

Date: January 7, 2003

Signed: _____

Joseph I. Lieberman, U.S.S.

STATEMENT OF SENATOR JOSEPH LIEBERMAN ON INTRODUCTION OF A BILL TO STRIKE CERTAIN PROVISIONS OF THE HOMELAND SECURITY ACT OF 2002

Mr. LIEBERMAN. Mr. President, I rise today to introduce a bill on behalf of myself and Senator Daschle to remedy some problems in landmark legislation passed at the end of the last Congress, and signed into law by President Bush, to establish a Department of Homeland Security. The legislation we are offering today would strike seven extraneous special interest provisions inserted into the Homeland Security Act by Republican leadership in the bill's waning hours - provisions that are contrary to the bipartisan spirit in which the Homeland Security Act was conceived.

Since the days following September 11, 2001, when terrorists viciously took the lives of 3,000 of our friends, family and fellow Americans, I have advocated establishing a Department of Homeland Security to beat the terrorist threat. Senator Arlen Specter, R-Pa., and I initially proposed creating a new department in October 2001. Our measure was not just bipartisan. It was in fact intended to be nonpartisan.

Unfortunately, some partisan battles did ensue – primarily regarding longstanding civil service protections for homeland security workers – and I remain very concerned about the potential impact of these provisions. Nevertheless, the final bill was, for the most part, a critical, well-constructed piece of legislation that incorporated the majority of the provisions approved by the Governmental Affairs Committee, and which an overwhelmingly majority of the Senate embraced.

In some very specific ways, however, the bill was flawed. In the final stages of passing the bill, the Republican leadership hastily inserted several special interest provisions that had no place in this measure. Most of these provisions had never been in any of version of the legislation before the Senate before they were presented in a take-it-or-leave-it package by Republicans, and several had not been considered by either chamber. The method and spirit in which these provisions found their way into what should have been a consensus piece of legislation was utterly objectionable and Senator Daschle and I made an effort to remove them at the time. That effort narrowly failed, but not before news of these special interest provisions had created great consternation for Democrats and the public – and even for some Republicans. Indeed, according to numerous published reports, the Republican leadership was able to muster the votes to preserve the provisions only after promising to revisit at least some of the most egregious additions during this session of Congress.

Mr. President, I believe that the seven extraneous provisions my legislation targets hurt the Homeland Security Act as it was finally passed by the Congress and signed by the President. And I believe that, by attaching these measures to what could have and should have been a common cause, the Republican leadership all but admitted that the provisions cannot withstand independent scrutiny. Following are the provisions my bill would strike.

Childhood Vaccine Liability Shield

First, perhaps the most egregious add-on to the Homeland Security Act was a provision that dramatically alters the way certain vaccine preservatives are treated for liability purposes under the law. To quickly summarize this very complicated issue, children who are hurt by childhood vaccines generally may not go directly to court to hold

vaccine manufacturers liable. Instead, they have to go first to what's called the Federal Vaccine Injury Compensation Program, which offers compensation for some of these claims. Parents argued, however, that the bar on lawsuits didn't use to apply to claims regarding faulty vaccine additives.

These seemingly arcane legal distinctions were particularly important to a large number of parents of autistic children who have attributed their children's autism to thimerosal, a mercury-based preservative that used to be in some childhood vaccines. These parents sued the manufacturers of both vaccines and thimerosal, and they had many lawsuits pending in the courts as of last Fall.

If you are wondering what any of this has to do with Homeland Security, you are doing exactly what we all did last November when, in the waning days of debate on the Homeland Security bill, a provision addressing this issue appeared for the very first time in any version of the bill. That provision fundamentally altered the way vaccine additive claims would be treated from then on. With the swoop of a pen, the pending additive lawsuits against both vaccine and additive manufacturers were thrown out of court and – the provision's supporters alleged – sent into the compensation fund.

As I said last Fall, I don't know whether there is any relationship between thimerosal and autism. I also don't know whether these cases really should be resolved in court or through the compensation fund. But I do know that figuring out where and how to resolve these claims is a very contentious, complex and challenging task, and is just one part of addressing broader problems with the vaccine compensation system. For example, the vaccine compensation fund's viability may be affected by the addition of claims regarding these additives. I also know that it is an issue that the committees of jurisdiction had been struggling with for a long time and that they should have been left to resolve. And I certainly know that a last second addition to the Homeland Security Act was absolutely the wrong way to deal with this issue and the wrong bill to use to take so many injured parents' and children's legal rights away. Indeed, we know that even more now, as it has become clear that while the provision closed the courthouse door to autistic children, it apparently didn't open the compensation fund window as its supporters said it would – because it didn't make the changes to either the fund's statute of limitations or to governing tax code provisions that would be necessary to obtain access to the fund for these cases.

The bottom line is that this was a wrong and poorly conceived provision to put in the Homeland Security bill – something I thought even the Republican leadership acknowledged when they were forced to make promises to get rid of this provision in order to save their bill. We should scrap it now, and let the committees of jurisdiction undertake a careful review and, I hope, get it right this time.

Transportation Security Regulations

My legislation would also strike from the Act a measure that requires 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, they would automatically lapse. Despite the TSA having decided that they are necessary, 90 days later, lacking the board's approval, they'd disappear.

Mr. President, 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 provision is contrary to new procedures that the Senate passed in 2001 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.

Airport Screening Company Immunity

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

But we in the Senate decided against extending such liability protection in at least two 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 11th. 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.

Like that little mole you hit with the mallet in a whack-a-mole game, somehow this provision reappeared in the Homeland Security Act. We must strike it.

SAFETY Act

Another unnecessary and overreaching provision I seek to strike gives 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.

This provision 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. Perhaps worst of all, this measure caps 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.

Federal Advisory Committee Act

Mr. President, the Homeland Security Act 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).

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 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?

We all say that we're for "good government"—for openness, integrity, and accountability. But as it now stands, 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.

Texas A&M

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

But there's a problem with this particular provision as it is written. The research center that it would create is described so narrowly, through 15 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.

Mr. President, 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."

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

Our legislation keeps the university-based science center program. However, it removes the highly-specific criteria that appear to direct it to a particular university. That's the way we'll get the best science, not by making Congressional allocations to particular institutions.

Mr. President, I'm extremely pleased we have created a Department of Homeland Security and plan to do everything I can to help ensure its success. But these flaws are real. They are serious. And they are utterly unnecessary. I ask unanimous consent that the text of the bill be printed in the Congressional Record.