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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

Almighty God, we commit ourselves to cherish each unfolding moment of this day You have given us, to enjoy You and the precious hours filled with opportunities to serve You.

Thank You for Your presence. Guide our thinking, so that we may know Your will. Abide in our hearts, so that we may be filled with love and sensitivity for the people around us; bless our conversations, so that we may glorify You; linger on our lips, so that we may speak truth in love; and rest on our countenances, so that no grimness may hide the grace You have given us so lavishly.

Grant that, all through this day, everyone with whom we work and everyone we meet may see the reflection of Your joy in us. Make us a blessing for those laden with burdens, a lift for those bogged down with worries, and a source of hope for those who don't know where to turn. Lord, help us to care as You have cared for us. Through our Lord and Saviour, Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator MCCAIN, is recognized.

Mr. MCCAIN. Mr. President, thank you.

THE PRESIDENT PRO TEMPORE

Mr. MCCAIN. Mr. President, may I say the President looks very well this morning, and we are certainly glad that he is with us to open the Senate, as he is on every day that the Senate is in session.

SCHEDULE

Mr. MCCAIN. Mr. President, for the information of all Senators, this morning the Senate will resume consideration of the Gregg-Leahy amendment pending to the tobacco legislation. It is the chairman's intention to move to table the Gregg-Leahy amendment at approximately 11 a.m.

I want to point out that that vote may be a little later, because I had a large number of Senators who have asked to speak before that vote. So that may be delayed past 11 a.m. All Senators will be notified when that vote occurs.

Following that vote, it is believed that the Democrats will be prepared to offer an amendment under a short time agreement. Following disposition of the Democrat amendment, it is hoped that the Senate could then consider the farmers' protection issue.

Therefore, the first vote of today's session is expected sometime after 11 a.m., and Members should expect rollcall votes throughout today's session in order to make good progress on this important tobacco legislation.

Also at the end of this week, it is hoped that the Senate will be able to complete action on the ISTEA conference report, if available, and the Iran sanctions bill under a previous consent agreement.

Once again, the cooperation of all Senators will be necessary for the Senate to complete its work prior to the Memorial Day recess.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. THOMAS). Under the previous order, leadership time is now reserved.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to S. 1415, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2420), in the nature of a substitute.

Mr. MCCAIN. Mr. President, I note the presence of the Senator from Massachusetts who wishes to speak. I will yield the floor in just a minute, because I don't want to have him delayed, because I know he has a schedule. Of course, I note the presence on the floor of the sponsor of the pending amendment, Senator GREGG of New Hampshire.

Mr. President, I thought yesterday we made good progress. We have addressed the issue of attorneys' fees, although I don't believe that will be the final consideration of that issue since there are some very strongly held views on it. But we did have good and vigorous debate on that issue.

Yesterday, also, I think the parameters of this legislation were determined to a significant degree when the Ashcroft amendment was tabled. Then the majority of the Senate decided that we would not remove these fees that will be imposed on the tobacco industry as part of this legislation and settlement.

On the other side, when the Kennedy amendment was rejected, also the majority of the Senate declared its position at $1.10, which was approximately where the price of a pack of cigarettes would be.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Today, we will address the Gregg amendment, which will have to do with another important part of the bill. And that is the cap on the amount of payments that the tobacco companies would make on an annual basis, which I intend to discuss at more length, because I am not sure that this Senate understands, one, the exact meaning of that and the implications of removing it, because, very frankly, the implications of removing it will mean much higher costs to the taxpayers and to the consumers at the end of the day.

Finally, after that issue is resolved, we intend to take up one of the other major portions of this proposed legislation. And that is the agriculture portions of the bill, and, of course, there are extremely strongly held views on that particular issue.

Mr. President, I believe at the end of today we would have addressed—the Senate—admittedly from time to time in somewhat prolonged fashion, the major issues pertaining to this legislation.

I am pleased with the progress we have made so far. Apparently, we may not be able to complete action on this legislation before going into recess. But hopefully the realization will set in that we have addressed by the end of the day the major portions of this bill. And we could then conclude consideration of this legislation upon return.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, did my friend and colleague want to make a statement? I know the floor manager is on his feet.

Mr. KERRY. No. I thank our colleague. I will reserve my comments.

AMENDMENT NO. 2433

Mr. KENNEDY. Mr. President, the Gregg-Leahy amendment raises very fundamental questions:

Why would we consider giving a group of the worst corporate villains in America special protection?

Why would we want to make it more difficult for those who have been injured by the tobacco industry's wrongdoing to collect damages?

Why should Congress impose a liability cap which will have the effect of redirecting dollars away from smoking victims and into industry coffers?

I have heard no convincing answers to these questions from the bill's proponents.

More than one year ago, when news of the settlement negotiations between the state attorneys general and the tobacco industry first became public, I expressed my opposition to restricting the liability of tobacco companies. On April 25, 1997, I came to this floor and spoke out against giving the tobacco industry any special protection:

It would be unconscionable to deny people poisoned by tobacco their day in court. Each year, millions of Americans learn that they have a disease caused by smoking. In too many cases, it is beyond our power to restore their health. We must never permit the tobacco industry to extinguish their right to justice as well.

We have come a long way in the last year. The deal with the industry that was announced on June 20th would have given tobacco companies de facto immunity from suit. In fact, its provisions were designed by the industry to erect enormous barriers in the path of smoking victims seeking compensation. It would have banned all class action suits, which are often the only effective way individuals can litigate against corporate giants. In fact, it prohibited any aggregation of claims. It would have also banned all punitive damages. If ever we have seen an industry against which punitive damages are warranted, it is the tobacco industry. It would have prohibited all litigation by health insurers, such as Blue Cross and Employee Health and Welfare Funds, which incur enormous costs treating tobacco induced illnesses. It would have prevented the introduction of crucial evidence by tobacco victims suing the industry. It would have given absolute immunity to the parent companies of cigarette manufacturers even though those companies are where most of the profits go and the real decisions are made. It would have extinguished all future governmental suits against the industry. And, it would have imposed an annual ceiling on the liability of the tobacco industry. It was truly a draconian litany.

Fortunately, these liability restrictions were so extreme that they produced a great public outcry. Public health experts and victims' rights advocates expressed their outrage at this enormous injustice.

During the past year, there has truly been a national awakening on this issue. The American people focused on what the tobacco industry has done as never before. The dramatic revelations of corporate misconduct which have emerged from the industry's own files have truly shocked the national conscience. The harshest indictments of the tobacco companies are written in their won words, long kept secret, but now revealed for all to hear. From a 1981 Phillip Morris strategic planning document:

Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens . . . Because of our high share of the market among the youngest smokers, Phillip Morris will suffer more than the other companies from the decline in the number of teenage smokers

From an R.J. Reynolds Tobacco Company document entitled ''Planning Assumptions for the Period 1978 to 1987''.

Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR–T must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

Company records also detail elaborate efforts to chemically treat the nicotine in cigarettes to make it even more addictive than it naturally would be. All the while, these same companies were telling the American people that smoking is just a matter of free choice.

All of the special industry protections contained in the settlement were included in the Commerce Committee bill when it was first introduced. To the Committee's credit, in the final days before the markup, the prohibitions on class actions and punitive damages were removed. In the negotiations which produced the Manager's Amendment, the provisions granting immunity to corporate parents and affiliates was finally deleted and many of the evidentiary restrictions were removed. It is now time for the Senate to strip this legislation of the remaining vestiges of these special protections for Big Tobacco. While the remaining special protections may be less extreme, the principle is the same. This industry should not in any way be shielded from the long overdue rendezvous with accountability which awaits it in courthouses across America.

Title XIV of the Manager's Amendment provides the industry with an $8 billion per year liability cap limiting the companies financial exposure for both past and future misconduct. I object to any special protection for the industry. I believe the tobacco industry is not entitled to any liability cap. But, I especially object to this particular cap which applies to liability for future as well as past wrongdoing. One of the most important purposes of the civil law is to deter misconduct.

Capping liability for future wrongdoing reduces that deterrent and encourages tobacco companies to continue their misconduct. This industry of all industries, based upon its unparalleled record of corporate irresponsibility, should be subject to tougher standards, certainly not more lenient standards, than other companies. Yet, a more lenient standard is exactly what Title XIV will provide for the tobacco industry.

Consider the significance of the protection which a liability cap will give the tobacco companies. It provides them with an absolute ceiling on the amount of money they will have to spend each year to compensate their victims. This industry which conspired for decades to conceal the enormous health damages inherent in smoking. This industry which manipulated the nicotine in its products to make them even more addictive. This industry which targeted generations of our children for a lifetime of addiction and early death. There can be no justification for sheltering this industry from the legitimate claims of those who have been injured by its deadly product.

To the extent that the proposed liability ceiling is ever reached, it will have the effect of transferring dollars which rightfully belong to victims into the industry's corporate coffers. We are giving preference to CEOs and shareholders above the victims of tobacco

induced illness. That cannot be justified. It is ironic to hear some proponents argue that the ceiling is so high it will never be reached. If that is true, it is unnecessary. If it is reached, it will inflict a second injury on those already injured by this industry's gross misconduct.

There is another serious problem created by the current Title XIV. The language it uses to settle the state cases is far too broad. It does for more than resolve current claims arising from state expenditures for the treatment of citizens suffering from tobacco induced illness. As written, it could prohibit state and local government from bringing future actions to enforce public health standards and consumer protection laws. It could prevent state and local government from effectively policing future tobacco industry conduct. If this provision is not revised, it will tie the hands of state and local government, and allow the tobacco industry to escape effective regulation.

The Gregg-Leahy amendment will remove all of these special limits on industry liability from pending legislation. Congress does not need the consent of the tobacco industry to legislate meaningful protection for America's children. Our sole concern must be what the public health requires, not what the industry desires. The deal with the industry which Title XIV contemplates would set an appalling precedent. It will undermine the moral authority of the federal government as protector of the public health. Today the Senate should declare that it will not allow the tobacco industry to escape its long overdue rendezvous with accountability.

Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will speak at greater length at a later time, but let me just say with respect to two of the concerns that were expressed by my colleague from Massachusetts, the Senator expressed the notion that the managers' amendment has left an ambiguity with respect to preserving addiction claims and also preserving the ability of States to bring future enforcement actions against the tobacco companies.

I would assure the Senator that it is neither the intention of the Senator from Arizona nor myself that that be the case. It is our understanding that the language in the managers' amendment is clear with respect to the fact that we do preserve addiction claims, and we also preserve the right of the States to bring future enforcement actions. If there is any ambiguity about that, I know the Senator from Arizona and I would be only too happy to accept an amendment of clarification to make it clear that neither of those are in fact the intent. So I think that that is an issue that can be dealt with exceedingly easily. The larger issue, sort of the question of whether there is a shield or not, is something that I will address a little bit later.

At this moment I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KERRY. Mr. President, let me say, for the benefit of colleagues who were anxious to speak on this issue, that this is a good time. There is nobody here at this time seeking recognition, so we invite Senators who were particularly anxious to try to address this question to come to the floor and do so.

I want to try to clarify, if I can, what this amendment does and what it doesn't do, because I think there is a misunderstanding here. I think it is absolutely vital that when the Senate votes on this, we vote with clarity as to what the impact will be.

Some people have come to the floor suggesting that this is a shield for tobacco companies and that it is an unwarranted shield for tobacco companies. I think the Senator from Arizona and I would stress, as strongly as either of us knows how, that there is no shield here for tobacco companies. Tobacco companies will be liable. They will be liable under any circumstances under this bill. There is only one circumstance in this bill by which they might be limited in the amount of a 1-year payment. That is not a limit on liability. That is a limit on how much of their liability they would pay in any 1 year. But if the liability were more than that payment for 1 year, the payment carries over into the next year. So, in effect, there is no limit on liability. There is simply a rollover process by which a fixed amount, on an annual basis, is arrived at.

Why does that component of the bill exist?

Let me emphasize, there are two parts of this bill. If the opponents of the so-called cap, of an annual cap, if they were to prevail here today, what they would succeed in doing is stripping this bill of the one invitation that it offers to tobacco companies to come into the tent, if you will, and be part of the solution of how we are going to reduce smoking among teenagers. If you strip out that cap, what will happen is we will return to the status quo. We stay in the position where tobacco companies are merely being sued. We get no cooperation with respect to any of the advertising restrictions, any of the document depository, any of the health programs that will help our kids reduce smoking. We get none of that cooperation, and we guarantee that there will be a challenge on the look-back provisions. We guarantee it.

If people think stripping that out creates a stronger bill, to leave us in a situation that we have been in for all the last years—which is simply endless lawsuits that produce no cooperative effort and ultimately result, at least to this date, in no winnings in court—I would have a hard time understanding how that is a better situation. The fact is that all of the concerns that people expressed about immunity have been addressed between the time of the tobacco company settlements and the time the Commerce Committee brought a bill out of committee.

