirror similar provisions routinely found in current Federal laws funding research and development.

Proponents of the Lieberman-Daschle amendment claim the criteria are too selective and should be eliminated. Shouldn't we be concerned that the Department of Homeland Security works with the best and the brightest when developing technologies intended to protect the American people? If the Lieberman amendment passes, I caution you that the university-based centers could become more about pork and which legislator can deliver the most in government funds to his or her district, rather than protecting the American people with cutting edge technologies and programs.

To facilitate the development and deployment of needed technologies, the House included its SAFETY Act provision, recognizing that we cannot saddle manufacturers with unreasonable exposure to unlimited lawsuits. The House-passed SAFETY Act language imposes reasonable provisions to manage potential legal exposure of those companies that we have asked to step up to the plate in homeland security. Otherwise we will be faced with a crisis in homeland security when companies are unwilling or unable to become involved. Let me be clear, contrary to assertions by some, the House-passed language does not give blanket immunity to corporations. What it does is permit companies that manufacture and deploy designated antiterrorism technologies, approved by the Federal Government for use in homeland security, to be afforded the "government contractor defense," but only if certain criteria and precise government specifications are met.

It is important to note that if these criteria are not met, if the equipment deployed does not meet Government specifications or if the manufacturer conceals any information regarding the dangers posed by the equipment—the government contractor defense will not be successful. Moreover, if a company engages in fraud or willful misconduct, that are not protected. And if a State imposes additional requirements which do not conflict with the Federal criteria, the State law is not preempted. The defense is not a blanket immunity from suit.

If the government contractor defense fails, and the plaintiff prevails at trial, the subsequent award would be subject to reasonable limitations which include:

Proportionate liability for non-economic damages—Companies would only be liable for noneconomic damages according to their portion of culpability. Under current joint and several liability laws in place in many States, a defendant that is only 1 percent at fault could be forced to pay an entire award if payment cannot be obtained from those responsible for the other 99 percent. It is unconscionable that we would subject manufacturers that have stepped forward to protect the American people to unlimited litigation exposure that could result in their paying damages for which they are not responsible. A crafty plaintiff's attorney

could conceivably add one of the terrorists as a defendant in a case to inflame the jury. Consequently, even if the jury finds the terrorist 99 percent liable because he perpetrated the act, the manufacturer of a device that may have failed one time in 1,000 might be forced to pay a huge, often crippling award. Often these types of lawsuits become less about culpability and more about the trial bar extorting huge settlements based on emotions that run high in the aftermath of a tragedy. Nonetheless, the House-passed language only remedies this injustice with regard to non-economic damages. Economic damages would not be subject to proportionate liability and State laws forcing those less culpable to pay for the damages inflicted by those who are really responsible, would still apply.

A Ban on Punitive Damages—It is appropriate to ban punitive damages in lawsuits which we can anticipate could very well be based more on emotion than legal culpability and are less in line with the real purpose of punitive damages—to punish bad behavior—and more about making a statement about a tragedy. Uncontrolled and inflated punitive damage awards run the risk of drying up defendant resources and reducing awards to subsequent plaintiffs to pennies on the dollar.

We must provide some stability to the legal process, especially in the context of terrorist attacks to ensure that private-sector resources are available for our homeland defense and that plaintiffs are compensated for their actual damages.

In order to facilitate the development and deployment of essential vaccines, the House-passed language recognized the importance of this aspect of our homeland security and included language that would treat doctors and hospitals who administer certain vaccines and manufacturers of certain vaccines as Federal employees. This means that the government will step in under the Federal Tort Claims Act, FTCA, and defend the lawsuit and pay any damages awarded, subject to the parameters of the FTCA. Claimants will still be compensated, but those who partner with us to protect our people will not be overwhelmed by an unrestrained trial bar. Nobody is arguing with that particular provision—but we must recognize that it works in tandem with the other provisions that I have addressed.

If we suffer another attack, do my colleagues want to be faced with a shortage of important vaccines, or the inability to get those vaccinations to the public in a rapid and orderly manner? As Senator FRIST noted, our vaccine capability is in crisis. Potential exposure to unlimited lawsuits has made it impossible for most companies to participate in a vaccine program. We have seen the number of vaccine manufacturers fall from 12 to 4, only 2 of which are U.S. companies. Doctors and hospitals are legitimately concerned about their potential legal ex-

posure should they attempt to partner with the government in the dissemination of a vaccine. Let me stress that the government cannot do this alone; we must partner with the private sector or else we will leave significant portions of our constituents unprotected.

I must note that the last-minute inclusion of sections 1714-1717 in the House-passed bill dealing specifically with liability for vaccines that are covered under the current National Vaccine Injury Compensation Program, NVICP, has raised many concerns. I have heard from many parents that feel the process by which this bill was brought to the floor will deny them a meaningful opportunity to influence legislation that is important to children and their families. Simply, the process leaves much to be desired. A piecemeal, unvetted approach to addressing these specific, very complex vaccine injury compensation and supply issues is not the best way to protect our children and families. Without broad debate and consideration of all the issues surrounding vaccine compensation, the narrow inclusion of certain provisions regarding NVICP, such as “clarification of definition of a manufacturer,” removal as “an adulterant or contaminant any component or ingredient listed in a vaccine’s product license application or product label,” and application of these definitions to pending litigation, without addressing other criticisms of NVICP may not be the best course of action. What is most troubling is the fact that we have not been given the opportunity to fully understand the implications of sections 1714-1717 and develop comprehensive solutions due to a poor legislative process.

