

calendar year, any tax return preparer unless such preparer reasonably expects to file 10 or fewer individual income tax returns during such calendar year.

**(C) INDIVIDUAL INCOME TAX RETURN.**—For purposes of this paragraph, the term 'individual income tax return' means any return of the tax imposed by subtitle A on individuals, estates, or trusts.”

**(b) CONFORMING AMENDMENT.**—Paragraph (1) of section 6011(e) of the Internal Revenue Code of 1986 is amended by striking “The Secretary may not” and inserting “Except as provided in paragraph (3), the Secretary may not”.

**(c) EFFECTIVE DATE.**—The amendments made by this section shall apply to returns filed after December 31, 2010.

**SEC. 18. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.**

The percentage under paragraph (1) of section 202(b) of the Corporate Estimated Tax Shift Act of 2009 in effect on the date of the enactment of this Act is increased by 33.0 percentage points.

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

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

The motion to lay on the table was agreed to.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. BYRD. Mr. President, it is a moral responsibility for a great nation to help provide for its citizens when they are in dire economic circumstances. There are more than 30,000 workers in West Virginia who have exhausted their regular unemployment benefits, and thousands of them have already received their final payment of emergency unemployment benefits. These workers and their families are relying on this unemployment extension bill to survive. Later this year, many more unemployed workers will be counting on the Congress to take action to extend provisions contained in the stimulus bill, in order to be able to purchase health insurance. Congress must not fail them.

I am very pleased that the Senate has passed this unemployment extension measure, which provides a lifeline for families who are barely hanging on.●

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**EXECUTIVE SESSION**

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**NOMINATION OF TARA JEANNE O'TOOLE TO BE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY**

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Tara Jeanne O'Toole, of Maryland, to be Under Secretary for Science and Technology, Department of Homeland Security.

Mr. McCAIN. Mr. President, I understand the Senate is proceeding to the consideration of the nomination of Dr. Tara O'Toole to serve as Under Secretary for the Science and Technology

DIRECTORATE at the Department of Homeland Security. This nomination has not been available for consideration until now because I was waiting for Dr. O'Toole to answer the nearly two dozen questions I submitted to her during the past month. As of Monday, she has answered each question.

While I continue to have concerns about this nominee failing to disclose her activities as strategic director for the Alliance for Biosecurity, I will not hold up consideration of her nomination. A September 8, 2009 article in the Washington Times referred to the Alliance as a “lobbying group funded by the pharmaceutical industry.”

Specifically, the article stated, “The alliance has spent more than \$500,000 lobbying Congress and federal agencies—including Homeland Security—since 2005, congressional records show. However, Homeland Security officials said Dr. O'Toole need not disclose her ties to the group on her government ethics form because the alliance is not incorporated . . . Analysts say the lack of disclosure reflects a potential loophole in the policies for the Obama administration, which has boasted about its efforts to make government more transparent.”

The article continued:

They also question lobbying laws that allow such a group to spend hundreds of thousands of dollars without the public knowing exactly how much money each of the companies that belongs to the group contributes, though such arrangements are permitted under the law . . . Ethics rules require nominees to report any paid or unpaid positions held outside of government, including but not limited to those of “officer, trustee, general partner, representative, employee or any consultant of any corporation, firm, partnership or other business enterprise.” Dr. O'Toole signed a letter on behalf of the group sent to the White House as recently as March.

I put forward numerous questions to Dr. O'Toole about her “stealth lobbying” on behalf of the Alliance. She repeatedly answered that her “activities did not constitute lobbying.” I also asked numerous questions about her involvement in securing an earmark for the Center for BioSecurity at the University of Pittsburgh Medical Center. She provided answers to the questions and stated that although she provided a statement for the media in support of the earmark, she did not provide any assistance in lobbying Congress for the earmark.

Elections have consequences, and while she would not have been the nominee I would have chosen for this position, she is the President's choice.

I ask unanimous consent that the September 8, 2009, Washington Times article be printed in the RECORD.