Let me clear up that understanding as strongly as I can. When the settlement was agreed to, back in June of 1997, it contained sweeping immunities for the tobacco companies. Those are gone. There is no longer any elimination of class actions. Tobacco companies will continue to be subject to class actions. There is no longer an elimination of punitive damages. Tobacco companies will be subject to punitive damages. There are no longer any restrictions on the aggregation of claims, which means different individuals could come together, one lawyer representing them—you can aggregate the claims and come in with a larger claim. That is now permitted. And there are no restrictions on third party claims. They are now permitted.

So, as reported by the Commerce Committee, the bill contained certain other immunities. Those are gone, too. Parent companies and affiliates are no longer shielded from liability. Advertisers, attorneys, and PR firms are no longer shielded from liability. Addiction and dependency claims against the tobacco industry are preserved, including claims where addiction is the only injury alleged and claims where addiction is the basis of a broader claim relating to the manifestation of a tobacco-related disease.

There are no longer any restrictions on the type of evidence that is discoverable or admissible, and all limits on the industry's obligations to produce documents have been removed. The ability of plaintiffs to maintain actions in State courts and grounded in State law is preserved. And, finally, there is no longer any exemption for tobacco companies from the Nation's antitrust laws.

All of that is gone, Mr. President—gone. They have been totally exposed. And that is one of the reasons, I might add—you know, when you look at the price of $1.10, and you look at the settlement in Minnesota, if you extrapolate the settlement in Minnesota and the settlement in Mississippi, if you add up the potential of all the settlements in the country, you come out with an amount of money that is exactly or almost exactly where we are with respect to the $1.10. The fact is the tobacco companies are settling cases now at a rate that basically accepts the $1.10. They are not fighting about price because they know ultimately that is a price they can bear. What they are fighting about is the liability. That is the reason these millions of dollars are really being spent.

That is the real bone of contention here.

The fact is, they are offered two choices in this bill. They don't have to participate, in which case the situation the Senator from New Hampshire wants is exactly what will exist. They will be subject to suits, endless suits. That can happen. But, if they choose to try to come into the tent, as we have said —and we have no way to force them into the tent. There is no way we can do that. So my fellow Senators have a choice. You can either leave them out there subject to lawsuits, subject to all of this litigation without any cooperation. Or you can decide maybe there is something sufficiently good that we, the Government, can get in exchange for their participation, for which we are willing to tell them only one thing: You are not going to pay more than $8 billion in any 1 year. It doesn't let them off the hook. It doesn't say they don't have to pay. It doesn't say they are not liable. It doesn't give them immunity. It simply restricts the amount of money in any 1 year.

What is it worth getting for that restriction for not having any more money in 1 year? We settle the State actions and we give them that $8 billion cap. That cap is importantly indexed to inflation, so there is not some sort of reduction in the purchasing power or in the value of that. It will rise with inflation and it will increase according to—at least 3 percent we have had each year and perhaps more, if the CPI is higher than 3 percent.

I think it is important to make it clear—there is no concession in this bill unless the tobacco companies decide to be involved. And that is a critical component. The tobacco companies would have to come in and sign a protocol, sign a consent decree, and they would agree to abide by the provision of the payments. Most important, they would agree to abide by the look-back assessments.

I would like to just run through the look-back assessments, because I heard the Senator from Utah yesterday on the floor—the Senator from Utah was pointing out to everybody how unconstitutional are the look-back assessments. The look-back assessments are a dramatic way of engaging the tobacco industry into compliance with the things we want them to do.

The tobacco industry accepted, they are the ones who helped come up with the look-back agreement. The look-back agreement was in the original settlement with the attorneys general. So they have accepted it once already. They have shown their willingness to come in and live by the standard of the look-back agreement.

What the look-back agreement says is that they must meet a target for the reduction of underage tobacco use. These targets are the same as those they agreed to in the June 20 agreement.

The targets are as follows: In 3 years, there must be a 15-percent reduction. In 5 years, there must be a 30-percent reduction. That is for cigarettes. For smokeless tobacco, it is 25 percent. There is a 50 percent reduction over 7 years and 35 percent for smokeless.

Over 10 years, the tobacco companies are agreeing that they must reduce teenage smoking by 60 percent. That is what this bill is about. This bill is an effort to reduce teenage smoking, and here we are trying to get the tobacco industry to specifically accept responsibility to be part of the process of doing that. You can't order them to do it. They are certainly not going to do it if all we do is leave them out there subject to endless lawsuits.

There ought to be some incentive that says to those companies, ''Come on in and be part of the solution,'' and the look-back provisions are that. But the look-back provisions also say that if the industry doesn't meet the target, they will pay $80 million for each percentage point missed between 1 and 5. They will pay $160 million for each percentage point missed between 6 and 10 percent, and $240 million for each percentage point missed above 10 percent. That is not a bad penalty. That is not a bad assessment. That is an assessment based on a target that they agree to meet, and if they don't meet the target, they pay a regulatory fee accordingly.

Mr. President, you can't get them to do that unless they agree. If you don't want them to challenge it and to tie us up for years in a court challenge that would not do what we want to do to reduce smoking, then, Mr. President, you have to find some way to bring them in.

I say to all of my colleagues, yesterday on the floor of the U.S. Senate, there was a lot of hue and cry about how kids are going to lose out per 10 cents that we didn't raise the price, and if we had raised the price by 40 cents, we were going to save another 240,000 lives and people were deeply concerned about that and are deeply concerned about that.

Those people who were concerned about that should not come in and vote to leave the tobacco companies in a position where all they are going to do is litigate lawsuits over the next 10 or 15 years, because during those intervening years, those numbers of kids are the kids who are going to be the victims. It is much more intelligent, it seems to me, to get the tobacco companies to be part of the solution in a way that reduces the level of smoking so those kids are, in fact, saved. I think that is a critical choice here.

What we do in this bill is ask the tobacco companies to come in and do things that we have absolutely no right to get them to do without their cooperation. Let me be specific.

A participating company, if they consented, would come in and make a significant up-front payment. They would abide by far broader advertising restrictions than those that were contained in the 1997 settlement. They would be required to create a document depository, where all those people who are going to sue in the future would have access to the documents that have come out of all of the tobacco litigation or out of their existing files. And they would agree—and this is the most important thing, Mr. President—they would agree not to challenge the provisions in the bill. They would agree to abide by these provisions, notwithstanding any future court decision on their constitutionality.

I ask my colleagues to, again, measure that. If the tobacco companies sign an agreement not to sue in the future, not to challenge any of the advertising restrictions that we can't achieve unless they agree, that is an enormous step forward.

Those advertising restrictions are as follows: There would be a complete ban on human images, on animal images and cartoon characters. There would be a ban on outdoor advertising, including stadia and mass transit. There would be a ban on advertising over the Internet. And there would be a ban on payments to glamorize tobacco use in media when such use would be appealing to minors.

There would be a ban on payments for tobacco products placement in movies, TV programs and video games, and there would be severe restrictions on point of sale advertising of tobacco products.

All of those things—all of those things—none of which could be achieved without the consent of the tobacco companies, we would gain as a result of just one thing: allowing them to know the level of their exposure and liability on an annual basis. It seems to me that is an enormous gain for the children, it is a gain for us putting together a responsible approach to reduction of smoking, and it is certainly a gain for the Congress, which would then have constructed a piece of legislation that had a chance of passing.

It seems to me what we have here is a fundamental choice: If we want to put together a piece of legislation that can pass or whether we are going to come out here and put ourselves in the position of simply bashing tobacco because that is the feel-good position.

I might add that in addition to the advertising restrictions, they would also abide by the look-back provisions. The look-back provisions will almost certainly be challenged. They won't be challenged, and even if they were challenged by someone else yet found unconstitutional, if the tobacco companies come in and sign a consent decree and a protocol, they must abide by that. If the tobacco companies at any time in the future were to violate that protocol, violate any component of this act, they would lose the cap on the annual liability payment. They would suffer the full exposure, just as they would if they don't participate.

The final comment I make to my colleagues is very simple. This is a clear, clear choice. Under the managers'

amendment, no tobacco company gets any liability restriction, any cap, any restraint whatsoever unless they decide to give up their rights on the first amendment, unless they give up their rights to challenge, unless they agree to abide by every component of the act.

We have a fundamental choice here, whether we are going to be reasonable in the approach to try to bring them into the tent, or whether we are going to try to abide by something I think most people would feel would be destructive to this legislation as a whole.

I reserve the remainder of my time. I know others want to speak at this time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I note the presence of the Senator from Washington, as well as the Senator from Oklahoma, who have very strong and important views—especially the Senator from Oklahoma has very strong views on this issue. I will not, then, make my remarks in order that they may be heard. I, again, encourage other Senators who would like to speak on this amendment and the bill to come over. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, perhaps a brief review of history as to how and why we find ourselves in the position we are in in this debate is an appropriate point at which to begin.

Over the years, the Congress has delicately paced around the outer edges of the controversy over tobacco, encouraging certain voluntary limitations on advertising, particularly by television, requiring certain warnings to be included on packages of cigarettes and on advertising, but never getting to the heart of the issue of the desirability or the lack of a desirability of tobacco.

Those limitations can be looked at as either a glass partly full or one largely empty. It is clear the major tobacco companies have attempted to remain profitable by creating, through advertising and peer pressure and in any other method that they could, a constantly increasing supply of new smokers, almost all of whom have begun smoking with the conscious knowledge of its adverse impact on their life expectancy and on their health, although when they began young this was not something that was at the forefront of the thoughts of youth.

Nevertheless, in the United States of America, over the course of the last 20 or 30 years, we have seen a dramatic reduction in the number of men and women who smoke. We, as Americans, probably smoke less than almost any other country in the world.

Various individuals and groups have sued tobacco companies as a result of the adverse impacts of smoking on health. Almost without exception, those individuals have lost those in connection with that litigation.

All of this had us in a situation that was almost stable until a group of State attorneys general and private lawyers came along with a new theory, that damage was caused not just to individual smokers but to the treasuries of our States and, by extension, to our own Treasury, through Medicaid primarily, through Medicare, and through the expenses of taking care of tobacco-related health problems, that these damages totaled in the billions of dollars. And, as a consequence, most of the States of the United States brought actions against tobacco companies to recover those losses to their States.

Some, as you know, Mr. President, acting independently, have already won that litigation by settlement or otherwise. The bulk of them, almost a year ago, reached an agreement with the tobacco companies for what is almost certainly the most massive judgment or change in practices that has ever taken place in this country—close to $400 billion in payments, dramatic and voluntary restrictions not only on advertising but on various other forms of promotion, a set of goals for lessened teen smoking, and a myriad of other ideas.

A part of that settlement is involved in the amendment before us right now, because that settlement purported to protect the tobacco companies against some forms of litigation, although not all forms of litigation. Those protections have been abandoned or rejected by this bill in return for certain other, less significant limitations on the annual liability of tobacco companies to individual litigation.

But, Mr. President, the centerpiece of the agreement with the State attorneys general, without whose work we clearly would not be debating this issue here today any more than we have for the last 10 or 20 years, the centerpiece of that agreement was its voluntary nature. As the eloquent Senator from Massachusetts, who is managing this bill on the other side of the aisle, pointed out, advertising restrictions, upfront payments, document collections, and probably the look-back provisions, are all provisions of that agreement that cannot constitutionally be imposed on the tobacco companies by law.

As a consequence, we are faced with a delicious challenge. We can make all the heroic antitobacco statements and speeches that we wish, we can pile on to a greater extent than even the most radical bills that have been introduced into this body, but we cannot force tobacco companies, as long as they are engaged in a legal business—so far, we do not have a bill that would absolutely prohibit the use of tobacco—we can pass whatever legislation we wish, but we cannot force them to abandon their first amendment rights; we cannot violate the Constitution of the United States.

So in the ultimate analysis, we are either going to pass a bill that, however reluctantly, with however much grumbling, the basic tobacco-product manufacturers will accept and follow, or we are simply going to create another bonanza for lawyers in challenging some of the basic provisions of this legislation, in challenges that, by and large, are almost certain to be successful. We may have voted ''antitobacco,'' but we will not have succeeded in a truly antitobacco result.

At this point, the tobacco companies have rejected the acceptance of the so-called McCain bill. Perhaps more narrowly, they have rejected the McCain bill as it was reported from the Commerce Committee. Many of the changes that have been made in the bill that is before us are designed, it might well be, as a result of gaining their acquiescence. This amendment, if it is passed, will clearly and necessarily result in their rejection of the entire package.

