

STATEMENT OF CHAIRMAN FRED THOMPSON

Joint Hearing With Energy and Natural Resources Committee

October 19, 1999

WASHINGTON, DC -- The following is the opening statement of Governmental Affairs Committee Chairman Fred Thompson (R-TN) at a joint hearing with the Senate Energy and Natural Resources Committee on the implementation of legislation creating the National Nuclear Security Administration:

"Earlier this year, the Cox Committee in the House made the startling determination that design information of some of America's most advanced nuclear weapons had been stolen from our nuclear weapons laboratories. These laboratories are under the control of the Department of Energy. The President's Foreign Intelligence Advisory Board issued a subsequent report -- on which our Committees had an unprecedented 4-way joint hearing -- which found gross mismanagement within our nuclear weapons complex. Indeed, the entire bureaucratic structure and culture of the weapons complex was found to be inadequate and, therefore, the President's Foreign Intelligence Advisory Board recommended that a new autonomous, or semi-autonomous, management organization be created.

"Because of the gravity of this situation for America's national security, Congress acted in rare form. On a quick and overwhelmingly bipartisan vote, we enacted legislation to create a semi-autonomous weapons complex management organization within the Department of Energy. Indeed, each step of this process -- beginning with the issuance of the unanimous Cox Committee report to the enactment of recommended legislation -- has occurred with broad bipartisan Congressional consideration and support. And despite concerns expressed from within the Administration about this plan -- most particularly by Secretary Richardson -- the president signed the new DOE organization legislation into law on October 5, 1999.

"The President could have vetoed the bill, but he chose to sign it which gave it the force of law as soon as he signed it. That meant that the President's constitutional duty to take care to faithfully execute the law immediately applied to that legislation.

"The legislation created a new Under Secretary of Energy. But under the law, two qualifications had to be met for a person to serve in this capacity. First, the individual could serve as Under Secretary only if he or she had extensive background in national security, organizational management, and appropriate technical fields, and was well qualified to manage the nuclear weapons, nonproliferation and materials disposition programs of the newly created National Nuclear Security Administration. And second, that individual could take office only if the President nominated him or her and the Senate gave its advice and consent to the nomination.

"The Under Secretary was also given authority to establish counterintelligence programs at each national security laboratory and each nuclear weapons production facility. His or her authority also includes establishing procedures for access to information and computers, and to ensure compliance with environmental, health, and safety requirements, as well as with federal

acquisition regulations. And the Under Secretary reports to the Secretary of Energy. The bill also provides that each employee of the new NNSA is to be under the control of the Secretary acting through the Under Secretary.

"President Clinton, although required to follow this law, chose a third way of behavior. He signed the bill, but immediately directed Secretary Richardson to perform the duties of the Under Secretary. He has directed that other DOE officials perform duties in NNSA as well. It is as if the President has exercised a line item veto, signing the overall bill but denying effect to these provisions. That approach is unconstitutional.

"Consider all the ways in which the President has acted contrary to the law.

- First, he appointed someone to act as Under Secretary who does not meet the statutory eligibility criteria and who has not received the Senate's confirmation.
- Second, although the law requires that the Under Secretary be given various types of authority at the labs, the Secretary is now to perform those duties. DOE employees are to perform duties that only NNSA employees by law may undertake.
- Third, the law requires those functions be performed under the direct supervision of the Under Secretary, not the Secretary. But now it is the Secretary who supervises them.
- And finally, the President has violated the Vacancies Act as well. The Vacancies Act provides the exclusive circumstances and procedures under which a President may designate acting officers to serve in lieu of Senate-confirmed officials. Since the circumstances that permit the President that power do not apply here, the President does not have the power to appoint Secretary Richardson or anyone else temporarily to the Under Secretary position.

"The President's actions violate the Constitution's separation of powers principle. The Congress denied the President the authority to make the Secretary of Energy responsible for the matters which the Under Secretary is to perform. It did so because the prior arrangement had led to dangerous situations in our nuclear weapons laboratories that demanded a new organizational arrangement. When the President makes the Secretary responsible for those matters, contrary to the directives that Congress made within its sphere of authority, he has violated the separation of powers. He is not faithfully executing the laws. And all this is occurring as he is unfairly and inaccurately criticizing the Senate for supposedly not fulfilling its constitutional duties with regard to appointments and other matters.

"On its surface, then, the question before us today is whether the Administration will implement critical changes to our national security structure. But the issue is really deeper than that. The heart of the matter before us is whether the President will implement the law as enacted by

Congress and signed by him. No question is more important to the fundamental fabric of American government.

"The Senate must not let this situation go unaddressed. The suggestion that a law of the United States not be implemented unless some additional action is taken by Congress is to suggest that the law not be followed. That is not the way our system works and it can not be allowed to begin working that way. Most of the operative functions of the law in question take effect on March 1, 2000. This should provide ample time to clarify any chain-of-command issues that might be unclear. I would certainly be anxious and happy to work with the Secretary on clarifications.

"But the intent of Congress is clear: a semi-autonomous agency is to be established with the Department of Energy to manage the nuclear weapons labs. This agency is to be headed by a new Under Secretary for Nuclear Security whose nomination by the President is to be submitted to the Senate for advice and consent. The Secretary's, and indeed the President's, views of the merits of this law are not relevant. Once the law is signed, they do not have the choice to implement it, or not, depending upon their personal views.

"I look forward to hearing from the Secretary how he intends to reconcile the requirements of the law with the directions given to him in the President's signing statement."