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

[From the Washington Times, Sept. 8, 2009]

OBAMA NOMINEE OMITTED TIES TO BIOTECH

(By Jim McElhatton)

President Obama's nominee at the Department of Homeland Security overseeing bio-

terrorism defense has served as a key adviser for a lobbying group funded by the pharmaceutical industry that has asked the government to spend more money for anthrax vaccines and biodefense research.

But Dr. Tara O'Toole, whose confirmation as undersecretary of science and technology is pending, never reported her involvement with the lobbying group called the Alliance for Biosecurity in a recent government ethics filing.

The alliance has spent more than \$500,000 lobbying Congress and federal agencies—including Homeland Security—since 2005, congressional records show.

However, Homeland Security officials said Dr. O'Toole need not disclose her ties to the group on her government ethics form because the alliance is not incorporated: “There's no legal existence so she wouldn't have to disclose it,” said Robert Coyle, an ethics official for the Department of Homeland Security.

Analysts say the lack of disclosure reflects a potential loophole in the policies for the Obama administration, which has boasted about its efforts to make government more transparent. They also question lobbying laws that allow such a group to spend hundreds of thousands of dollars without the public knowing exactly how much money each of the companies that belongs to the group contributes, though such arrangements are permitted under the law.

“You're not allowing the public to know the full background of this nominee,” said Judy Nadler, a senior fellow at the Markkula Center for Applied Ethics at Santa Clara University in California. “It shouldn't matter whether it's incorporated or not.”

Craig Holman, legislative director of the nonpartisan watchdog group Public Citizen, said the lack of disclosure “definitely and clearly runs counter to the intent of the law.”

Ethics rules require nominees to report any paid or unpaid positions held outside of government, including but not limited to those of “officer, trustee, general partner, representative, employee or any consultant of any corporation, firm, partnership or other business enterprise.” Dr. O'Toole signed a letter on behalf of the group sent to the White House as recently as March.

Dr. O'Toole declined to comment for this article. Her office referred questions to Mr. Coyle at Homeland Security and to officials for the Alliance for Biosecurity, who said the group is in “full compliance” with lobbying rules and noted that there were no financial ties between the Center for Biosecurity, where Dr. O'Toole is chief executive, and the lobbying group she helped found.

In written testimony to Congress, Dr. O'Toole said the alliance was “created to protect the Center for Biosecurity's status as an honest broker between the biopharma companies and the U.S. government.”

As undersecretary of science and technology, one of Dr. O'Toole's responsibilities would involve overseeing the department's chemical and biological division, which is in charge of making sure the nation is prepared to defend itself against chemical and biological attacks.

Dr. O'Toole was nominated less than four years after the alliance was formed in 2005. She has served as the group's unpaid strategic director and has signed her name on more than a dozen letters sent to Congress and federal agencies.

The group's letters to policymakers often seek more money for research and vaccines. She signed the letters as the group's strategic director, in addition to listing her full-time paid job as director of the Center for Biosecurity, which is affiliated with the University of Pittsburgh.

The letters, including one that Dr. O'Toole sent to House Speaker Nancy Pelosi, California Democrat, last fall, describe the Alliance for Biosecurity as a “collaboration” among the Center for Biosecurity of the University of Pittsburgh Medical Center, pharmaceutical companies and biotechnology companies “working to develop vaccines, medicines and other medical countermeasures for the nation’s Strategic National Stockpile.”

Members include companies such as Pfizer Inc., Sig Technologies and PharmAthene Inc. The group discloses the letters and list of members on a Web site.

But for all its lobbying and letters to Congress, the alliance isn’t incorporated, it doesn’t have a bank account and its day-to-day operations are overseen by the K Street lobbying arm of Drinker Biddle & Reath LLP, which also lobbies on behalf of the alliance, according to records and interviews.

The alliance’s legal counsel, Anita Cicero, is also a Drinker Biddle lawyer who serves as a lobbyist for the group. In an e-mail response to questions about the alliance, Ms. Cicero said the group was formed to work “in the public interest to improve prevention and treatment of severe infectious diseases—particularly those diseases that present global security challenges in the 21st century.”