Maintaining a safe, adequate vaccine supply while fairly compensating vaccine injury is an important issue and deserves far more deliberation and debate than it was afforded. Americans are rightfully concerned about the manner in which this important issue has been handled in the eleventh hour. Clearly, on the one hand, the vast majority of our children and families have benefited from vaccines. On the other hand, unfortunately, there are rare adverse events that are caused by vaccines. Balancing these issues to ensure the health and well-being of our children requires careful consideration. Legislation introduced by Senator FRIST, S. 2053, the Vaccine Affordability and Availability Act, which contained the original provisions now included in the Homeland Security bill, had never been subjected to any legislative scrutiny such as hearings or markups. Our citizens expect to be heard and their concerns taken into account when forming legislation, especially when modifying a current program. I am disappointed that this did not occur. Ensuring affordable, life-saving vaccines while protecting our children from vaccine injury and fairly and expeditiously compensating the unfor-

tunate families who suffer harm is not a simple matter, and at the very least, should be the subject of an open, thoughtful legislative process. This issue was clearly not afforded the deliberation the American public deserves.

Though I may not agree with every provision in the House-passed bill, and I must emphasize my disappointment in the hurried manner with which some provisions were included, I recognize that if we allow this amendment to strip the provisions which I feel are vital, we will threaten overall passage of the bill.

Failure to enact this legislation would be a serious disservice to the furtherance of our homeland security and the interests of the American people because it would leave us in danger of being unable to develop the technologies or vaccines necessary for the defense of our country in the 21st century. We are in a new type of war, and litigation that could follow terrorist attacks will not be garden variety lawsuits. Leo Boyle, president of the Association of Trial Lawyers conceded as much in a January 9, 2002, Washington Post article, “Legal Eagles, Beating Back the Vultures,” where he stated that lawsuits seeking to blame the effects of the September 11 attacks on anyone but the terrorists “deny the essential nature of the attacks” and should be subject to special rules limiting the liability of Americans. If that is true, the trial bar should not oppose these provisions.

Fred Baron, a leading member of the trial bar, was recently quoted as referring to an article in the Wall Street Journal that stated the trial bar “all but controls the Senate.” Mr. Baron took issue with the “all but.” I took issue with his assertion during a recent hearing in which he was a witness before the Judiciary Committee on asbestos litigation, because as I think it is clear to all of us—the trial bar has so far been successful in preventing us from enacting essential reforms in the area of asbestos litigation and class actions which are spiraling out of control and crippling American businesses. Often these abusive lawsuits have little correlation to any actual culpability of these companies, and often end up being to the detriment of claimants deserving of appropriate compensation.

I challenge my colleagues to show the American people that we are serious about providing them with the technologies and medicines necessary to protect them in the event of another terrorist attack by opposing this amendment, and thereby proving that the Senate will not cow tow to the special interests of the trial bar or their campaign contributions.

I thank the Chair. I yield the floor.

Mr. REID. Mr. President, I wish to speak in support of the Daschle-Lieberman amendment to the homeland security bill. Many people have pointed out many of the problems this amendment attempts to address.

I share the concerns of my colleagues that the homeland security bill should not include provisions protecting Eli Lilly from lawsuits over a vaccine that may be responsible for causing autism in children. The homeland security bill is no place for these special interest, last minute provisions.

There are many other such provisions that I am concerned about which this amendment will address.

In particular, I am extremely disappointed with the provision in the bill that essentially establishes Texas A&M as a homeland security research center. This provision was drafted in such a way that many other universities, such as the University of Las Vegas-Nevada and University of Nevada-Reno, will not be able to compete fairly for this important designation.

The war on terrorism will only be won when we utilize all the best and brightest academic minds all over the country. I am proud of the universities, colleges, and community colleges in the State of Nevada. We have some of the best counterterrorism training and research facilities affiliated with the Nevada universities and colleges. I am disappointed that the administration and the House decided to support one facility without taking the time to learn what these other facilities have to offer.

If this amendment is not successful, I will still work to ensure that UNLV and UNR will be able to compete for this important distinction. By doing so, these universities will continue the proud Nevada tradition of offering up our skills to serve the nation in times of crisis.

Ms. SNOWE. Mr. President, it is only after long and careful consideration, as well as assurances from leadership I and several of my colleagues have secured which I will detail in a moment, that I have determined that I will not support the Daschle-Lieberman amendment before us today.

This is not a decision I have come to lightly. I am deeply troubled by a number of eleventh-hour additions to this major piece of legislation, in the dead of night, as we face adjournment. This is not the legislative process at its finest.

Even as we speak, unprecedented challenges face our national security. Counterterrorism officials report that the level of intelligence "chatter", or information, being picked up from al-Qaida by the CIA, FBI, and National Security Agency is approaching the volume seen in the weeks before September 11, promoting the FBI's recent warning of "spectacular" attacks. That is why the President needs this new Department, and must have the opportunity to begin its organization as soon as possible in order to respond to this national imperative and to secure American soil to the best of his ability.

Yet, here we are, with the House regrettably having adjourned having sent to us a Homeland Security bill encumbered with stealth provisions that have

prompted considerable and justifiable alarm, particularly the clarification of vaccine manufacturer liabilities, the criteria by which colleges and universities will be chosen to undertake work on behalf of the new Department, and the waiver allowing the use of inverted domestic corporations as contractors for the purposes of homeland security.

As to the vaccine program, some argue that the measure included in the legislation is necessary in order to help ensure the continued viability of the industry, especially at a time when vaccination against a host of potential biological attacks has become all the more critical. Others have serious concerns about the impact of this provision on pending litigation.