Personally, Mr. President, I believe what we ought to do is in effect to ratify, with some toughening, the agreement that the attorneys general of the various States made after long and careful negotiation and litigation. And we will have the opportunity to do that, or come as close as we can to doing that, when we deal with the amendment that will be proposed by my colleague from Utah, Senator HATCH.

But this bill, the McCain bill in its present form, is, in my opinion, a responsible approach toward this problem. I believe that we must deal with the agricultural elements of it, the payments to tobacco farmers, payments that I think are infinitely too high, with the total preservation of the present tobacco program that is included in the Ford provisions, but we will be dealing with that next.

I believe a significant portion of the money that the Federal Treasury is going to get from this ought to go to tax relief for the American people rather than into other Government-run programs.

But these are elements of this bill that we will debate at some point in the future. They are not elements that will result in the rejection of the bill by those at whom it is aimed on the grounds of the Constitution. This amendment is. Personally, as I say, I would prefer the provisions on litigation that are contained in the attorneys general bill. It may be that at some point or other we will move back in that direction.

I am convinced, however, that the amendment that is before us now will destroy any chance of our passing successful antitobacco legislation. Legislation that balances the constitutional rights of those organizations with which we disagree must significantly increase the cost of a pack of cigarettes but not beyond the point where we create a huge black market of contraband cigarettes, a point that I believe would have been passed, exceeded, by the Kennedy amendment yesterday, and a package that can result in something ultimately acceptable to the

American people, to the courts, to those who manufacture cigarettes, with the net result that we will reduce, though we will never eliminate, cigarette smoking.

I believe that the Senator from Arizona, Senator MCCAIN, who did not seek but was given this assignment, has carried it on in a highly credible fashion with a far greater degree of success than I would have predicted when he started. I think he deserves the thanks, the gratitude of all Members of this body, and to a large extent, at least, our support. I am convinced that he deserves our support on this amendment because this amendment will destroy any chance of being truly successful in getting antitobacco legislation through the Congress, and through the President's signature, in a way that will meet the goals that all of us share.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I am going to make fairly lengthy remarks dealing with the contents of the bill. First, let me just state my respect and admiration for Chairman MCCAIN. He is a very good friend of mine in the Senate. One of the things we have a pleasure of doing in the Senate—we are not a very big body—so we get a chance to know each other sometimes pretty well. I have had the pleasure of working and knowing Senator MCCAIN since he came to the Senate. He is a very good friend of mine. He will still be a good friend of mine.

I don't like his bill. I don't like the procedure by which the bill is being considered, and I was involved in the procedure. Senator LOTT asked me to head up the task force to try to put this bill together. Senator MCCAIN, and the Commerce Committee, had a lot of jurisdiction over the bill, probably more than any other committee. Also, he had to deal with the issue of whether or not we are going to have a limitation on liability for tobacco companies.

Probably the most important issue is whether the attorneys general package will either pass or not pass, it is very pertinent to the amendment that the Senator from New Hampshire has pending before the Senate today. Are we going to give a limitation on liability to tobacco companies? We don't do it for other companies, with very, very few exceptions. I think we did it for the airline industry for a small, targeted area, but, by and large, we don't do this for any industry in America. We don't do it for pharmaceuticals. We don't do it for people who make heart valves, and so on. A liability limitation was in the attorneys general's package that they dumped on Congress, that they signed off with the administration. The administration agreed with that package, the so-called $368 billion 25-year package. That was handed to Congress and they said, ''Here, go pass it.''

I told some of my colleagues from the outset I don't think we will pass legislation—nor do I think we should—that will put a total limitation on class action lawsuits. If you are using in tobacco, you can't have a class action lawsuit against tobacco companies? That is what the attorneys general's package was going to do. In exchange for that, tobacco companies were going to pay about $15 billion a year. That was the so-called deal.

They didn't consult very many people in Congress, and I thought at the time they are going to have a hard time passing that restriction on liability. If they don't have that, they don't have a deal. Frankly, as this process evolved and the Commerce Committee marked up the bill, they struck some of the liability protections on exemption from class action suits, and instead came up with a cap—which is kind of a back end way of trying to do somewhat the same thing. The tobacco companies said, wait a minute, you have increased the price, you have increased the penalties, you have increased everything, and you gave us very little legal protection—this cap. Anyway, the tobacco companies said that is not good enough, there is no deal, we are not going to abide by it.

The only way this could conceivably be in the Commerce Committee instead of the Finance Committee is we say there will be payments of fees in lieu of protection for liability. But it didn't work out that way. So then we had a referral to the Finance Committee. The Finance Committee struck out this fee structure, which I think is a disaster. I see my friend and colleague from Nebraska here is also on the Finance Committee. I will go through, and it will take some time, but I will go through how the tax is computed or the fees are computed in this bill, and just say that it won't work very well.

I also want to say I concur with the objectives of trying to reduce teen smoking. I don't want teenagers to smoke. I have four kids. One out of my four smokes, and he happens to be 28 years old. He started when he was in high school. I really wish that he didn't smoke. I grew up in a family—both my parents and all my brothers and sisters—all of them smoked. My mother has had lung cancer and emphysema, very critical. She still is a survivor, but it is a very serious problem. A couple of my brothers and sisters had a hard time quitting. They did quit. They were able to do it. One in my family didn't have that hard of a time of quitting. I am trying to get my son to quit and I have not been successful. I wish that he would. I really wish that he would.

When you look at the use of tobacco products, you can see that it is pretty significant. This chart shows anybody who has ever used cigarettes in their lifetime, kind of an unusual statistic. I guess I would fall into it because I know I smoked one or two cigarettes when I was in junior high—probably never a full pack. But I guess, if somebody said, did you ever smoke a cigarette, I would have to say, yes, sometime in the 8th grade. So I would be in the 70 percent category—you might notice from this chart that usage went down a little bit in the last few years. Frankly, under the Clinton administration it started going up.

Marijuana use has also gone up—and I am more concerned about drugs than I am smoking. I will make that evident in a moment. But marijuana use, which was up to 60 percent and has fallen down to about 33 percent, fell almost every year through the 1980s until, frankly, President Clinton was elected. Then it has gone up and it has gone up in a skyrocketing fashion. As a matter of fact, I will insert in the RECORD this chart. I tell my friend and colleague from Nebraska that marijuana use in 1992 among 12th graders was 11.9 percent. Last year, it was 23.78 percent —100 percent increase of marijuana use among high school seniors. That is a staggering statistic.

This is marijuana use by people categorized as ''frequent users'' who have used it in the last 30 days. You can see on the chart that this has jumped up. You also see tobacco use has gone up. Cigarette use has gone up. In 1992, cigarette consumption among seniors in high schools was 27.8 percent. In 1997, it was 36.5 percent, an increase of about a third. That is a big increase. You could go all the way back to the 1960s as to who uses cigarettes on a frequent basis or in the last 30 days, and it was very constant for decades, until frankly, the Clinton administration. And during these 5 or 6 years, it has gone up a third, the biggest increase that we have seen.

You might also note, and this is more troubling to me, that marijuana use had gone down for frequent users, down to only about 11 or 12 percent in the early 1990s. And now it is more than double and is up to about 24 percent. Now, that bothers me. And I cannot help but think a lot of people, when they are just going after tobacco and how terrible it is, are fairly silent about drug use, drug use that is habitual, drug use that is illegal, drug use that is deadly, drug use that leads to lots of other crimes, lots of other problems.

Why only the attention on cigarettes? Why only the attention on cigarettes? We are going to have some amendments which will have significant attention on drugs. I had a town meeting during the Easter break in Oklahoma—I had several—but I had one in Shawnee, OK, a middle-class town. This town meeting happened to have a lot of high school students, a lot. I told them we were debating the cigarette tax issue and I just asked how many smoked, and hardly any hands went up.

I said, ''Well, let me ask you a question. Congress is contemplating raising tobacco prices by $1.10, maybe $1.50. Would that make any difference for those of you that raised your hands?'' The answer was, ''No, we don't smoke that much.'' Maybe they would smoke

on a weekend or at a party. They said it would make no difference. That is an informal survey; it is not scientific. But some claim that scientists say if we raise this tax, we are going to reduce teen smoking. I am not sure that is the case. I think when you ask the question if somebody smoked in the last 30 days, that means one cigarette or two cigarettes. I am not sure you are going to have an appreciable reduction because you raise prices a dollar. Maybe there would be some. Maybe it would be a component in reducing teen smoking, but some people are acting like it is the whole battle. I disagree with that. I don't think it would work.

As a matter of fact, I am kind of amused because now we hear everybody say our objective is that if we raise these prices, these taxes, spend all this money and run this massive campaign, we will be successful and we can reduce teen smoking by 60 percent. If you are against this, you are for tobacco companies and you are against kids. I reject that outright. I don't like smoking. I don't like teen smoking, especially. I don't like to see kids smoke. But that doesn't mean you have to sign onto a program that spends hundreds of billions of dollars.

I looked at a statement of Secretary Shalala when she announced new FDA regulations with David Kessler in August of 1995. They came up with a lot of new regulations. I don't agree with a lot of them. I think they are overly intrusive. But whether I agree with them or not, they stated in those regulations they thought they could reduce children and adolescent smoking by 50 percent within 7 years. Wait a minute. We are talking about spending hundreds of billions of dollars in addition to these FDA regulations to it to 60 percent? So these massive price and tax increases might decrease smoking another 10 percent in addition to what they are already doing in FDA? I am not so sure.

That tells me that people are sometimes pretty loose with statistics. Maybe these surveys don't mean as much as some people think. Maybe this question of, ''Did you smoke in the last 30 days?''—maybe that is one cigarette. I am not sure. That is one of the questions.

My point is that I don't want kids to get addicted to smoking. We want to do some things to discourage that. I am concerned when I see that drug use has doubled; marijuana use has doubled under this administration amongst high school seniors. That bothers me a whole lot more than the 33 percent increase in teen consumption tobacco. I happen to be a parent; I have four kids. If you tell me that maybe they smoked a cigarette once, or if they were using marijuana on a regular basis, I would be a lot more concerned about the marijuana. I don't want them to do either, and we should discourage both. But to have a campaign and have this massive effort to attack tobacco and be silent on drugs, I think, is absurd and it should not happen.

We should have a campaign against teen smoking, but we should not raid taxpayers in the process. We should not spend hundreds of billions of dollars. If you ask people, ''Do you want to reduce teen smoking?'' you are going to get a favorable poll that says 90 percent say yes. If you say, ''We are going to reduce teen smoking, and we are going to spend hundreds of billions of dollars and pass the largest tax increase in years. Do you still think we should do it?'' They are going to say, ''What?''

I think there was a poll that said 70 percent of the people thought Congress is doing this more to spend money than to help kids. They know this is more about a money grab, a big ''cookie jar,'' than about reducing teen smoking. Look at the costs. I happen to be kind of a numbers cruncher. I am on the Budget Committee and the Finance Committee and I think numbers are important.

I am going to talk about this bill quite a lot this morning. I looked through this bill, and in this bill there is no mention anywhere of a $1.10 tax increase. I am going to tell the press there is no mention of a $1.10 per pack tax increase in this bill. They mention it in the committee report, but the committee report is not the law. So how much does this bill cost? I stated repeatedly that it costs more than a $1.10; and it does cost a lot more than $1.10. People will say, wait a minute, where did you get the figures? I got the figures from the bill, not from Senators' statements or from reading The Washington Post or The New York Times, where the headline was ''Senate to Stay With $1.10 Tax Increase.'' There is not a $1.10 tax increase in this bill; there is a lot more. It is going to cost consumers a lot more. Is it going to cost tobacco companies a lot more? I don't think so.

As a matter of fact, I put on this chart the gross tax increase on consumers in billions of nominal dollars. These new taxes cost consumers, but do they cost tobacco companies? Not a dime. Let me go through a couple of the provisions, Mr. President. Before I do, I will submit the chart I have already discussed about the increase in use of marijuana and also cigarettes into the RECORD.

I ask unanimous consent to have the chart printed in the RECORD at this point, along with another chart regarding the national tobacco settlement trust fund.