Ms. Cicero described the lobbying activities as focusing on broad issues. “The overarching advocacy issues we address run across the industry, and we do not conduct lobbying activities to advance the commercial interests of any individual member company,” she said.

Still, a review of the group’s correspondence to federal lawmakers along with member companies’ public disclosures to investors show that the lines between advocacy and commercial interests aren’t always clear.

In an Oct. 31 letter to Mrs. Pelosi signed by Dr. O’Toole and two other alliance officials, the group called on Congress to include more than \$900 million for the “advanced development of medical countermeasures” to be administered by the Biomedical Advanced Research and Development Authority.

The letter also was signed by the chief executive officer of member company PharmAthene, David Wright, who was one of the two first co-chairmen for the alliance after its creation in 2005.

Mr. Wright’s company has a big financial interest in securing work from the authority, according to investor filings. A Securities and Exchange Commission filing last summer disclosed that PharmAthene has been trying to win a contract administered by the authority to supply 25 million doses of an anthrax vaccine to the national stockpile, which is overseen by the Department of Health and Human Services.

As undersecretary, Dr. O’Toole wouldn’t be directly responsible for decisions on which vaccines to develop or buy. Still, she would oversee the government’s threat assessments on the risks of bioterrorists.

Dr. O’Toole has told the Senate in written testimony that she would adhere to all ethics rule on conflicts of interests, but that because she has no financial interest in PharmAthene, she’s not aware of any recusal requirements if she were to become involved in decisions concerning government funding for anthrax vaccine development.

Ethics groups say the alliance’s setup is an example of what critics call “stealth lobbying,” in which like-minded companies form a loosely knit compact and spend lots of money lobbying the government. The arrangement is legal, but it exposes loopholes that prevent the public from finding out how much money each company pays and whether one business exerts more control over the others.

Ms. Cicero said the group is complying with all applicable federal laws and that the alliance discloses on a Web site its membership list and correspondence to the White House, Congress and federal agencies. She said the companies pay a “pro rata” share to the Drinker Biddle & Reath firm.

“The alliance does not generate income, does not have a bank account and does not owe taxes,” she said.

Ms. Cicero said the law firm “regularly convenes consortia of biopharma companies that share common goals or interests and provides secretarial and legal support for the groups.” She said the alliance was formed so companies, academic institutions and the government could work together to “accelerate the development of therapeutic and vaccine countermeasures.”

Ms. Cicero said Dr. O’Toole no longer has an active role as the strategic director for the alliance.

Another lobbying client of the firm, the International Pharmaceutical Aerosol Consortium, appears structured similarly. There are no records of any incorporation papers for that group, either. The group has a Web site listing several pharmaceutical companies as members, and Senate records show it has paid more than \$250,000 to Drinker, Biddle & Reath since 2007.

Government watchdog groups acknowledge that the arrangement is legal but say it seems at odds with lobbying reform laws that were intended to shed more light on who bankrolls and controls special interest groups.

“At the end of the day, companies that form coalitions like this are being able to get around having to disclose the full breadth of who they are and what they’re doing,” said Dave Levinthal, a spokesman for the nonpartisan Center for Responsive Politics. “Does that cut against an open and transparent government? It appears that it does.

“Stealth lobbying has been taking place for years and despite the focus on the influence of lobbying, what’s happening is that organizations are finding, if not loopholes, then ways around the spirit of the law,” he said. “Companies that are lobbying Congress are not necessarily disclosing the full strength of their lobbying.”

Mr. LEVIN. Mr. President, I cannot support the nomination of Dr. Tara O’Toole to be the Under Secretary for Science and Technology at the Department of Homeland Security.

By its nature, this position requires a disinterested scientific approach to issues affecting homeland security. It is a position which the Department of Homeland Security and its policymakers must rely on for objective advice and counsel.

Dr. O’Toole fell short of the strict adherence to scientific principles when she was the director of the Johns Hopkins Center for Civilian Biodefense Strategies. Dr. O’Toole was one of the principal designers and authors of the June 2001 Dark Winter exercise that simulated a covert attack on the United States by bioterrorists.

