

DAN BURTON, INDIANA,
CHAIRMAN

BENJAMIN A. GILMAN, NEW YORK
CONSTANCE A. MORELLA, MARYLAND
CHRISTOPHER SHAYS, CONNECTICUT
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
STEPHEN HORN, CALIFORNIA
JOHN L. MICA, FLORIDA
THOMAS M. DAVIS, VIRGINIA
MARK E. SOUDER, INDIANA
STEVEN C. LA TOURETTE, OHIO
BOB BARR, GEORGIA
DAN MILLER, FLORIDA
DOUG OSE, CALIFORNIA
RON LEWIS, KENTUCKY
JO ANN DAVIS, VIRGINIA
TODD RUSSELL PLATTS, PENNSYLVANIA
DAVE WELDON, FLORIDA
CHRIS CANNON, UTAH
ADAM H. PUTNAM, FLORIDA
C.L. "BUTCH" OTTER, IDAHO
EDWARD L. SCHROCK, VIRGINIA
JOHN J. DUNCAN, JR., TENNESSEE

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

www.house.gov/reform

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
PATSY T. MINK, HAWAII
CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
ROD R. BLAGOJEVICH, ILLINOIS
DANNY K. DAVIS, ILLINOIS
JOHN F. TIERNEY, MASSACHUSETTS
JIM TURNER, TEXAS
THOMAS H. ALLEN, MAINE
JANICE D. SCHAKOWSKY, ILLINOIS
Wm. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS

BERNARD SANDERS, VERMONT,
INDEPENDENT

November 15, 2002

Mr. Mitchell E. Daniels, Jr.
Director
Office of Management and Budget
Washington, DC 20503

Dear Director Daniels:

Among the special interest provisions buried in H.R. 5710 are provisions that would change the Vaccine Injury Compensation Program (VICP) in a way that benefits Eli Lilly and Dow Chemical. According to an article in today's Washington Post, these provisions were "something the White House wanted."¹ As Director of the Office of Management and Budget (OMB), one of your responsibilities is to coordinate the Administration's position on legislation.² For this reason, I am writing you to inquire about how these provisions came to be included in the bill.

Sections 714-716 of the Homeland Security Bill include provisions that would change the definition of vaccine manufacturer for purposes of the VICP to include manufacturers of vaccine preservatives. Under current law, families seeking compensation for vaccine-related injury must first go through the VICP. If the family is dissatisfied with the outcome of this government-run program, the family is allowed to bring a legal action in state court for compensation.

I co-authored the legislation that created this program and I am very proud that this program has, for the most part, worked very well. Families rarely exercise their right to sue after going through the program and, until recently, vaccine manufacturers have not been subject to the litigation that precipitated the need for the Vaccine Injury Act in the mid-1980's.

¹*Homeland Security Bill Aids Drugmakers*, Washington Post (Nov. 15, 2002).

²According to OMB's website, "OMB ensures that agency rules, testimony, and proposed legislation are consistent with the President's Budget and Administration policies." (See: www.whitehouse.gov/omb).

Mr. Mitchell E. Daniels, Jr.
November 15, 2002
Page 2

Recently, however, there have been a number of lawsuits filed claiming that Thimerosal, the mercury-containing preservative that has been phased out of childhood vaccines, may have injured children. The science to date has not borne out these allegations.

These lawsuits have by-passed the VICP by claiming that Thimerosal, despite being part of the Food and Drug Administration approved vaccines, is a contaminant. Overwhelmingly, judges have said that these cases against vaccine manufacturers properly belong in the VICP. However, cases against the manufacturers of Thimerosal, including Eli Lilly, have been allowed to proceed in state courts.

These provisions are irrelevant to the Homeland Security bill and have been included without appropriate congressional consideration.

I understand that there are reforms that need to be made to the VICP. In fact, the Advisory Commission on Childhood Vaccines (ACCV), the independent panel that oversees the VICP, has made numerous recommendations about how to change the program. Some of the changes proposed by the ACCV would benefit vaccine manufacturers, some would benefit the Department of Health and Human Services' ability to administer the program, and some would benefit claimants. Included in the ACCV recommendations that would benefit claimants are recommendations to: increase the statute of limitations; increase the benefit awarded to families whose child has died from a vaccine; and allow awards made under the program to pay for family counseling expenses. However, none of these other provisions were included in H.R. 5710. Instead, only those provisions that provide liability protection to Eli Lilly and other Thimerosal manufacturers have been included.

I request information on how this Administration position was put together. Please provide me with the following information:

- (1) a list of all outside groups or individuals consulted about changes to the Vaccine Injury Compensation Program, including, but not limited to, members of Congress, public interest groups, lobbyists, private citizens, and vaccine manufacturers and their representatives;
- (2) with respect to each entity identified in response to question (1), a list identifying
 - (a) the date and nature — e.g., meeting, telephone call — of each contact between the entity and the Administration;
 - (b) the topics discussed during the contact; and
 - (c) all persons present or participating in the contact, including federal employees;

Mr. Mitchell E. Daniels, Jr.

November 15, 2002

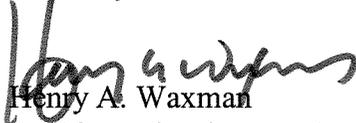
Page 3

- (3) copies of all documents and records — including, but not limited to, correspondence, notes, memoranda, and e-mail messages — created or received by the Administration regarding or relating to changes to the Vaccine Injury Compensation program.

I would also like to know what your role was, if any, in developing this legislation. Did you, or any member of your staff, have any contacts with either representatives from Congressional offices or from Eli Lilly or any other Thimerosal manufacturer? If so, please provide the information requested above.

Please respond to this letter by November 27, 2002. If you have any questions, you can contact Sarah Despres of my staff at 225-5420.

Sincerely,



Henry A. Waxman
Ranking Minority Member