There being no objection, the charts were ordered to be printed in the RECORD, as follows:

12TH GRADERS USE OVER 30 DAYS

Class of	Marijuana	Cigarettes
1980	33.7	30.5
1981	31.6	29.4
1982	28.5	30
1983	27	30.3
1984	25.2	29.3
1985	25.7	30.1
1986	23.4	29.6
1987	21	29.4
1988	18	28.7

12TH GRADERS USE OVER 30 DAYS—Continued

Class of	Marijuana	Cigarettes
1989	16.7	28.6
1990	14	29.4
1991	13.8	28.3
1992	11.9	27.8
1993	15.5	29.9
1994	19	31.2
1995	21.2	33.5
1996	21.9	34
1997	23.7	36.5

NATIONAL TOBACCO SETTLEMENT TRUST FUND

[Gross tax increase on consumers in billions of nominal dollars]

Year	Initial payment	Annual industry payments	Maximum potential lookback assessments	Grand total
1999	10.00	14.40	.....	24.40
2000	.....	15.40	.....	15.40
2001	.....	17.70	.....	17.70
2002	.....	21.40	4.40	25.80
2003	.....	23.60	4.52	28.12
2004	.....	24.31	4.64	28.95
2005	.....	25.04	4.77	29.80
2006	.....	25.79	4.89	30.68
2007	.....	26.56	5.03	31.59
2008	.....	27.36	5.16	32.52
2009	.....	28.18	5.30	33.48
2010	.....	29.03	5.45	34.47
2011	.....	29.90	5.59	35.49
2012	.....	30.79	5.74	36.54
2013	.....	31.72	5.90	37.61
2014	.....	32.67	6.06	38.73
2015	.....	33.65	6.22	39.87
2016	.....	34.66	6.39	41.05
2017	.....	35.70	6.56	42.26
2018	.....	36.77	6.74	43.51
2019	.....	37.87	6.92	44.79
2020	.....	39.01	7.11	46.11
2021	.....	40.18	7.30	47.48
2022	.....	41.38	7.50	48.88
2023	.....	42.62	7.70	50.32
Total, 25 years	10.00	745.67	129.88	885.55
Total, 5 years	10.00	92.50	8.92	111.42
Total, 10 years	10.00	221.55	33.41	264.96

Annual industry payments are adjusted for the greater of 3% or CPI–U beginning in year 6. This estimate does not include potential increases or reductions in industry payments resulting from changes in the volume of tobacco sales.

Lookback assessments would be initiated after year 3 if underage tobacco use is not reduced by specified percentages. The maximum lookback assessment of $4.4 billion is adjusted for inflation. Does not include an estimate for brand-specific lookback assessment.

Source: S. 1415 as modified on the Senate floor.

Mr. NICKLES. Mr. President, I am also going to insert a table that shows new tax assessments and penalties that are in this bill. The national tobacco settlement trust fund is what I am going to talk about now. This is the trust fund, the big kahuna. There are a lot of other taxes, penalties, but this is the bulk of the money. If a person was interested, they could look at this provision in the bill. If you go to page 179, it talks about the trust fund. You can see on page 181 that it says tobacco companies, in the first year, pay $10 billion. Then on page 182, it says—in the first year, you also pay $14.4 billion. That is the reason why the first year payments are $24.4 billion on my chart. It doesn't say anything about a $1.10 tax, or any other tax. It says, industry, you pay $24.4 billion. I have heard some people say, well, we are going to raise the tax gradually to $1.10. It starts out at 65 cents. The only mention of a per pack tax is in the committee report. It starts at 65 cents and ends with $1.10.

I am just telling you that those numbers don't add up. I have told this to my colleague from North Dakota, and maybe he will believe me by the time I finish this presentation. The bill

doesn't mention $1.10. We are passing a bill, not a committee report. We are passing a bill. The bill says in the second year the companies will pay $15.4 billion. The third year is $17.7 billion, then $21.4 billion, and then $23.6 the fifth year. Thereafter, it is adjusted for inflation. That is where these numbers come from. These numbers are adjusted for inflation. At a minimum of 3 percent, regardless of whether there is any inflation or CPI, whichever is greater. The bill says a minimum, so I put in the 3 percent.

Now, some of my colleagues and the administration said this bill raised $516 billion. That number is in the committee report. The committee report embarrasses me. I am embarrassed by the work that the Commerce Committee put together, but frankly I shouldn't really blame them. I want to blame the administration because, frankly, they wrote the bill. It wasn't the Commerce Committee; it was the administration. The administration-drafted report even has a section that says payments will be no greater than $516 billion. That is hogwash. As a matter of fact, I have a letter from OMB that says you only compute $516 billion if you deflate the industry payments to constant 1999 dollars. That is where they get $516 billion. Those are constant 1999 dollars. They make it look a lot smaller than it is.

Frankly, that is not the way we do accounting in the Senate. The bill says, here are the payments and they are adjusted for inflation, and, frankly, these are conservative because I will tell you that sometime in the next 25 years, you are going to have more than a 3 percent inflation rate. We know that. So I am going to tell you that the $755 billion in industry payments over the next 25 years is conservative. It is much more conservative than what will actually happen. I will also mention that I didn't add look-back assessments. The administration, when they said $516 billion also didn't add the look-back. Then, they increased the look-back to $4.4 billion when they rewrote the bill over the weekend. The administration rewrote the bill over the weekend, not the Commerce Committee or the Finance Committee. The Finance Committee reported out a bill and some amendments and said, let's scrap this industry payment nonsense and come up with a tax increase. I didn't support it—a $1.50 tax increase—but at least it was honest.

This bill is very misleading. These industry payments are very deceiving. We ought to be ashamed of ourselves. I will talk about the look-back provisions in a minute. I didn't even add the look-back, yet, but if you add the look-back at another $130 billion the total tax increase is $885 billion. These are just the facts. These are the facts that you get if you read the bill—if you read the bill on page 182, page 183 and page 184.

Then you find out that they did a lot of other silly things in this bill. I guess silly things maybe to protect certain constituents or certain parts of the industry. But, if you think you are passing a $1.10 tax on all tobacco, you will find out that they exempted some companies. They exempted some companies. I thought excise taxes were excise taxes, like excise taxes on gasoline—the Federal excise tax is on all gasoline, made in North Dakota and Oklahoma. Except perhaps for gasohol. I don't think we should exempt gasohol. But we do. But this bill exempts certain companies from the tax. If their sales are less than 1 percent, they pay no tax. What does that mean? You already have a 24-cent Federal excise tax on cigarettes. Everybody pays it. There is no exemption on that. Congress has already increased that in the future to go up to another 15 cents. That is going to be 39 cents. Everybody pays that. But this committee said for this additional tax or fee some companies need not pay. Think about that.

Everybody else is going to have to pay this. Let's say the tax is $1.10. I think it is much more than that. But most companies will have $1.10 additional cost put on their products, and some companies won't. That makes sense, doesn't it?

I also looked at the tax increases on other products. I would love to have a sponsor of the bill explain to me how they did this. Take a product like snuff. I calculated the tax increase on snuff, that little round package, you know, you put a pinch between your check and your gum. The tax increase on snuff is over 3,000 percent. That is a significant tax increase. Right now it is 2.7 cents per little can, and it goes up to 85 cents. That is a pretty good increase. Maybe 85 cents is the right amount. But I will venture to say nobody in here knows that. That little can costs about $3 and something. That is a pretty good hit.

We at least ought to know what we are doing. I don't think anybody here knows what they are doing.

Then we find in the bill that some smokeless tobacco companies, small manufacturers, are getting a smaller tax increase, 60 cents. For most of the snuff people, the people who make these little round things, we are going to increase their tax by 82.5 cents. But for some people we are only going to increase it 60 cents, because they are small, or maybe because their Senator said, ''Hey, they are not part of the problem, they are not very big. They sell less than 150 million units.'' I thought we were interested in children's addiction. So we are going to give this company a 20-some-cent advantage over other companies? That is in the bill. That is on page 185, if anybody cares to look at it. I wonder how many of us really looked at this bill.

Excise taxes, if they are going to be on snuff, should apply to everybody. But we didn't do that in this bill. I say ''we,'' the Commerce Committee. The Finance Committee did tax everyone, and in proportion to the tax on cigarettes. Finance said, ''Let's scrap all this industry payment nonsense and have an excise tax.''

I am going to show you that this tax is a lot more than one dollar and a dime. And I don't think there is any question it is more than a dollar and a dime. Yet, people are still under the facade that this is $1.10. Why? Because OMB said it is, and Treasury said it is. I don't think that is the truth. The bill says, here is the amount of the industry payment, pay it. Not everybody has to pay. One company made a deal, and said, ''Hey, we have already settled. So we are not part of the problem. So we don't have to pay the excise tax.'' They have a much better deal. It is worth hundreds of millions of dollars. We are getting ready to pass it. I don't think that makes sense. I think we ought to be ashamed of ourselves the way we are legislating.

There is a reason why we have committees of jurisdiction. And we violated it grossly. I thought maybe we fixed it when the Finance Committee took this bill. But, obviously, the Commerce Committee and the administration said, ''No, we don't want to do that. We like what we have.'' I will tell you why. Because they are going to get more money, in my opinion, than they would get at $1.50.

I was halfway tempted to vote for the amendment of the Senator from Massachusetts amendment to raise the tax to $1.50. If you had a real tax at $1.50, I think it raises less money than the figures we are talking about. Maybe I am wrong. The press is going to report $1.10 and $1.50. That is what the press reports. I think this payment scheme equates to more than $1.50. This chart shows $40 billion or $50 billion per year in the future. Guess how many packs are sold a year? About 24 billion packs a year. If you have a $1 tax, assuming you had no reduction in consumption, you are talking about $24 billion. This bill is in that neighborhood already in the first year—not just the fifth year. We are talking about the first year. That is going to be about a $1 tax paid for 1999. You have the $10 billion initial payment. That equates to about $1 a pack. The tax on snuff and smokeless, and so on, doesn't raise a lot of money cumulatively, but it is a huge tax increase.

On chewing tobacco, the tax goes from a very small two-and -a-quarter cents per 3 ounce pack of chewing tobacco to over 40 cents—almost 41 cents. That is a 1,711-percent increase in one fell swoop. That is a big hit. I think it is a nasty habit. If you want to tax it and eliminate it, maybe that is what some people are trying to do. But we at least ought to know what we are doing. I would venture to say that maybe a lot of people in the Senate don't.

I want to talk a little bit about the look-back provisions. I think I heard Senator HATCH, and others, say that the look-back is unconstitutional. I think he is right. I will tell you, I am not a constitutional scholar. I will not

enter that debate. I will tell you, it is unworkable. I heard somebody say the industry has signed off on the look-back provisions. I have not been talking to the industry, but I am pretty sure they are planning on contesting them on constitutional grounds. And they are pretty confident—at least that is what my staff tells me—that they would win.

What does the look-back do? It could raise a lot of money. And evidently the administration thinks this is real money and it is going to happen because they increased the amount to $4.4 billion over the weekend. The look-back grew by over 10 percent over the weekend. It is much higher now than when it passed out of the Commerce Committee.

That is interesting. How does it work? If a person was interested, they could look on page 106 of the bill and find the look-back section. This is kind of interesting. How does this work? Is this going to be a real incentive for companies to curtail smoking? I found out these provisions are very interesting. They start on page 103 of the bill and go through to page 109. I will just talk about this for a second.

The look-back says the Secretary—talking about the Secretary of Treasury—shall conduct a survey to determine methodology and the percentage of all young people who use a type of tobacco product within the last 30 days. It says ''a type of tobacco product within 30 days.'' He is going to take a survey, a poll.

A lot of us are in the political business. All of us in the Senate take polls. The Secretary of the Treasury is going to take a poll. Keep in mind that of all tobacco consumption, only 3 percent of it is done by teenagers. Keep in mind that it is against the law for teenagers to smoke in every State. It is against the law to smoke if you are less than 18 years old. He is going to take a poll and find out how many are trying tobacco. These numbers are going up. Maybe they did it once, or more. They are going to take a poll. The poll is going to also specify: ''Did you use tobacco?'' and ''What brand did you use?''

Then there is a complicated formula. But if a tobacco company's numbers don't come down, then we are going to be subject to special assessments.

I should mention more about the poll—this is interesting. Every poll that I have ever seen has pluses and minuses. There is a range of plus or minus 4 percent. This cannot be entirely accurate, because they are not going to ask every teenager age 11 through 17, ''Did you smoke?'' That wouldn't be too cost effective. They might do it maybe for that reason.

On page 106, it says, the survey is deemed conclusively to be proper, correct, and accurate for purposes of this act. They deem their poll whenever they happen to take it to be accurate.

That is interesting. I just think of the games that could be played with that.

Let's see, if they took their poll around the Fourth of July, there may be a greater instance of tobacco use on the 4th of July, or maybe the Memorial Day weekend, or maybe the Labor Day weekend when people are going to the beach. If they want to jack the penalties up, ''Let's take the poll then.''

I just fail to see that this is a good way to do business. If the company doesn't meet the underage tobacco use goals as outlined by this bill, then there would be significant penalties—very significant penalties, up to about $4.4 billion, and indexed for inflation. So on my chart the totals increase rather significantly to $130 billion. Those aren't tax deductible.

Is that really workable?

Then there is another section.

There is an additional look-back assessment on brand-specific underage tobacco problems. If you look on page 112, which talks about if they miss their percentage share, tobacco companies could have an additional surcharge of $1,000 per teenager.