I'm also extremely concerned about the loophole that was opened in the bill's provision banning homeland security related contracts with inverted corporations.

It may be one thing to say that exceptions can be made should our security requirements demand we deal with an inverted corporation because there simply is no other option. It is quite another to actually require Federal contracts to be awarded on the basis of the lowest bid regardless of where the company is incorporated, thereby rewarding the very companies that moved offshore for the purpose of avoiding Federal taxation. What kind of message does that send? What kind of precedent does it set when just 5 months ago in the Finance Committee we were working to crack down on the most egregious corporate inversions?

And finally, the under-the-radar provision concerning college and university work mandated extremely selective and narrow criteria that effectively excluded the vast majority of institutions of higher learning in America. The measure offered the new Secretary no discretion, but rather was tailored to apply to only a handful of colleges and universities. Why shouldn't the University of Maine be able to contribute to the cause if the Secretary believes that specific security needs match with a specific expertise they may possess?

The only reason I will not be supporting efforts to remove these provisions from this legislation via the Daschle-Lieberman amendment is because I have been able to obtain assurances from the Republican Leader, the Speaker of the House, the Majority Leader-elect of the House and the Administration that these objectionable measures will be addressed with alacrity upon our immediate return in January, through the first available appropriations vehicle in the 108th Congress.

All of these parties have been in close communications on this matter. And let me say it is a credit to Leader LOTT that he worked swiftly and decisively to address the concerns I and others raised, as well as to secure the necessary assurances from House leadership.

I appreciate that our Republican leader came to the floor to speak to

our concerns, agreeing there are items in the bill that cannot stand as they are and pledging they will be redressed. And I applaud the leader's initiative to form a committee to remedy the most troublesome provisions I have outlined, and as a member of that committee I look forward to achieving that goal so that we can right these wrongs as part of the first order of business we conduct in January.

As a result of these assurances, we can move forward toward completion on this bill that can no longer wait. After 6 month of deliberation, at this sustained period of "Code Yellow" elevated alert status, the time has come for the perpetuity of purpose ensured by statutory status for a new Department of Homeland Security.

A Department responsible for safeguarding our homeland defense must not be dependent solely on the relationship between a particular President and his or her Homeland Security director. Rather, it must be run as efficiently and effectively as possible under the leadership of a permanent, cabinet level official. That is the only way to achieve the kind of "continuity of urgency" the security of our homeland demands.

The fact of the matter is, we cannot afford a descent into complacency when it comes to this life-or-death obligation to protect the American people. Under a new cabinet-level department, responsibility would rest with a Secretary of Homeland Security—a position created under law—who would manage the vital day-to-day functioning of the new department. Critically, this person would have their own budget, while they work closely with the Administration to develop and implement policy.

The bottom line is, I support the creation of the Department of Homeland Security—the largest re-organization of our Government since WWII—because it will centralize our efforts to prevent and respond to any future terrorist attack. Currently, at least 22 agencies and departments play a direct role in homeland security, encompassing over 170,000 people. This legislation consolidates these various responsibilities into one Department which will oversee border security, critical infrastructure protection, and emergency preparedness and response.

Every day we wait is another day that we risk having to look back and wonder, what if we had acted sooner? For this reason, along with the commitment I have personally received from the Leader that we will address the issues of vaccine liability, inverted corporations, and university contracts next year, I will oppose the Daschle-Lieberman amendment.

Mr. LEAHY. Mr. President, tucked away into the Homeland Security bill is a small provision that no one seems to want to take credit for and yet it would bestow huge benefits on just one interest group. According to news accounts, Sections 714 through 716 of the

Homeland Security bill were "something the White House wanted," not necessarily something the House or Senate wanted.

This explanation hardly clarifies why we are including such a far-reaching amendment that has nothing to do with homeland security in this bill. It hardly explains why, in these final days of the 107th Congress, we have decided so blatantly to put the interests of a few corporate pharmaceutical manufacturers before the interests of thousands of consumers, parents and children.

Sections 714, 715 and 716 basically give a "get out of court free card" to Eli Lilly and other manufacturers of thimerosal. Thimerosal is a mercury-based vaccine preservative that was used until recently in children's vaccines for everything from hepatitis B to diphtheria. Unfortunately, while these vaccines were intended to help protect our children's health, there are many health professionals and parents who now believe the opposite occurred.

Parents and health professionals are now concerned that using vaccines with thimerosal has exposed as many as 30 million American children to mercury levels far exceeding the "safe" level recommended by the Environmental Protection Agency. In 1999, the American Academy of Pediatrics and the Public Health Service began urging vaccine manufacturers to stop using thimerosal as quickly as possible. Since then, parents of autistic children around the country have gone to court to hold pharmaceutical companies liable for the alleged damage caused by thimerosal. Many of these parents now cite pharmaceutical manufacturer's own documents to show that they knew of the potential risk of using mercury-based preservatives back in the 1940s and yet did not stop its use.

Now tucked away in the Homeland Security bill, we find this small provision that changes the definition of a vaccine manufacturer to include those companies that made vaccine preservatives. This small change to the Vaccine Injury Compensation Program cuts the legs out from under the families involved in pending lawsuits against thimerosal manufacturers. The amendment is obvious in its attempt to put up roadblocks to these cases. Those who brought the cases against manufacturers would lose their option of going to court while the manufacturers get new protections from large judgments.

Let's be clear about this provision. It has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. We should not take away the rights of our citizenry under the guise of trying to protect them.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. What is the current time remaining?