The Dark Winter exercise had a deadly serious purpose: to assess the vulnerability of the United States to a biological weapons attack and our ability to deal with such an attack.

But many top scientists have said that the Dark Winter exercise was based on faulty and exaggerated assumptions about the transmission rate of smallpox.

Dr. James Koopman of the Department of Epidemiology at the University of Michigan, an expert at modeling the transmission rates of infectious diseases who participated in the smallpox eradication program, has said that Dr. O’Toole “has not sought balanced scientific input in her thinking, that she shows a lack of analytic orientation to scientific issues, and that she has generated hype about bioterrorism that she will feel obligated to defend rather than pursue a balanced approach.”

Dr. Anthony Fauci, the Director of the National Institute of Allergy and Infectious Diseases, told me that the conclusions of the Dark Winter exercise were “dramatically affected” by the assumptions that were used, and that these assumptions were “much, much worse than would have been the case” in real life.

Dr. Michael Lane, the former Director of the Centers For Disease Control Smallpox Eradication Program—who has had extensive and first-hand experience with the disease—found the assumptions about smallpox transmission rates in the Dark Winter exercise “improbable” and even “absurd.”

The transmission rate of smallpox was not the only area where Dr. O’Toole exaggerated the facts. On February 19, 2002, she wrote that “Many experts believe that the smallpox virus is not confined to these 2 official repositories [1 in the United States and 1 in Russia] and may be in the possession of states or subnational groups pursuing active biological weapons programs.” This statement referenced a New York Times article of June 13, 1999, for support of that very startling statement about “subnational groups.” But the article she cited made no reference to any subnational or terrorist or nonstate group possessing active biological weapons programs.

Bioterrorism poses a serious threat to our national security. But it is one of many threats we face. All threats to our security must be addressed objectively and scientifically so that we spend our resources in the most effective way possible to address the most likely and most dangerous threats. Exaggerations for the purpose of influencing policy makers do a disservice and result in the misallocation of limited resources that must be utilized wisely and objectively in order to enhance our security.

Mr. LIEBERMAN. Mr. President, I rise today to urge my colleagues to take up and approve the nomination of Dr. Tara O’Toole to be Under Secretary of Science and Technology at the Department of Homeland Security.

When the Homeland Security and Governmental Affairs Committee held its confirmation hearing on Dr. O’Toole’s nomination I said I believed it was an “inspired choice.”

My judgment remains unchanged and I would note that her nomination was reported out of committee favorably on a bipartisan basis with just one dissenting Democratic vote.

I would also note that DHS Secretary Janet Napolitano has been pleading with the Senate to confirm Dr. O'Toole. Secretary Napolitano has said that Dr. O'Toole's biosecurity and epidemiology expertise are critical to DHS and to her, personally. The Secretary's urgency is heightened because of the critical roles Dr. O'Toole will play in both defending our Nation against bioterrorism and in the continuing preparations for the H1N1 flu pandemic.

Let's consider the tough job Dr. O'Toole has been asked to take on and then consider the qualifications she brings to it.

The Science and Technology Directorate is charged with managing our Nation's investments in homeland security research and development projects with the goal of providing its customers within and without the DHS the kinds of state-of-the-art technologies they need to achieve their missions.

The S&T Directorate got off to a rocky start and struggled in its early years to clarify and execute its primary mission. Former Under Secretary Jay M. Cohen resolved to build a leaner and more tightly managed organization that focused on better serving its customers and being transparent with Congress. He implemented internal controls to monitor S&T finances and track the progress of S&T investments. He established a structured strategic planning process that is designed to produce specific objectives and annual performance measures.

But despite this progress, big challenges await the new undersecretary, including expanding investments in innovative R&D for homeland security—like the advanced spectroscopic portal, ASP, and the secure border initiative—and insuring the reliability of the a testing and evaluation that DHS relies on for large acquisition programs.

Programs like these can be force multipliers for DHS's customers within and without the department.