The amount of the manufacturer-specific surcharge for a type of tobacco product for a year under this paragraph is $1,000 multiplied by the number of individuals for which such firm is in noncompliance with respect to its target level reduction.

So we have target-level reductions. It starts out at 15 percent. It gradually increases to 60 percent. They are going to take a survey and find out what brand of cigarettes this youngster is smoking. So in this random survey, if a bunch of kids say, ''Yes, I had a Marlboro,'' mark them down, and for every child they determine smoked that brand of cigarette, they are going to assess the company another $1,000.

Now, I find that to be ludicrous. There are hundreds of brands of cigarettes—hundreds, and so we are going to have the Department of Treasury conducting this poll asking teenagers did you smoke. And if you did, what brand? And it may be they can remember the brand, maybe they can't. Maybe they smoked one cigarette; maybe they bummed a cigarette; maybe they don't tell the truth; maybe they don't respond; or maybe whatever. We are going to be assessing penalties to the tune of $1,000 for every teenager deemed by this poll to have used this particular product.

That is ludicrous. I want to warn my colleagues. I may not have the votes, but I am going to probably try and strike that. If we don't strike that, it is going to come back to haunt you. You are going to be embarrassed because we put language in here that says this poll was deemed to be accurate and therefore whatever the Secretary says is law and as a result here is your penalty. We have determined that there are 10,000 youngsters in the age category who are using your brand and they are age 17 or less, and therefore we are going to sock it to you.

This doesn't make sense. If you want to figure out ways to punish tobacco, to fine tobacco, do it. But this is not the right way. This is not workable. You should trash this whole thing and say, if you want to increase tobacco tax $1.10, do it. Do it tomorrow. This thing phases it in over five years.

My point being, if you are going to try to reduce consumption, you want to have a sticker price shock. You don't phase it in over 5 years. They will never see it. They won't know it. It won't make the reduction in use. It won't get consumption down. It won't be effective.

Wow, what did we do. We raised hundreds of billions of dollars, but did we achieve our objective? I don't think so. What did we do? Maybe the objective was to raise billions of dollars so we would have a lot of money to spend. Maybe that's the case. I don't know. I hope not.

Mr. CONRAD. Will the Senator yield for a question?

Mr. NICKLES. I have a lot to say.

Mr. CONRAD. I understand. I don't want to interrupt the Senator. I just want, if I could for the purposes of the RECORD, if nothing else, and maybe for the education of both of us, to ask just one question.

Has the Senator, in the numbers that he has displayed on the chart, made any volume adjustment?

Mr. NICKLES. Let me go to that, and I appreciate the Senator's comments because I knew the bill's proponents would say my numbers don't assume a volume adjustment.

The administration, when they did their projection to come up with a $516 billion price tag for this bill, they did no volume adjustment. When the AGs came up with their price tag for the settlement, they didn't do a volume adjustment. And finally, we discovered that the White House changed the volume adjustment threshold in this legislation over the weekend. That bothers me a lot. That was changed Sunday or Monday night. And that bothers me a lot.

Let me conclude. I know what my colleague is going to say. Let me take you through this a little bit further.

The volume adjustments, the formula that passed out of the Commerce Committee says the industry payments will be reduced by the volume. If there is a reduction in sales, we will reduce the tax. Again, in calculating the costs of their own bills, both the $516 billion current dollar estimate and the $755 billion nominal dollar estimate, they didn't calculate the volume adjustment.

Now, what happened Sunday and Monday night was a humongous tax increase that nobody knows about because the volume adjustment was triggered not when sales dropped below 100 percent of 1997; it is triggered when sales drop below 80 percent of 1997. So you get no volume reduction unless you reduce total consumption to below 80 percent where we are today. So I am not sure there will be a volume adjustment ever.

Now, I do not know if my colleague caught that. In the original Commerce bill, it says we will take these figures on my chart and we will reduce them, if there is a reduction in volume of sales. We will have a CPI increase, and we will have a volume decrease, and so maybe the figure will stay close to $23 billion. If volume went down 3 percent and CPI went up 3 percent, maybe you could take this figure, $23 billion, for all future years.

Well, what they did in the stealth of the night of Sunday or Monday, they said, oh, we are going to change that. We are not going to give a volume adjustment unless they reduce total consumption to below 80 percent of where it was in 1997. Wow.

Now, this is getting too complicated. Most of our colleagues aren't going to follow it, and I don't want to get too bogged down in the minutia, but that is a big tax increase. That means you are not going to have reductions. You may never have a reduction.

My point being, that the way you do volume adjustment, the real way is to have a direct excise tax on the product—very clean, very simple. You don't have to argue about whether or not you are talking about constant dollars, inflated dollars, whether you are talking about volume adjusted. If you have an excise tax per pack, if you sell less packs, so what. You have accomplished your objective. You have done it.

This is the worst method to tax we have ever imposed in the Federal Government that I can find. This is so convoluted, so distorted, so deceptive, so contrived say we are raising taxes $1.10 and not do it. If our colleagues want to be honest, they would say let's scrap all this and let's make the tax $1.10, and then you have an automatic volume adjustment. You have an automatic volume adjustment. Because if you purchase less, then that will happen.

Let me just mention, too, the volume adjustment section, just for my colleagues'——

Mr. CONRAD. Will the Senator—

Mr. NICKLES. I really don't want to. I have a lot to go through and I want to finish this. I am this far and I have a lot more to go. So I will be happy to talk to you in just a minute. But I want to run through several things, and I don't want to get too bogged down on that one particular thing.

Mr. President, let me just touch on a few other things. And I mention that, Mr. President, and I will guarantee you that not one Member, maybe not any Member, certainly not more than two members of the Commerce Committee or the Finance Committee knew anything about that change in the volume adjustment, and it is a big change. It is different than the committee reported bill. And, again, I am troubled by these games. I am troubled by people saying, oh, here is what the bill says and then to play games maybe late at night, Sunday night, Monday night, and have this bill written by the administration. This is not a Commerce Committee bill. This is an administration bill.

I think it cries out for change, and the change should be this, I tell my colleagues. The change should be to call a tax a tax. Senator LAUTENBERG introduced a bill that said let's have a $1.50 tax. That is what the Finance Committee passed. Whatever the tax is, whether it is a $1.10 or $1.50, whatever, we should pass the tax increase per pack plain, simple, clean, and not play this game of, industry, you pay in all these hundreds of billions of dollars, and maybe we will give you some reductions if consumption comes down, but we are going to have penalties if X, Y, Z brand doesn't go down as much as we think it should go down among certain people. That is absurd, and that is what we have, all based on polling that they deem to be accurate. That makes no sense, no sense whatsoever.

Let me go on through a few other points. I am going to try to speed the pace up. There are tobacco distributor licensing fees, brand new; there are nonpayment penalties, there are document good-faith payment penalties; there are antismuggling penalties; and then we get into new spending. So all this is on the revenue side. This is on the tax side. This humongous tax bill, I don't care what period you are looking at, this is a bigger tax bill—gross, net, any figure you want to use—a bigger tax increase than the tax cut we passed last year. Maybe that will help put it in perspective.

Last year, in a bipartisan manner, we passed $500 tax credit per child. This year, for 1997 it is $400. We passed that. We reduced capital gains from 28 percent to 20 percent. That is one of the reasons you have seen Federal revenues grow by over 10 percent this year. It is because we cut capital gains. People like that. People have more financial transactions, and you are not taxing those transactions so much. It raised a lot of money for the Government. We reduced estate taxes by increasing the exemption. We provided IRAs. We did a lot of good things in the tax bill, a lot of good things.

Guess what, this tax increase overshadows it. This tax increase overshadows it, and it is paid for, the strong majority of this is paid for, by individuals making less than $30,000, $40,000 a year. This is a tax increase on low-income people. It is a humongous tax increase. It is bigger than all the tax cuts we gave last year, than all the tax cuts. So that should concern people.

My colleague, Senator GORTON of Washington, said we should have some tax relief. We are going to have a humongous tax increase; we should have some relief.

We are getting to the spending side now. This is one of the problems that bothered me. I told my colleagues from the outset, I will work to pass a good bill to reduce teenage consumption of drugs and tobacco. I will. I will not support passing a bill that spends hundreds of billions of dollars so government can grow. We grow government in this bill like there is no tomorrow. This bill has government growing from the State level, government growing from the Federal level, government growing at almost any excuse. And the administration wrote every bit of it.

Did they consult the Appropriations Committee? Did they consult the Budget Committee? No way. We made a little improvement. In the bill that passed the Commerce Committee, this was all off budget and it wasn't subject to an appropriation. All of that was an entitlement. We changed it. Now, only half of it is entitlement. The States are entitled to 40 percent. That is an entitlement. We can't touch that. And then the farmers are entitled—under the bill from the administration and Commerce Committee, farmers are entitled to $28 billion.

I know Senator LUGAR is going to have an amendment to reduce that, but in both cases those are entitlements. In both cases we are spending billions of dollars. I have a problem with that. I don't know how I can go to my farmers and say those tobacco farmers are going to be entitled to get maybe $18,000 an acre on this buy-out, and of course they can continue producing tobacco after we buy them out. We will buy their quota, but, yes, they can continue producing tobacco forever. I have trouble with that.

I have trouble with, Who is going to get most of this money? Let's see; let's figure out who is going to get the money. I mentioned my mother had emphysema and lung cancer. Does she get any money? No. Do victims get any money? No. Government gets money. Who gets money? Do victims of cancer and smoking-related disease and problems get money of out of this? No. Who gets the money? States get the money. The Government gets the money.

Where are they going to use the money? The bill says the States get 40 percent of the money, and they are going to get at least $196 billion so they don't sue the tobacco companies. Four have done it and settled. More power to them. Congratulations.

Who is going to benefit from that? I guess the States do. They get some money. In the State of Florida, out of an $11.3 billion, the trial attorneys get $2.8 billion. That is 24.7 percent. In Texas, they had a $15.3 billion deal; the trial attorneys get $2.2 billion.

We had an amendment the other day to limit it. Maybe it was too low. I am going to tell my colleagues, you are going to have another chance. But we are going to give a few individuals, maybe 50 individuals or something, we are going to make them multimillionaires, maybe billionaires? We have had some of these people working the halls of Congress. These guys, some of them have chances to become billionaires, with a ''b.''

And I am all for people making money, I think that is great, but we should not do it raising taxes on consumers making under $25,000. We are

getting ready to do it, and I will tell my colleagues, if we pass this and if somehow you are successful—and I don't think you will be—but if some forsaken way you are successful getting this through conference the way you have it set up right now, you will be more than embarrassed. You will be reading about individuals making hundreds of millions of dollars, trial attorneys making hundreds of millions of dollars off this deal. And you had your hands on it? I would be embarrassed, and I think that you would. I think we are going to fix it.

I noticed the Senator from North Carolina was here, and he tried to fix it with one amendment. It didn't pass, but my guess is we have some other ideas. I think we will fix it before it leaves the Senate. If we don't fix it before it leaves the Senate, we will fix it in conference. If we don't fix it in conference, I hope we don't have a bill. I hope we don't have a bill anything like this. And, again, I reiterate my position, I think we can come up with a bill that will be good to curb teenage smoking and consumption of drugs and tobacco. But I do not think we have to come up with a scheme that spends either $500 billion or $755 billion or $885 billion. I don't think we have to do it. I know we don't have to do it.

Some people are saying, ''I am reading a poll and''—I don't care what the poll says. Let's do what is right. Let us try to curb teen smoking. You don't have to do all of this.

The FDA came up with their regulations 2 years ago, and they said their regs alone were going to reduce consumption by 50 percent. There is not a lot of difference between 50 percent and 60 percent, except I see hundreds of billions of dollars being spent in the process. So, let me talk about that. I talked a little bit about the money going in. I am telling you, there is a lot more money going in than people have mentioned. If they say there is only a dollar and a dime, let's pass an amendment and say here's a dollar and a dime, and I guarantee these figures will shrink. They will shrink.

Mr. CONRAD. Will the Senator just yield on that point?

Mr. NICKLES. No, I won't yield. I am going to continue or I will never get done, and then I will be happy to yield for a question.

The spending side of this equation, I mentioned it has a couple of entitlements. The States get 40 percent of revenues. We tell the States: You have to spend half of it as the Clinton administration decreed. You have to spend half as they said. It must be on children's health, child care, child welfare, substance abuse, education, children's health insurance—any of their little social programs that they like. Granted, the Clinton administration wants to expand the welfare state. So they say, here, States, we know that you initiated these lawsuits and you were winning some of them, but, since now we are going to take this over and federalize it, you have to spend the money the way we want.

So the bill restricts half of the state money and says: States, you spend it in a welfare-acceptable or child-acceptable manner as the Clinton administration dictates that it be spent. And then they say: States, you can spend the other half any way you want to. So that is the way we are going to increase government in the States. States, congratulations, here's your money. In exchange for that, we are going to limit your ability to sue the tobacco companies.