The PRESIDING OFFICER. The Republican leader has 2 minutes 20 seconds, and the majority leader has 4 minutes 3 seconds.

Mr. DASCHLE. Since the Republican leader is not here, I will use the time remaining to respond to a couple of the points raised by my colleagues.

First, with regard to the comments made by the Senator from Texas, I again reiterate this has nothing to do with support for pharmaceutical research. This has everything to do with a questionable preservative used in combination with pharmaceutical vaccines. Thimerosal is an additive, a preservative. There are those who have made the case that Thimerosal may cause autism in children. We do not know. All over this country, there are class action suits by families who have sued to make the case, who have sued to have their day in court, who want to get more science and more answers than they have right now. That is what this is about: Whether those thousands of families will have an opportunity to be heard in court; whether they will have an opportunity if, God forbid that there is that connection, to be indemnified. Make no mistake, this legislation eliminates all of that opportunity.

I heard the Senator say this is good government. I must say, I am baffled by that expression. How can it be good government to say to families all over the country who have been victimized, or at least who think they have been victimized, that they can no longer go to court to seek redress?

Again, let me say, this has nothing to do with research or with the vaccines themselves. Thimerosal is no longer being made. We are not even dealing with future class action lawsuits. We are only dealing with the ones currently pending. This legislation, let everyone understand, will wipe out—eliminate—the access to courts by families who have been injured, whose children have autism, who want the right to make the case to the courts, and then the courts decide. If the evidence is not there, they do not get the compensation. But if they can make the case and if the science will support the connection, then there is some hope for these families who otherwise have none.

Why at the eleventh hour, why in the dead of night, somebody, even if they thought they were right, would add legislation without debate, totally stripping these families of that opportunity, is something I cannot explain. I cannot understand. That is what we are talking about. That is not good government; that is shabby government. That should not be allowed. That is really why we are taking it out.

We can explain, we all know how these targeted amendments get put in legislation. In the course of any one Senator's career, those occasions occur. I don't think anyone can justify a Texas A&M earmark for research. I say to the Senator from Nebraska, the University of Nebraska should be entitled to that research. The University of South Dakota might be interested in that research. There ought to be a bidding process. There ought to be some

open opportunity for colleges to compete. But to earmark, without debate, Texas A&M as the only university allowed under this legislation—it may be justified; maybe after all the competition they could win—is not the way to legislate. That is also an embarrassment. I hope we can avoid that.

I will finally say, because I know I am out of time, for the Congress to reverse a decision we both have made—passed in the Senate, passed in the House, passed overwhelmingly in both bodies—to send a clear message to companies that go overseas to avoid paying U.S. taxes, that will not be tolerated, especially with regard to their ability to deal with the Homeland Security Department, and now to say we were not serious, we were just kidding, those votes, as overwhelming as they were, really did not mean anything; what we really mean is, go ahead and have that business, do that business, that is OK, you can go overseas, avoid paying taxes, you can renounce your U.S. citizenship, but you can still do business with homeland security, that is OK—that is what we are saying if we oppose this amendment.

I could go on and on. I know I am out of time. I urge my colleagues to do the right thing. Let's cleanup this bill. Let's not have this vote and send the wrong message to the people of this country, to the families who are victimized, to the businesses that have no business dealing with homeland security. We can do better than that. That is what this amendment will allow us to do.

The PRESIDING OFFICER. The minority leader.

Mr. LOTT. How much time is remaining on each side?

The PRESIDING OFFICER. Two minutes 11 seconds remain.

Mr. LOTT. Mr. President, if I need additional time, I will yield myself leader time so I can wrap up this discussion.

I regret I have not been able to hear all of the debate this morning. We have had an opportunity to have a long and fruitful debate. A lot of Senators and Congressmen and the administration have been involved in this process. There is no use rehashing all of the history. We know we need a Department of Homeland Security. We know this 484-page bill that Senator BYRD referred to is not a perfect bill. There are things we will find out very quickly we will have to add that are not there now. We will find out some of the provisions are not good. We will have to revisit that. This is a huge undertaking. We all know this has not been done for 50 years.

We will bring together 170,000 people and try to make this thing work out of whole cloth. It will be a tremendous challenge, whether Gov. Tom Ridge or whoever winds up being the Secretary. They will have to have a strong Department. They will have to have support from Congress. We will have to carry out our oversight responsibilities. This will be a continuing process.

However, if we do not do it now, when are we going to do it? Do I like this process? No. Is a legislative process like making sausage? No, it is not pretty and it is not done well, sometimes. Sometimes we are the problem, individually or collectively. Sometimes it is the House; sometimes even the administrations make mistakes.

The terrorists are not going to wait for a process that will go on days, weeks, or months.

We have fought this fight. We need to get this done. And we need to do it now. If we don't, we don't know when this process would end. Would we have to go to conference? When would conferees be appointed? Who would appoint them? When would the conference meet? I don't want to be singing "Jingle Bells" here on December 21. We are all prepared to do it if that is the right thing for the country.

But we could very well be working on this again next year. And then you have to get this Department started. It could take a month, 2 months, 3 months, 4 months. Is our homeland going to be secure during that process? Are we vulnerable still in our ports? How about our drinking water? Are we at risk? Yes.

Now, there are some things in this bill that cannot stand, as it presently is.

We don't like it. Texas A&M University is a great university. Mississippi State University could do this job. I don't think we ought to be setting criteria that directs research being done at one place or another. We have to open that up. We have to make sure everybody has a shot at it and that the research will be done at universities—if that is needed, and I am not even sure it is—in the right way. We are going to change that. You have my commitment we will change that.

