Congress of the United States
Washington, DC 20515

February 15, 2006

The Honorable Bill Frist, M.D.
Majority Leader
U.S. Senate
509 Hart Senate Office Building
Washington, DC 20510

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
235 Cannon House Office Building
Washington DC 20515

Dear Speaker Hastert and Majority Leader Frist,

All of us share the goal of seeing that the nation is properly prepared for an influenza pandemic or a biological attack. Effective planning and adequate funding are both indispensable elements of preparedness.

We must also see that concerns about possible litigation do not deter responsible manufacturers from supplying vaccines and other drugs to our national stockpile, or dissuade medical practitioners from administering them to patients. An essential element of any program to limit the legal liability of manufacturers and medical professionals must be an effective and properly funded compensation program for patients injured by these products.

Many of us worked closely with our colleagues in the majority to develop a bipartisan proposal to meet this national need. We are deeply concerned that a stealth provision to shield manufacturers from responsibility for making faulty drugs and vaccines was included in the Defense Appropriations Act without Congressional debate or public scrutiny.

Legislation of such significance should have been debated in the open, not sneaked into a larger bill behind closed doors as a favor to special interests. Doing so without the approval of the members of a House-Senate conference committee was, in the words of Thomas Mann of the Brookings Institution, "a travesty of the legislative process."

The provision included in the bill is not limited to vaccines for pandemic flu or other major threats to the nation's health, but could instead be used to allow manufacturers of virtually any drug or vaccine to escape responsibility for gross negligence or even criminal acts. The provision fails the basic test of fairness by including only an empty shell of a compensation program for injured patients with none of the funding needed to make compensation a reality.

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To correct this serious violation of Congressional procedures, we urge you to schedule immediate action on legislation to repeal this deeply flawed provision, and enact in its place a measure to give pharmaceutical companies and medical professionals appropriate liability protection while ensuring that injured patients are properly compensated.

Sincerely,

Ted Kennedy

Chris Dodd

Patrick Leahy

Carl Levin

Barbara A. Mikulski

Hillary Rodham Clinton

Jack Reed

Patty Murray

Mark Dayton

Ron Wyden

Harry A. Wayman

Dianne Feinstein

Daniel K. Akaka

Barbara Boxer

Debbie Stabenow

Tom Harkin