I can see why the companies walked away from this deal. They made a deal with the Clinton administration and the administration broke it, and they can still be sued in lots of areas. Oh, well, there is an $8 billion cap. I can see a race to the courthouse.

I am going to support the amendment of the Senator from New Hampshire to strike protections for the tobacco companies. Some people say, if you are opposed to this bill, Senator NICKLES, you must be in favor of the tobacco companies. This bill does the tobacco companies a big favor by limiting their liability to $8 billion a year. The tobacco companies are saying they are not even part of it. Why should we give them an $8 billion limit of liability? Why?

I don't see any reason to do that. I agree with the Senator from New Hampshire. So I am not going to give the tobacco companies the protection they really want. Why give it to them? It is the proponents of the bill who are trying to do the tobacco companies a big favor, not some of the opponents.

(Mr. FAIRCLOTH assumed the Chair.)

Mr. NICKLES. Mr. President, what about the money? Now we are talking about money. The States are going to get 40 percent of this amount, and they can spend half as they want, and the other half is spent as the Clinton administration wants.

They can spend it on public health—and we are all for public health. That is going to get 22 percent. So we are going to grow a lot of government in that area. Health-related research, we are all for that. Farmers' assistance, we are going to make farmers millionaires. Maybe these farmers were thinking about selling their property last week. Now, they hear Congress is getting ready to pass a bill and they say, ''I might get 4, 5, 10 times what the property is worth if I hang around.'' It would be interesting to see what is happening on tobacco farm prices right now in North Carolina, Kentucky, Virginia and other places, because Congress is going to pay them billions of dollars.

We are going to pay them so much—not per acre—per pound of quota, and we are going to make a lot of them a lot wealthier than they have ever been.

Guess what? When we are done paying them they can still grow tobacco. We can buy their farms cheaper than what will be paid under these two proposals right now. We can buy the land, have the Government take over the land and turn it into a park. I shouldn't say that out loud, because somebody is going to propose it.

We are going to make people very, very wealthy because they hold a document called an allotment. It goes back to the New Deal. If you believe in free markets, it is just totally wrong. Yet, we are going to compensate them; we are going to buy them out.

Let me go through some other new spending provisions.

There is a Medicare preservation account. Frankly, that is important, but I tell my colleagues, it wasn't in the Commerce Committee bill. It wasn't in the Finance Committee bill. It appeared Sunday or Monday night, and I object to that. I object to the administration coming in and saying, ''Oh, we have some new ideas here,'' as they did with their volume adjustment.

We have child care development block grants. This is very interesting. This was put in the Commerce Committee bill, and I objected to it. One, they don't have jurisdiction over child care development block grants, but they were putting it in anyway. They are not the committee of jurisdiction on that. I don't know if they know anything about it. They put the money in. The Finance Committee took it out. Guess what? The Clinton administration put it back in. I am troubled by that.

Then, I find they did some other things. They changed formulas for child care programs. I wonder if my colleague from North Dakota knows that. They changed the formula. We have a State match formula for Medicaid. The match in most States is 50–50. In some States, it is 70–30. This bill now reduces that State match for child care to 20 percent, because they want more child care money spent and more individuals to qualify for it. The States actually have more money now in this program than they know what to do with. People were not taking advantage of it, so they reduced the State participation down to 20 percent.

The Federal Government for child care, with this increase, is going to pay four times as much as the State pays for it. That is an entitlement. That is a change, and the Commerce Committee has no jurisdiction over that. They did it. They also have report language that says, ''Hey, let's spend about $4 billion per year on this program.'' This is a 25-year bill. That is $100 billion. It was just added. Does anybody know it? Like I said, it was in, it was out, now it is back in.

They changed the Medicaid provision, which is wrong. They put in a brand new children's health care provision, which basically reopened the welfare bill. The bill would add $25 billion for States to do Medicaid outreach on children's care. We debated welfare. We passed the welfare reform bill. Now, the administration is coming through

the backdoor on the tobacco bill saying, ''Let's expand the welfare bill.''

They did it in the middle of the night. It did not pass the Commerce Committee. They didn't ask anybody in the Finance Committee who worked on welfare reform—not one person, not staff, not anybody. They just put it in.

They also put in a provision that allows for presumptive eligibility outside the cap funding for children's health care. Last year, we passed children's health care, a $24 billion. We increased cigarette taxes to do it. I thought it was too much. I didn't support it, but we passed it. It is now the law of the land.

Guess what they did in this bill? They just put in this new language. It was not in the Commerce Committee bill. It was not in the Finance Committee bill. The administration put it in. It sickens me to know that the administration thinks they have the ability to rewrite this bill. It may have Senator MCCAIN's name on it, but it is the administration's bill. Now, they are opening up the welfare bill, and they are opening up the kid care bill we passed last year for a massive expansion. These new provisions are estimated to cost $400 million per year. They open up the balanced budget agreement. That was part of our balanced budget agreement package that we negotiated and fought so hard for. Again, they cannot find enough people to qualify for the money under the language that we already have, so they are trying to figure out new ways to spend more money.

We have new programs for cessation and other treatments, Indian Health Service, education prevention, counterads, which incidentally, I will support. This paltry bill is spending hundreds of billions of dollars. Do you know what it spends for countereducational ads to discourage the consumption of tobacco? Mr. President, $500 million a year. Big deal.

Everybody says, ''Hey, we need to pass this bill so we can reduce teen consumption of tobacco.'' So $500 million out of a total of about $20 billion dollars almost every year. All the rest is for other Government spending; in some cases, any Government spending.

The national educational effort to convince people that smoking can bring about cancer is pretty small out of this total package.

It has an Institute of Medicine study, National Institutes of Health—all of these are getting pro rata shares of money that would be authorized—Centers for Disease Control, National Science Foundation, National Cancer Clinical Trials. That program wasn't in anybody's bill. The administration put that in either Sunday or Monday. They have money in here for a State retail licensing program, State grants, of $200 million a year. It is on page 118 of the bill.

I will just tell my colleagues what this does. I am embarrassed that we would put language in that allows this to happen. But I want my colleagues at least to know it so that maybe they will agree with me. I will have an amendment at some point to strike some of this language.

The State retail licensing program codifies that portion of the FDA regulations. It provides for $200 million a year and, basically, it codifies the FDA regulations dealing with selling tobacco. That is on page 119. It says:

> Shall prohibit retailers from selling or otherwise distributing tobacco products to individuals under 18 years of age, in accordance with the Youth Access Restrictions regulations promulgated by the Secretary.

Let me mention what that one little paragraph does. That paragraph says we are going to set up a whole mechanism to find out whether or not retail establishments are selling tobacco to teenagers. Maybe you say, ''Hey, I don't want retail establishments selling to teenagers.'' So how are they going to do it? There is $200 million which they give to the States in block grants. The States have to contract to set up inspection teams to do random inspections across the country to find out whether or not they are complying.

What if they don't comply? The fines and penalties are very, very significant. I looked it up. The fifth noncompliance the penalty is $10,000. For the sixth there is an even greater penalty; it is not just monetary.

So the Federal Government is going to train these inspectors. They are going to go out and do random audits. And I just have to think, what are we doing? How far are we going in this Government police business? In the committee reported bill there would have been so many inspections per State. Each individual State had a list of how many inspections. I will talk about this later, because I plan on having an amendment on it. But I say on the floor today, I believe, there have to be 4,000 inspections—smaller States less, bigger States more.

The bill was mandating thousands of inspections where these people would be going by and seeing if somebody is purchasing cigarettes. Guess what? It is not just purchasing under age 18; they are checking to see if the establishment is checking IDs for people up to age 27. So you are in noncompliance if you are a gas station and you sell cigarettes to somebody who is 26 years old. That is a violation if you do not check their ID. You are in violation of these Federal regulations if you do not check their ID.

Now, I am going to have a different speech talking about FDA regulations. But my point is, this bill sets up a $200 million new program to give money to the States. The States monitor this as we deem appropriate on the Federal level. I find that to be absurd. And the Federal Government, with its wisdom, says, ''We believe you should check everybody aged 27 or less. If you don't check them, you are subject to fines of up to $10,000.''

Wow. Now, think of that. You have some burly Marine who is 25 years old from the Marine camp in North Carolina who comes in, and he says he wants a pack of cigarettes, and you can tell he is more than 18 years old. And you are going to ask this guy, ''Oh, I can tell you're a sergeant major, but we want to check your ID''? I don't want to ask him to do that. But you could be fined up to $10,000. That is in the FDA reg.

We are getting ready to codify the FDA regs. We are getting ready to deem the FDA regs as law, which is a very bad idea. The FDA can come up with regs. They cannot write law. They cannot write law. Their regs, in my opinion, are unconstitutional. We just cannot deem something unconstitutional as law, as this bill would propose to do, whether it be in advertising or otherwise. Just to give you an example, the FDA regs said it was unlawful for tobacco companies to develop advertising gimmicks such as a hat. I have a staff member who has a hat that says ''Marlboro'' on it. Heaven forbid, what outlandish behavior. We have the Federal Government saying, ''You can't have a hat that has 'Marlboro' on it or 'Winston' ''? Give me a break. And there are penalties for noncompliance with that.

The FDA came up with some outlandish regulations. We are just going to deem those regulations as law? We are the legislative body. I think we should clarify what FDA can do. I don't mind regulating nicotine. I do not mind giving FDA some additional authority if we clearly define it, but Congress should define it. We should not just take their regs and say, ''Here. Whatever you've said is fine. It's law, no matter what court cases are already decided.'' Wait a minute. If they went too far, they breached the Constitution, we are just going to deem it as law? That is not good legislation. That is just doing whatever FDA wants.

Again, this administration wrote the bill. But we should not adopt those provisions. We are the legislative branch. We are the equal branch of the administration. Why let them write this bill? Why help them pass a bill which has no tax relief, spends hundreds of billions of dollars, and its impact on smoking is very questionable?

Mr. President, there is a lot of new spending. I am going to submit for the RECORD several specific references. I have heard people say this bill has 17 new agencies. It has a lot more than that.

Mr. President, I think I have mentioned all these. I will run through this other list in a minute. It has Indian tribe enforcement grants, Indian tribe public health grants, tobacco farmer quota payments, tobacco community grants, farmer opportunity grants, tobacco worker transition program, USDA operation of tobacco program, international tobacco control awareness effort—brand new; it was not in either bill, was not in the Commerce Committee, and was put in by the administration Sunday or Monday.

Compensation to tobacco vending owners: That was in the Commerce Committee bill. Let me just touch on that for a second. Everybody knows the FDA regs say we are going to ban vending machines. Well, if Congress wants to ban vending machines, Congress should do it. And then you say, ''Well, wait a minute. Shouldn't we compensate the vending machine owner?'' It is logical. As a matter of fact, the Constitution says you should not confiscate somebody's property without just compensation.

What do we do in this bill? We set up a corporation. And the corporation is to deem what is just compensation. I have had people come in and lobby me—some of them are very good friends —and say, ''Boy, we need this in there.'' I say, ''What kind of compensation are you talking about? How much do those machines cost?'' ''Well, they might cost $1,500, $2,000, $2,500, something like that.'' ''How much do you envision taxpayers paying you for that machine?'' ''Well, we're kind of thinking maybe $8,000 or $10,000, something along those lines.''

That troubles me. ''Well, we were going to make money off that machine for the next several years, and we would like to have the present value of the future earnings of that machine since you're taking it away from us.'' Maybe they have a legitimate argument, but that bothers me. It is the same argument that we are going to be making on tobacco farmers. Are we going to be giving them the future value of the earnings potential of that farm for a long number of years? I do not want to do it. And I love my friends from the tobacco States, but I do not want to do that. I do not want to do it on vending machines either. I just think that is a mistake.

We are getting ready to pay—if we allow this legislation to go forward,''such sums as necessary.'' We are going to be spending lots and lots of money.

This bill has a section in it, Mr. President, called ''asbestos trust fund.'' Now, I raised this with my colleague, the Senator from Arizona. The bill that was reported out of the Commerce Committee contained a $21.5 billion asbestos trust fund, originally funded separately by the tobacco companies. I objected to that, and so they agreed to fund it out of the larger trust fund. Then the Finance Committee struck it altogether and said if we are going to set up a new compensation program, we should look at it more closely. And if we do it for asbestos, shouldn't we also do it for black lung? Shouldn't we do it for brown lung? And shouldn't we do it for textile mills? Shouldn't we do it for any other number of lung diseases related to occupation?