And I don't like the language in this expatriate area. I think it is too broad. However, a little bit of what is at stake here is trust. We have to have some modicum of trust that the new Secretary and the President and the Congress are not going to let these things be done in an irresponsible way. We are not going to grant block waivers to companies that have left this country for tax purposes. But we also have to have some common sense.

What if homeland security is at risk? What if a large amount of jobs is at stake? What if this particular company offers a particular thing we really need that somebody else can't offer? We are going to have to deal with the liability. We don't like limiting liability in some areas—some of our colleagues on both sides. But here is the question: Are they going to go into this business of homeland security without some degree of reliability that what they are going to be able to do will be without the threat of lawsuits going on and destroying them?

We are asking companies to produce items and to deal with this vaccine problem. Let me tell you, one of the

toughest decisions the President of this United States is going to have to make is are we going to have a broad-based smallpox vaccination of the population? That could kill hundreds, thousands of people, but perhaps protect millions. It is a huge, tough, emotional, personal decision the President is going to have to make. And liability exposures could be huge.

But do we want the vaccine? Do we want the inoculation opportunity to protect our people? Yes.

So I am asking for common sense. I am asking for trust. I am asking for action now. And we will address some of these issues. I am going to be specific as the day goes forward about some of the changes that are going to have to be made. We will find what they are. We will find a vehicle.

Some people would say: Change it now and let the House deal with it. But how do you do that? How do they do that? How do we get a conclusion? How much longer does it delay this? We need to get this done, my colleagues, and now is the time to do it. We need to work together to make sure it is implemented in the right way.

We are going to find there are a lot of provisions here that are going to have to be refined. There are going to have to be technical corrections. There are going to have to be amendments and they are probably going to come soon. But I urge the Senate to go ahead and act now.

As I said earlier, we have fought this fight. Is it perfect? No bill, no law, ever is. And I am going to ask the President of the United States to give us some assurances, when he signs this legislation, that we are going to look at it carefully and we are going to continue to work to make sure he has the authority and that the Department does the job in the way we expect them to do it.

In conclusion, I thank Senator LIEBERMAN, the chairman of the committee, for his work. He was for it before it was cool. And so were some others on that side and this side. I thank Senator FRED THOMPSON for his great effort. This is his swan song. He will be leaving at the end of this year and we are going to miss him. These are two fine Senators who have worked on a very difficult job. I think we should show our appreciation to them and get this work complete.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4953.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be. The clerk will call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 245 Leg.]

YEAS—47

Akaka	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Lincoln
Biden	Durbin	McCain
Bingaman	Edwards	Mikulski
Boxer	Feingold	Murray
Breaux	Feinstein	Nelson (FL)
Byrd	Graham	Reed
Cantwell	Harkin	Reid
Carnahan	Hollings	Rockefeller
Carper	Inouye	Sarbanes
Cleland	Jeffords	Schumer
Clinton	Johnson	Stabenow
Conrad	Kerry	Torricelli
Corzine	Kohl	Wyden
Daschle	Leahy	

NAYS—52

Allard	Fitzgerald	Nelson (NE)
Allen	Frist	Nickles
Barkley	Gramm	Roberts
Bennett	Grassley	Santorum
Bond	Gregg	Sessions
Brownback	Hagel	Shelby
Bunning	Hatch	Smith (NH)
Burns	Helms	Smith (OR)
Campbell	Hutchinson	Snowe
Chafee	Hutchison	Specter
Cochran	Inhofe	Stevens
Collins	Kyl	Thomas
Craig	Landrieu	Thompson
Crapo	Lott	Thurmond
DeWine	Lugar	Voinovich
Domenici	McConnell	Warner
Ensign	Miller	
Enzi	Murkowski	

NOT VOTING—1

Kennedy

The amendment (No. 4953) was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4911

The PRESIDING OFFICER. Under the previous order, there are 2 minutes equally divided for debate prior to the vote on the next amendment. Who yields time?

Mr. DASCHLE. Mr. President, I ask unanimous consent to vitiate the yeas and nays on the amendment in the first order.

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

The question is on agreeing to amendment No. 4911.

The amendment (No. 4911) was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4901

The PRESIDING OFFICER. There are 2 minutes equally divided prior to the next vote. Who yields time?

Mr. BYRD. Mr. President, what is the amendment that is before the Senate?

The PRESIDING OFFICER. The Thompson substitute amendment is the next item of business.

Mr. BYRD. Is that the amendment by Mr. THOMPSON?

The PRESIDING OFFICER. It is. Who yields time?

Mr. BYRD. Mr. President, I assume someone who is in favor of the amendment will take 1 minute out of the 2 minutes.

The PRESIDING OFFICER. Who yields time?

There are 2 minutes equally divided.

Mr. BYRD. Mr. President, if no proponent wishes to take the 1 minute, I will take 1 minute.

I say to my colleagues that the Senate had just 48 hours to review the 484 pages of the House bill before cloture was invoked, before we stabbed ourselves with the dagger.

In reviewing the details of the bill finally, though, I have had a chance to do a cursory review. The Congressional Budget Office has identified three provisions that increase mandatory spending by \$3.26 billion. Some of this new mandatory spending has nothing whatsoever to do with homeland security.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD. Mr. President, my time has not expired. Senators should pay attention. I insist that I have the rest of my time.

The PRESIDING OFFICER. Would the Senator ask unanimous consent.

Mr. BYRD. I ask unanimous consent that I may proceed for at least a half minute.

