

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

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

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

UNANIMOUS CONSENT REQUEST

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

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

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

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

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

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

Mr. REID. That is right.

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

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

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

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

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