I do not think you can stop just with asbestos. I think you have to look at black lung, you have to look at brown lung, you have to look at all of them. So the cost of this, the $21 billion, could grow like cancer, and would. I made these points in the Finance Committee. We struck it in the Finance Committee. This was never a request by the administration, and never a request by the Commerce Committee. Then it was put back in by the Commerce Committee anyway; it is back in.

They delete the authorization language and so on, but they authorize Congress to spend tobacco money whenever Congress passes an asbestos bill. You can tap into the fund an unlimited amount of money. It does not say $21.5 billion, it just opens the door. I think that is grossly irresponsible.

Does that mean I am not sympathetic to somebody who had asbestos problems and also is a smoker and had lung cancer and has a problem? No. I am very sympathetic. But I am also looking at what we are doing here. And we are in the process of expanding a program greatly out of control.

It has money in it for the Veterans Affairs' tobacco recovery fund—not specified; wide open; no limit to how much it could cost.

Is has an attorney fee arbitration panel. I touched on this before. This arbitration panel is a three-member panel, with no limit as to how much this would cost. I heard some people say, ''We can't do that.'' Now, wait a minute. Everything else has limits. I am going to submit this list of programs for the RECORD, but we have about 30-some-odd guidelines on how this money should be spent.

But we are going to leave a blank check in here for attorney fees? Now, give me a break. Congress is in the process of raising these taxes, putting this money in the fund. Congress is also responsible for spending the money: ''Here, States, here is how you spend it. Here is how you must spend it. Here is how we're going to spend it. And we can place restrictions on what attorney fees should be.

Right now if we pass this bill, the clear winners are trial attorneys. The clear losers are consumers, low-income smokers. They are the losers. The trial attorneys are the victors. They are the winners. They win big time. They become millionaires—billionaires, maybe in some instances. And the losers are the people who see their total Federal tax liability increase by 44 percent if they make less than $10,000. They are the losers. They are big-time losers. Are we going to fix it? I hope we will fix it.

Mr. President, I ask unanimous consent to print in the RECORD attorney fees from the States of Mississippi, Florida, Texas, and Minnesota.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE SETTLEMENT TOTALS/ATTORNEY FEES

State	Total (dollars in billions)	Fees
Mississippi	$3.4	$250 million (7.3%)
Florida	11.3	2.8 billion (24.7%)
Texas	15.3	2.2 (14.4%)
Minnesota	6.6	450 million (6.8%)

Mr. NICKLES. There is a Scientific Advisory Committee, there is a National Tobacco Free Education Advisory Board. That concludes this list. And we haven't found them all yet. Since we also added the Lugar amendment, there are several provisions, some of which are similar but not near as extensive or as expensive as that provided in the Commerce Committee bill. It adds a tobacco community's revitalization trust fund, it adds a tobacco quota buyout, block grants, tobacco farmer assessment, and so on.

I want to be fair on both sides of the tobacco argument. You add all that together, you have 30-some new programs funded in this bill. You have hundreds of billions of dollars funded in this bill. You have trial attorneys who, in all likelihood, will make over $100 billion out of this bill—$100 billion out of this bill.

I ask unanimous consent to have printed in the RECORD new taxes, assessments, penalties, and new spending authorizations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

What's New in the White House tobacco bill

NEW TAXES, ASSESSMENTS, & PENALTIES

National Tobacco Settlement Trust Fund ..	Funded by the net revenue from $102 billion in deductible industry payments over 5 years, ($885 billion over 25 years), increased for inflation, increased/decreased for volume, subject to appropriation except state share and farmer money, Section 401, 402, and 403, page 179.
Lookback assessments—industry wide	Up to $4.4 billion per year beginning in 3rd year, increased for inflation, not deductible, Section 204(e), page 106.
Lookback assessments—brand specific	$1,000 per underage user above specified reduction targets beginning in 3rd year, increased for inflation, not deductible, Section 204(f), page 109.
Tobacco distributor licensing fees	Secretary may set fee level to cover costs of registering tobacco manufacturers and distributors, Section 1139, page 384.

What's New in the White House tobacco bill—Continued

Non-payment penalties	Prime interest rate plus 10% of unpaid balance after 60 days late, Section 406, page 190.
Document good faith penalties	$50,000 per violation, Section 908, page 258.
Anti-smuggling penalties	$10,000 per violation, Section 1137, page 377.

NEW SPENDING AUTHORIZATIONS—GENERAL ALLOCATION OF FUNDS

State Litigation Settlement Account	40% of net revenues, adjusted after 10 years to equal $196.5 billion over 25 years, sent to states without appropriation, distribution formula to be determined by states, 50% may be spent on anything, 50% must be spent on children's health, child care, child welfare, substance abuse, education, and children's health insurance, Section 451(a), page 192 and Section 452(b), page 200.
Public Health Account	22% of net revenues plus all of lookback assessments, subject to appropriation, Section 451(b), page 194.
Health & Health-Related Research Account	22% of net revenues, subject to appropriation, Section 451(c), page 197.
Farmer Assistance Account	16% of net revenues for 10 years, then 4% until $28.5 billion cap, Section 451(d), page 198.
Medicare Preservation Account	Excess industry payments for 10 years, then 12% of net revenues, Section 451(e), page 199.

NEW SPENDING AUTHORIZATIONS—SPECIFIC PROGRAMS

Child Care Development Block Grants	Such sums as may be necessary, committee report recommends $4 billion per year, state-match reduced to 20%, Section 1161, page 385, and Section 452(d) page 202.
Children's health care	$25 million for states to do Medicaid outreach for children's health care, and allows funding for presumptive eligibility outside of capped funding for children's health care, Section 452(f), page 203.
Cessation and other treatments	25%–35% of the public health account, 90% of which is block granted to the states, Section 451(b)(2)(A), page 194 and Section 221, page 129.
Indian Health Service	3%–7% of the public health account, Section 451(b)(2)(B), page 194.
Education, prevention, counter-ads, international.	50%–65% of the public health account, Section 451(b)(2)(C), page 195.
FDA enforcement, state licensing, smuggling.	17.5%–22.5% of the public health account. Of that amount, FDA receives 15% in 1st year, 35% in 2nd year, and 50% in 3rd year, Section 451(b)(2)(D), page 195.
Institute of Medicine study	$750,000, Section 451(c)(2)(A), page 197.
National Institutes of Health	75%–80% of health research account, Section 451(c)(2)(B), page 197.
Centers for Disease Control	12%–18% of health research account, Section 451(c)(2)(C), page 198.
National Science Foundation	1% of health research account, Section 451(c)(2)(D), page 198.
Medicare Cancer Clinical Trials	$750 million over 3 years from health research account, Section 451(c)(2)(E), page 198.
State retail licensing program—state grants.	$200 million each year, Section 231, page 118.
Compliance Bonuses for States/Retailers	$100 million each year, Section 232, page 128.
National Medal of Science	CDC funding to be used to establish a National Medal of Science, Section 454, page 207.
Indian tribe enforcement grants	Amount not specified, Section 603(d)(3), page 222.
Indian tribe public health grants	Amount not specified, Section 603(e), page 223.
Tobacco farmer quota payments	$1.65 billion entitlement per year for 25 years, Section 1011(d)(1), page 491.
Tobacco community grants	$10.5 billion entitlement over 25 years, Section 1011(d)(3), page 491.
Farmer opportunity grants	$1.44 billion entitlement over 25 years, Section 1011(d)(5), page 491.
Tobacco worker transition program	$25 million entitlement per year, Section 1011(d)(4), page 491.
USDA operation of tobacco program	Such sums as may be necessary, Section 1011(d)(2), page 491.
International tobacco control awareness effort.	$350 million through 2004 and such sums as necessary thereafter for grants to individuals, corporations, or other entities, Section 1107, page 361.
Compensation to tobacco vending owners	Such sums as may be necessary from general fund or tobacco fund, Section 1162, page 386.
Tobacco vending reimbursable corporation	Section 1162(b)(2), page 387.
Asbestos trust fund	Authorizes such sums as necessary for future enactment of an asbestos trust fund, Section 1201, page 402.
Veterans affairs tobacco recovery fund	Not specified, Section 1301, page 403.
Attorney fee arbitration panel	Section 1403, page 438.
Scientific advisory committee	Section 906(e)(2)(B), page 49.
National Tobacco Free Education Advisory Board.	Section 221 of the bill, new section 1982(b), page 148.

ADDITIONAL ITEMS IN THE LUGAR AMENDMENT

Tobacco Community Revitalization Trust Fund.	Funded with such sums as necessary from the National Tobacco Settlement Trust Fund, Section 1511, page 450.
Tobacco quota buy-out	Payments of $8 per pound of quota owned, or $4 per pound of quota leased for production, paid over 3 years, Section 1515 & 1515, page 452.
Rural economic assistance block grants	$200 million per year for 4 years in block grants to states, Section 1521(a), page 454.
Tobacco farmer assessment	Marketing assessment set by the Secretary to cover the annual costs for federal administration of extension, inspection, and crop insurance related to tobacco.

Source: S. 1416 as modified in the Senate (5/18/98).

Mr. NICKLES. Now, are we going to pass that? I know I saw an ad by Dr. Koop saying we need to. I love Dr. Koop. I know he is very sincere. But I don't think you have to spend hundreds of billions of dollars to go after teenage consumption of tobacco or of drugs. And I think we should go after both. I think we would be grossly irresponsible if we don't go after both.

I am concerned about the cost of this bill. I told my friend and colleague from Arizona that I have the greatest respect for him but I don't have great respect for this bill. I think this bill is one of the worst pieces of legislation that Congress has considered since the health care dictates of the President and Mrs. Clinton several years ago. That bothers me. I don't think we should pass it in the Senate. I told my colleagues I am not going to just stand back and throw rocks at it. I will try to make some improvements.

I read a list of the sections, and I don't think there should be an asbestos section. I may have an amendment to delete it. I don't think we should have the massive industry payment system. I am going to try to talk my colleagues into replacing it with a simple excise tax. Raise it $1.10, so you know exactly the amount. I am not comfortable with the fact that some people are saying it is $1.10, but it raises more money than that, so maybe they will have more money to spend. There is no doubt in my mind that these payments, and you divide that out by the number of cigarettes sold, if you are selling 24 billion cigarettes, you realize this will raise a lot more money than $1.10. We are talking about big money. We are talking about it every year.

The tobacco settlement was originally, when fully implemented, about $15 billion a year. This bill starts at $24 billion, and by the year 2002, assuming the kickback comes in, $30 billion. That is a lot of money—3,000 percent

increase in the tax on smokeless tobacco and so on.

Maybe people don't care. I care. I care about the procedure. I think some of my colleagues from the tobacco areas were upset about the procedure. I think when you are dealing with the agriculture section, that should have come out of the Agriculture Committee. Commerce Committee is not supposed to write the agriculture section. And Commerce Committee is not supposed to write the tax section. And they did both and they did a crummy job on the tax section. This is the worst tax law I've seen. If we pass it, it would be the worst tax bill Congress has passed. With all due respect, it wasn't even done by the Commerce Committee. It was done by the administration. President Clinton didn't want to use the word ''tax'' so he thinks they hide it by using the word ''fee,'' but it is not a voluntary fee.

If tobacco companies were in agreement with this, this would be voluntary, it would be a fee, and in return they get some liability protection, and that is what they negotiated with the attorneys general. Maybe that would work. This is not voluntary. There is no provision that says if the tobacco companies don't like the fee, they don't have to pay it. There is no provision like that. So it is a tax. Congress has the power to tax, but if we are going to tax, let's tax right.

The cigarette excise tax right now is 24 cents per pack. It is going to 39 cents by 2002. This bill purports to raise it another $1.10, so that goes to $1.49.

So for my colleagues who are trying to push the tax to $1.50, it will be $1.10 by the year 2002 under this bill, plus indexed for inflation. So maybe you have a lot more than you really realized.

Let me take you through the numbers again. The tax on cigarettes today is 24 cents per pack. Congress, last year, I believe, increased that tax 15 cents—24 and 15 is 39 cents. That is already law. This bill adds to that, purportedly, another $1.10. A $1.10 on top of the 39 cents is $1.49. So the Federal excise tax on tobacco, at a minimum, will be $1.49 in the year 2002, plus it is indexed for inflation forever. This is indexed at inflation, or 3 percent—whichever is greater. Never had an index that I know like that. I don't know that that makes sense, but we have it in there. Why do we have it in there? So we put more money in the pot so we have more money to spend. I don't think we should do that.

What should we do? We should work together to come up with a responsible package. I am willing to do that. I think this bill goes way too far.

I haven't touched the regulatory side of the bill. I will save that for another speech, and hopefully maybe the FDA section will have some common sense come into it. We don't want to give this unbridled authority to the administration. Don't we want to preserve for ourselves, the legislative branch, the authority to write law? Or are we going to take a massive menu of FDA regs and say they are deemed to be law, although a court said part of them is unconstitutional. I don't think we should do that. I will save the FDA section for another comment and another time.