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

The Senator is recognized for 1 minute.

Mr. BYRD. Mr. President, at age 85, I need no hearing aid. I don't think I will ever need one, but sometimes it is pretty difficult to hear, even for those who can even hear better.

These additional expenditures are not provided for in the budget resolution adopted in 2001 for fiscal years 2002 through 2011. Therefore, the amendment is subject to a point of order under section 302(f) of the Budget Act.

I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I yield myself 1 minute. We have debated this issue for 8 weeks. The American people spoke very clearly on this issue in the election. It is now time for us to speak.

This is the vote on homeland security and I urge my colleagues to vote aye.

I would like to thank Richard Hertling, the distinguished staff member who has been the leader here. I thank Mike Solon of my staff, and I thank Rohit Kumar of the Republican leader's staff.

Mr. President, I move to waive the budget point of order. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 69, nays 30, as follows:

[Rollcall Vote No. 246 Leg.]

YEAS—69

Allard	Domenici	Lugar
Allen	Edwards	McCain
Barkley	Ensign	McConnell
Baucus	Enzi	Miller
Bayh	Feinstein	Murkowski
Bennett	Fitzgerald	Nelson (FL)
Bingaman	Frist	Nelson (NE)
Bond	Gramm	Nickles
Breaux	Grassley	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Santorum
Burns	Hatch	Sessions
Campbell	Helms	Shelby
Cantwell	Hutchinson	Smith (NH)
Carnahan	Hutchison	Smith (OR)
Carper	Inhofe	Snowe
Chafee	Kerry	Specter
Cleland	Kohl	Stevens
Cochran	Kyl	Thomas
Collins	Landrieu	Thompson
Craig	Lieberman	Thurmond
Crapo	Lincoln	Voinovich
DeWine	Lott	Warner

NAYS—30

Akaka	Dorgan	Levin
Biden	Durbin	Mikulski
Boxer	Feingold	Murray
Byrd	Graham	Reed
Clinton	Harkin	Reid
Conrad	Hollings	Sarbanes
Corzine	Inouye	Schumer
Daschle	Jeffords	Stabenow
Dayton	Johnson	Torricelli
Dodd	Leahy	Wyden

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. On this question, the yeas are 69, the nays are 30. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order falls.

The majority leader.

Mr. DASCHLE. I ask unanimous consent the next two votes be 10-minute votes.

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

Mr. BINGAMAN. Mr. President, I rise today in support of the Thompson substitute amendment to the Homeland Security bill. While I have concerns about the process by which this legislation was put together and some of the provisions contained in it, I believe that passage of the Homeland Security bill is a necessary first step in the Government's effort to secure our nation against future terrorist attacks.

I want to speak first about the provisions in the bill that will help my State of New Mexico. First, I am pleased that this legislation includes many provisions that will ensure that New Mexico's national laboratories—Sandia and Los Alamos continue to play a key role in the fight against terrorism. To that end, the Thompson amendment incorporates a number of science and technology provisions from Senator LIEBERMAN's Homeland Security bill that I helped write.

In particular, I am pleased that the Thompson amendment allows the De-

partment of Homeland Security to become a joint sponsor of the Department of Energy's national laboratories. I believe joint sponsorship retains the clear lines of authority needed for the Government to manage the national laboratory system effectively. I am also happy to see that the bill includes \$500 million for the technology acceleration fund, which represents a good starting point for our investment in the new technology that will be needed to defend our homeland against terrorist threats. Finally, the amendment includes the formation of a Homeland Security Institute, as called for by the National Academy of Sciences. The Institute will provide vital technical analysis and policy advice to the new Department. In particular, I look for the Institute to help the new Department strike an appropriate balance between the desire for greater information gathering by law enforcement and intelligence agencies and the fundamental need to protect the privacy rights of individuals. I believe we have done the right thing by establishing a not-for-profit institute to advise the Department on these most important issues.

The bill also transfers the Federal Law Enforcement Training Center, FLETC, to the Homeland Security Department and ensures that the activities currently underway continue to be carried out at the same locations. This will ensure that the FLETC division in Artesia, NM, will continue to play a key role in training Federal law enforcement personnel who are on the front lines in the effort to keep our country safe.

The legislation also creates a new Bureau of Border Security within the Department of Homeland Security, which will include the Customs Service and Border Patrol, as well as the other enforcement functions of the Immigration and Naturalization Service, INS. While I would have preferred that the service and enforcement functions of the INS be kept under a single directorate, as proposed by Senator LIEBERMAN, I am hopeful that the consolidation of these border agencies under a single bureau will enable us to address the efficiency and security problems that have been experienced at ports-of-entry along the U.S.-Mexico border in recent years. That said, if we are ever going to ensure the security of our borders, we must also take steps to improve the efficiency of the INS with regard to its processing of legal immigrants. As the new Department takes shape, it is my hope that the Secretary of Homeland Security will make immigration reform a top priority.

I would also like to talk briefly about some of the concerns I have with this bill. First, I was deeply troubled with the process by which the final legislation was crafted. Senator LIEBERMAN worked for months in good faith to craft a Homeland Security bill that was well thought out and included significant input from both the majority

and minority in the Senate. His bill even passed the Governmental Affairs Committee with bipartisan support. Unfortunately, when the bill came to the Senate floor, the Republican party and President Bush chose to politicize the issue and block many good faith efforts to pass the bill before the election. After the election, the President and the Republican leadership, with virtually no other input, produced this 484-page bill, which is loaded with numerous special interest provisions and a bad deal for Federal workers. Further, as we considered this bill on the Senate floor, we were allowed only one amendment. This process of last minute, backroom deals and limited amendments is not the way the Senate should conduct its business.