Now let's consider the resume Dr. O'Toole brings to the job—both as a medical professional and as a manager.

Let's start with Dr. O'Toole's solid and impressive educational background: a bachelor's degree from Vassar College, a medical degree from George Washington University, and a master of public health degree from Johns Hopkins University.

Now let's consider her management skills: From 1989 to 1993 she served as a senior analyst and project director with the Congressional Office of Technology Assessment; from 1993 to 1997, she served as the Assistant Secretary for Environment, Safety and Health at the Department of Energy.

From 1999 to 2003, she managed the Johns Hopkins Center for Civilian Bio-defense Strategies. For the last 6 years, she has served as the Director and Chief Executive Officer of the Center for Biosecurity at the University of Pittsburgh.

On top of all this, Dr. O'Toole is also an accomplished author.

She has published her research on anthrax, smallpox, the plague, biological attacks, containment of contagious disease epidemics, biodefense, and hospital preparedness. She is coeditor in chief of the *Journal of Biosecurity and Bioterrorism*.

And she took all this knowledge she has gained over these many years and used it to help create the 2001 bio-terror attack simulation known as "Operation Dark Winter" that helped open our eyes to our many vulnerabilities.

Dr. O'Toole is also a former chair of the board of the Federation of American Scientists and she has participated in major studies or advisory panels at the request of the National Science Foundation, the Department of Defense, the Department of Health and Human Services and the Department of Homeland Security.

Besides these many qualifications, another important measure of her fitness for this post is the bipartisan respect she has earned across the government and scientific communities that monitor homeland security and bioterrorism challenges.

Among her many supporters are: Former Senators Bob Graham and Jim Talent, Chairman and Cochairman of the Commission on the Prevention of WMD Proliferation and Terrorism; former DHS Secretary Tom Ridge; former Senator and defense expert Sam Nunn; former National Security Adviser to Presidents Gerald Ford and George H.W. Bush, Brent Scowcroft, as well as Dr. Robert P. Kadlec, former Special Assistant for Biodefense Policy at the Homeland Security Council under President Bush; Dr. D.A. Henderson, who led the World Health Organization's efforts to rid the world of smallpox, and the Federation of American Scientists.

Dr. O'Toole brings a remarkable breadth of experience to this job that is so crucial to our nation's security and I say again she is an inspired choice and I urge my 3 colleagues to take up her nomination and confirm her to this position where our nation so desperately needs her talents.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Tara Jeanne O'Toole, of Maryland, to be Under Secretary for Science and Technology, Department of Homeland Security?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President will be immediately notified of the Senate's action.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

Mr. WHITEHOUSE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business.

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

#### ORDER OF PROCEDURE

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the next hour be controlled by the Democratic side; that colloquies be allowed among the speakers; and that the speakers be recognized, first, the Senator from New Jersey, Mr. LAUTENBERG, then the Senator from Oregon, Mr. MERKLEY, and then as recognition may be sought on the Democratic side after that.

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

Mr. WHITEHOUSE. One further unanimous consent request, Mr. President. I ask unanimous consent that Senator STABENOW follow Senator MERKLEY after Senator LAUTENBERG has spoken.

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

The Senator from New Jersey is recognized.

#### HEALTH CARE REFORM

Mr. LAUTENBERG. Mr. President, I thank my colleagues for giving me an opportunity to talk for a few minutes about health care as we try to understand what brings us to this point with a shred of rage, trying to maintain the dignity of our society.

We are on the verge of fixing our health care system once and for all, but there is one major obstacle in our way. The obstacle I talk about is the health insurance companies, their lobbyists, CEOs, and their friends on the other side of the aisle. We can call this group the status quo caucus. They are spending unlimited funds on TV commercials and bogus studies to kill health reform. That is their mission. Think about it. They define their goal, their objective, as articulated by our colleague from South Carolina, as saying: If we can stop this health care reform from continuing, it can be the end of the Obama Presidency, it can be his Waterloo.

What kind of an objective is that, that we put politics at the top end as we ignore millions of people, over 40 million people who do not have any insurance, and many of the others who do