Second, as I mentioned, this bill is loaded with special interest provisions that were inserted at the eleventh hour by the Republican leadership at the request of the White House. The one amendment that was considered would have stricken seven of the most egregious provisions. One such provision will grant new liability protections for pharmaceutical companies that make mercury-based vaccine preservatives that may have caused autism in children. Provisions such as this have nothing to do with homeland security and have no business being in the Homeland Security bill. That is why I was greatly disappointed that the Senate voted against the Daschle/Lieberman amendment to strike these seven extraneous provisions from the bill.

Finally, I want to emphasize that I remain concerned with the lack of provisions that address protections for civil service employees. I know that support for these provisions has been characterized over the last few weeks as support for the unions. I think that characterization is overly simplistic, however, and the issue far more complex. I believe that all employees—whether they be in the public or the private sector—deserve to be protected against the arbitrary treatment this so-called “flexible” management system will allow. Over the decades we have established a set of reciprocal principles and practices in Government service that require both employers and employees to treat each other with respect and integrity. Those principles and practices have worked well through national crises of all kinds and a willingness has always been evident on the part of both employers and employees to sit down and work through problems that have arisen.

The idea that we need to change that system because it will break down in this instance is, in my view, a red herring. There is no evidence that this will occur, and there are no examples when it has occurred. From where I sit, the brave men and women who work along the border in the Border Patrol, U.S. Customs, and the Immigration and Naturalization Service are patriots and are not inclined to take any action

that would harm the national interest. They deserve better than this bill offers. There are no protections against unlawful discrimination, political favoritism, and unjust decisions. There are no protections for whistleblowers. There are no protections against management that use the “flexibility” available in this bill to settle a personal or professional grudge. There was instead a decision on the part of the administration to impose its ideological solution to a problem that begged for discussion and compromise. What we ended up with was a bill that establishes a system based on individual whims and not established law. Government employees deserve better than this, and I believe in the end our capacity to serve the public will be diminished because we did not find a way to address this issue in a mutually satisfactory manner. That said, I believe the need for the creation of a Homeland Security Department outweighed the potential consequences of these provisions in the bill. As the President takes steps to establish the new Department, I will be watching his actions with regard to Federal workers closely, and I hope that we will have the opportunity to address this matter further during the 108th Congress.

It may seem like we have finally reached the end of a long and difficult debate on how best to ensure our homeland security, but passage of this bill means that our efforts have just begun. It will take some time to get the Homeland Security Department off the ground. During the coming transition, I am committed to helping President Bush make this new Department operational as soon as possible, and I will continue working to ensure that the new Department has the funds necessary to carry out its mission effectively. Further, I will continue working to maintain New Mexico's preeminent position in the fight against terrorism and to ensure that our national labs remain at the leading edge of homeland security research and development. At the same time, I will be monitoring closely the actions of the President and his administration as this legislation is implemented. We do not have to sacrifice our civil liberties to maintain homeland security, and I will be working to ensure that the new Department remains accountable to the American people.

The PRESIDING OFFICER. The question is on agreeing to the Thompson amendment No. 4902.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 26, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—73

Allard	Dorgan	McCain
Allen	Edwards	McConnell
Barkley	Ensign	Miller
Baucus	Enzi	Murkowski
Bayh	Feinstein	Nelson (FL)
Bennett	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nickles
Bond	Graham	Roberts
Breaux	Gramm	Rockefeller
Brownback	Grassley	Santorum
Bunning	Gregg	Schumer
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Cantwell	Helms	Smith (NH)
Carnahan	Hutchinson	Smith (OR)
Carper	Hutchison	Snowe
Chafee	Inhofe	Specter
Cleland	Kerry	Stevens
Cochran	Kohl	Thomas
Collins	Kyl	Thompson
Craig	Landrieu	Thurmond
Crapo	Lieberman	Voinovich
Dayton	Lincoln	Warner
DeWine	Lott	
Domenici	Lugar	

NAYS—26

Akaka	Durbin	Mikulski
Biden	Feingold	Murray
Boxer	Harkin	Reed
Byrd	Hollings	Reid
Clinton	Inouye	Sarbanes
Conrad	Jeffords	Stabenow
Corzine	Johnson	Torricelli
Daschle	Leahy	Wyden
Dodd	Levin	

NOT VOTING—1

Kennedy

The amendment (No. 4091) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 529, H.R. 5005, the Homeland Security legislation.

John Breaux, Ben Nelson of Nebraska, Larry E. Craig, Jon Kyl, Mike DeWine, Don Nickles, Craig Thomas, Rick Santorum, Trent Lott, Fred Thompson, Phil Gramm, Pete Domenici, Richard G. Lugar, Olympia J. Snowe, Mitch McConnell.

The PRESIDING OFFICER. Under the previous order, there are 2 minutes of debate equally divided on the cloture vote.

Who yields time?

Do Senators yield back their time?

Mr. DASCHLE. Mr. President, I yield the remainder of our time.

Mr. THOMPSON. Mr. President, we yield back the remainder of our time.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived. The question is, Is it the sense of the Senate

that debate on H.R. 5005, an act to establish the Department of Homeland Security, and for other purposes, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 83, nays 16, as follows:

[Rollcall Vote No. 248 Leg.]

YEAS—83

Allard	Domenici	Lott
Allen	Dorgan	Lugar
Barkley	Edwards	McCain
Baucus	Ensign	McConnell
Bayh	Enzi	Mikulski
Bennett	Feinstein	Miller
Biden	Fitzgerald	Murkowski
Bingaman	Frist	Nelson (FL)
Bond	Graham	Nelson (NE)
Breaux	Gramm	Nickles
Brownback	Grassley	Roberts
Bunning	Gregg	Rockefeller
Burns	Hagel	Santorum
Campbell	Hatch	Schumer
Cantwell	Helms	Sessions
Carnahan	Hollings	Shelby
Carper	Hutchinson	Smith (NH)
Chafee	Hutchison	Smith (OR)
Cleland	Inhofe	Snowe
Clinton	Inouye	Specter
Cochran	Johnson	Stevens
Collins	Kerry	Thomas
Conrad	Kohl	Thompson
Craig	Kyl	Thurmond
Crapo	Landrieu	Voinovich
Daschle	Leahy	Warner
Dayton	Lieberman	Wyden
DeWine	Lincoln	

NAYS—16

Akaka	Feingold	Reid
Boxer	Harkin	Sarbanes
Byrd	Jeffords	Stabenow
Corzine	Levin	Torricelli
Dodd	Murray	
Durbin	Reed	

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. On this vote, the yeas are 83; the nays are 16. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:29 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CORZINE).

HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. We are postclosure on H.R. 5005.

Mr. BAUCUS. Mr. President, I ask unanimous consent that I may soon make a unanimous consent request

that the time be charged against the pending measure.

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

DISASTER RELIEF

Mr. BAUCUS. Mr. President, soon, I am going to ask unanimous consent to take up the emergency disaster relief bill that the Senate passed earlier with over 79 votes on September 10, 2002.

The only difference between my consent request today and that amendment is today's bill reimburses the \$752 million of section 32 funds that were used to pay for the livestock compensation program earlier this year. This all really stems from the agricultural disaster our country has been facing for the last year and, frankly, in preceding years.

In 1996, not too many years ago—that is the year before the drought began in Montana—our producers earned \$847 million from wheat sales. In 2001, 4 years later into the drought—we have had a series of droughts in Montana—producers made just \$317 million from wheat sales, a 62-percent decline.

That 62-percent decline in sales is through absolutely no fault of Montana wheat producers. These farmers haven't been cooking the books. This is not an Enron matter or a WorldCom matter. They have not been taking exorbitant bonuses at the expense of their shareholders. They have been farmers and ranchers working the soil and doing their very best, in many cases, just to survive. They are dedicated, honest, plain folks, raising livestock for our country and the world, raising agricultural and grain products to try to make ends meet. They need our help.

The drought is no longer touching only isolated pockets of our country; it has become an epidemic that is affecting a majority of our Nation.

According to the U.S. Department of Agriculture, 49 percent of our Nation's counties were declared an agricultural disaster in 2001; 78 percent of our counties were declared a disaster in 2002; 38 percent of those counties were declared a disaster in both 2001 and 2002.

So it is in many parts of the country. In fact, a map I displayed in this body earlier showed that the western half of the United States basically is experiencing drought conditions, and the eastern United States as well. Now, there are also pockets. In Montana, for example, there are some counties where farmers are devastated and other counties where they harvested a bit of a crop.

In any event, if you are a farmer who has lost his crop continuously and you are having a very difficult time making ends meet, I say you deserve our help.

According to the New York Times, on May 3 of this year:

In eastern Montana, more than a thousand wheat farmers have called it quits rather than try to coax another crop out of ground that has received less rain in the last 12 months than many deserts get in a year.

It is anticipated that another 1,300 wheat producers will call it quits this year if disaster assistance is not provided.

Continuing, Mr. President, that same New York Times article—this is an eastern newspaper, not Montana:

Those people, small businesses and rural communities have been devastated by an unpredictable and uncontrollable national phenomenon.

On September 3, 2002, the Wall Street Journal also printed an article:

The United States may be looking at the most expensive drought in its history inflicting economic damage far beyond the farm belt.

Producers every day hope, plead, ask that Congress help them a little bit.

I could go on at great length. I am not going to go on at great length except to say many times we have brought up this measure. It passed the Senate by a large margin both times, and the other body has said no, basically because the White House has said no. That is a fact. Nobody denies that fact. I will ask again today; we still do have time today or tomorrow, however long we are here, to help our farmers. This is a disaster payment; it is an emergency disaster payment. This is what America does. If we have hurricanes, we provide disaster assistance. If we have floods, we provide disaster assistance. We have other natural disaster phenomena in this country, and the Government provides assistance to help the people get back on their feet. That is all we are asking.

If we pass this legislation today, the other body can take it up and pass it, and the President can sign it. It is that simple.

As we near the end of this session and approach the holiday season, the very least we can do is provide disaster assistance to our farmers and ranchers, many of whom are either going out of business or about to go out of business because of an agricultural disaster, in most cases, drought and in some parts of our country it is flooding.

I see our distinguished majority leader on the floor. I am quite certain he wants to speak on this matter as well. It is a huge issue in many parts of our country. It is very much hoped we can take disaster assistance up and pass it at this time. I yield now to my colleague from South Dakota.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I commend the distinguished Senator from Montana. He has been at this now for over a year. The very first conversation I had about drought assistance was with Senator BAUCUS over a year ago. I believe it was in connection with the economic stimulus package of a year ago. It has been 278 days since the Senate acted. So he has been at it for over a year. We, as a Senate, have been at it now for 278 days.

I must say, we can go all the way back to a year ago when Senator BAUCUS made the case that if you want