Now I am talking primarily about the financial impact of this bill. Let's work on a bill that will do a couple of things. Let s work on a bill that will try to educate youngsters that using drugs or using tobacco is a very serious problem. Let's try to reverse this trend that happened, frankly, in the last 6 years, during the Clinton administration, where marijuana use doubled among high school seniors, where tobacco use is up 35 percent among high school seniors. Let's try to reverse that through some public education. Let's try to get some workable restrictions that are constitutional. Let's try to put some responsibility back on young people. Let's try to maybe give the States the encouragement to enforce the law.

It is against the law in every State in the Nation for people under the age of 18 to smoke. So if they enforce the law, we don't have this problem. Now, maybe they are not enforcing the law. But certainly this little operation we have here where we are going to have the Federal Government spend $200 million a year to go around and have all these people inspecting to see if the convenience stores are checking IDs up to people age 27 is absurd. That is not going to work. It will build resentment. We need to say, States, what can you do to enforce the law? Maybe all the enforcement should go not to just the person selling the tobacco product. I am all for the States, if they find somebody selling tobacco or alcohol, frankly, to that minor, there should be significant penalties. That is the reason the laws are on the book. They should enforce the law. The penalties should not be just on the person selling but on the person buying or the person consuming. There are laws if you are driving under the influence, you get a DUI, they can take your license away. Maybe we should have restrictions and penalties on the consumer if they are breaking the tobacco consumption laws. Maybe it would be a financial penalty, maybe it would be that they have to do community service. Maybe they have to clean up a park. Give the States some flexibility to put some penalties on the consumer.

One of the reasons I didn't smoke is because I had a football coach who said, you smoke, you are out of here. Everybody else in our group understood that there was a penalty, there would be a price to be paid. So let's put it back on the individual. Let's turn it around. We can do some things like that.

What I see here is a massive effort to conceal, disguise, slide in under the radar screen, a very big tax price increase. And the way it is done is going to have minimal impact on reducing consumption among teenagers because we slide it in stealthily. It starts at 65 cents and over 5 years it is $1.10, according to this nonsense. Are we going to do it so gradually there is no sticker shock, so there won't be any impact anyway? The Finance Committee said, if you are going to increase the tax, put it up front, that, to me, is at least more honest. Do a tax, do away with the nonsense of hundreds of billions of dollars in industry payments. The tax is 24 cents now, so it's going to 39 cents. If Congress has the votes to do it, make it another dollar, add it on, vote on it. I probably won't vote for it. But do it honestly. The way we have here is so misleading and deceptive.

Instead we are going to talk about volume reductions, and we are going to talk about inflation adjustment and about these payments, and I am going to bring up the point that some companies don't have to pay. If smokeless companies produce less than 1 percent, they are exempt. So what are we going to do? We are going to put penalties, big assessments on some companies; but a new startup company doesn't have to pay this $1.10 assessment. That is a big advantage. I have a feeling that this bill is going to cause new companies to crop up all over the place.

I think the arguments made by the Senator from Utah and others about having a black market are very real. These commodities aren't that hard to smuggle or hide. I think if you put in this kind of incentive, you will have the same thing happen as it did in Canada and in other countries in Europe. You are going to find a lot of contraband, a lot of hidden stuff, and people smuggling tobacco like they used to be smuggling liquor. There is a lot of money to be made in the process. If they are smuggling tobacco tax free, there is money to be made. And there is money to be made in drugs. Smuggling under this bill is illegal. But the financial rewards will be very lucrative. If a person figures out the value of a truckload of cigarettes, you will realize that there is a real incentive if a person can get around the law and paying these taxes. The taxes are going to be greater, certainly, than the product.

I stopped in a gas station last weekend just to see what tobacco prices were. I didn't know; I don't buy tobacco. There were some cigarettes selling for $1.24 a pack, and another for $1.84, and another for $2.02. People say most of them are about $2. The more popular brands were the higher-priced ones, closer to $2. That is with the tobacco tax of 24 cents. If it goes up another 15 cents—this bill purports to take it up to $1.10, and that is without the look-back penalties. If you add that back in, you are looking at probably close to a $2-per-pack tax that is in this bill. So taking a product right now that sells from $1.24 to $2, you are going to add $1.50 to $2 in taxes very shortly on consumers. Is that going to be an incentive for people to smuggle cigarettes and get around the law? I believe it is. Certainly, there is incentive.

I hope they won't be successful. I don't want to set up a black market or encourage that type of activity, but I am afraid we will be doing it.

Finally, Mr. President, let me just say that I am disgusted about the procedure. I don't say that very often. I am part of the leadership, but I am disgusted by the fact that you have one committee, the Commerce Committee, writing the finance portion, writing the agriculture portion, and they didn't do a very good job. I am disgusted by the fact that the bill changed and the administration rewrote the bill over the weekend. They didn't consult the Commerce Committee, or the Finance Committee, or the committees of jurisdiction dealing with welfare, child care, the committees that wrote those laws, people that had the staff and the experts who knew what they were talking about. The administration put in a lot of their wish lists. I am disgusted by the fact that we would set up a whole new trust fund and say it is limited to $1.10 tax, when it is not.

Let's be honest with people. This is not the way to pass legislation. The Commerce Committee is not a tax-writing committee. They did a crummy job. I am disgusted. The tax on one can of Skoal will be one level, and on a competitor it would be 30 percent less. I am disgusted by the fact that one cigarette company is not going to have the excise tax that another cigarette company is going to have. Wait a minute, this is a national excise tax, but some companies don't have to pay it and some companies do. That is not the way you do business. I don't care if you are small or large. Excise taxes are supposed to be across the board. They didn't do that.

I am also disgusted by the fact that we would end up passing a bill to allow trial attorneys to make $100 billion over the life of this bill—probably $4 billion a year over the course of this bill. That bothers me a lot. That reminds me of what motivates this bill and it reminds me of the movie ''Jerry McGuire,'' where someone is screaming, ''Show me the money.'' That is what is driving this thing. It is not just about curbing teenage smoking. That is a great public relations campaign, and I will stand with anybody to try to curb teenage smoking and drug use. I emphasize ''drug use,'' because there is silence in this bill about that. We are not going to pass a bill, if I have anything to do with it, unless we have a significant effort to combat not just cigarettes but also marijuana and other illegal drugs that are much more hazardous, dangerous, and deadly.

I think this bill needs a lot of work. My guess is that it is probably not fixable with just a few amendments. I don't think we should be in a real rush to pass it. I have spent the last three nights staying up past 1 o'clock reading this bill, trying to understand how it works. I still have a lot to learn about this bill. Before we pass the biggest tax increase, the biggest spending program considered by Congress in years, I think we ought to know a little bit more about it. So I urge colleagues to do their homework, consider serious amendments, not frivolous amendments to string this bill out for a long time, but to make it better.

We are legislators. We are trying to pass law. My opinion is that this is a bad bill that needs to be improved significantly before we let it become law. I will reiterate my statement that I will work with any colleague, Democrat or Republican, to try to fashion a bill that will reduce teenage consumption of drugs and tobacco. But I don't think we have to spend hundreds of billions of dollars to do it. I don't think we have to turn over massive amounts of power to bureaucrats to do it. So I look forward to working with my colleagues to try to make that happen in the next few weeks as we consider this legislation.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CONRAD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

Mr. CONRAD. Mr. President, I was seeking to ask the Senator from Oklahoma some questions about the numbers he was displaying about the revenue generated by this bill, because the numbers he was displaying are not the official forecasts by the Joint Tax Committee of what this bill will raise. His numbers that he was displaying here are much higher than the numbers that are in the official forecast. Generally, when we debate a bill on the floor of the Senate, we debate based on common numbers. We debate based on the official forecasts. The Senator from Oklahoma has chosen not to do that. He has chosen to take other numbers that are much higher and different. The major difference between those numbers is that the bill calls for a volume adjustment that is not contained in the Senator's figures.

The volume adjustment appears very clearly in the bill at page 189, No. 2, ''Volume Adjustment.'' I will not go through the technical details. But the volume adjustment provides for, if volumes of cigarettes consumed declined because of an increase in price, the price increase will be adjusted downward. The numbers of the Senator from Oklahoma do not contain that volume adjustment. The fact is both Joint Tax and the Congressional Budget Office assume there will be a reduction in volume of about one-third, and any volume reduction beyond a 40-percent volume reduction will result in a lowering of the price increase.

Again, the Senator's numbers did not include those figures. The numbers he was using are not the official forecasts for this bill. They are at great variance from what has been provided by the Senator and are the official forecasts of what this bill will raise made by the Joint Tax Committee.

I want to point that out because I think it is important to set the Record straight.

At this point in the record, I ask unanimous consent to have printed in the RECORD the Joint Tax Committee's estimates of what this bill will raise.

I also would like to enter into the RECORD at this point page 189 from the bill that points out the volume adjustment provisions which the Senator from Oklahoma neglected to advise the Senate are not contained in the numbers which he displayed for our colleagues.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
Washington, DC, May 19, 1998.

Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate, Washington, DC.

DEAR SENATOR MOYNIHAN: This letter is in response to your request for a revenue estimate of the manager's amendment to S. 1415 offered May 18, 1998.

In order to complete the estimate of the manager's amendment to S. 1415, we assumed that the base payment for years beginning in 2003 and thereafter is $23.6 billion before the volume and inflation adjustments.

Our estimate presents the net revenue effects of the manager's amendment to S. 1415. These net amounts differ from the gross payments required under the manager's amendment for several reasons. First, the general tobacco industry payments are converted to fiscal year payments. Second, the general tobacco industry payments are reduced by an income and payroll tax offset in the same way that net receipts from an excise tax are calculated. Third, the higher price for tobacco products resulting from the proposal reduces net receipts generated from present-law tobacco excise taxes because of reduced tobacco consumption. Finally, because the proposal is expected to supercede most of the State-by-State settlements that are implicit in the Congressional Budget Office baseline receipts forecast, much of the negative indirect effect of the anticipated State-by-State settlements on receipts is reversed.

We estimate that the manager's amendment to S. 1415 will have the following effects on Federal fiscal year budget receipts:

[In billions of dollars]

	Fiscal year—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	1999–02	2003–07
1. General industry payments	15.4	11.0	12.5	12.7	13.2	13.8	14.3	14.8	15.4	51.5	71.5
2. Look-back assessment[1]	.....	.....	.....	.....	.....	1.0	0.6	4.0	3.1	.....	8.7

[In billions of dollars]

	Fiscal year—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	1999–02	2003–07
3. Total of S. 1415 as amended	15.4	11.0	12.5	12.7	13.2	14.8	14.9	18.8	18.5	51.5	80.2
General industry payments per pack[2]	$0.76	$0.89	$1.06	$1.11	$1.24	$1.28	$1.32	$1.36	$1.40	.....	.....

[1] This net revenue reflects the effect of reduced excise tax receipts because of the assumption that the penalty excise tax payments are passed through in the price of tobacco products.
[2] Presented on a calendar year basis and without regard to look-back assessments.

Note: Details may not add to totals due to rounding.

I hope this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

LINDY L. PAULL.

VOLUME ADJUSTMENT PROVISION

(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2002, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio of the actual volume for the calendar year to the base volume. For purposes of this paragraph, the term ''base volume'' means 80 percent of the number of units of taxable domestic removals and taxed imports of cigarettes in calendar year 1997, as reported to the Secretary of the Treasury. For purposes of this subsection, the term ''actual volume'' means the number of adjusted units as defined in section 402(d)(3)(A).

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, my colleague is making my argument for me.

In the first place, I am consistent. The administration, and Senator MCCAIN, said this bill would only cost $516 billion. Guess what? They don't make a volume adjustment on that estimate. Instead, they used constant 1999 dollars.

I have a letter from OMB that was trying to refute my argument, but basically they made it for me. OMB says inflated nominal dollar industry payments would equal $755 billion over 25 years. That is without the look-back penalty. By way of comparison, the equivalent estimate which the State attorneys general are proposing is $539 billion in nominal dollars. Like the private analysis, these estimates do not included volume adjustments. There is a reason they do not include volume adjustments. It is because it is hard to figure.

My point is that everybody here has heard the attorneys general group discussing the $368 billion figure that the administration signed off on. When they use the $368 billion, they do not take into account any volume adjustment. No one knows what the volume adjustment is going to be.

I will show my colleague a table from the Joint Tax Committee. I have been trying to figure out what these industry payments really are. How much of a tax increase is it? I have hounded Joint Tax for an estimate, and we have a letter and report from them dated yesterday. If this is not the one the Senator printed in the RECORD, I will insert it in the RECORD at the conclusion of my statement.

In the first place, they show the total revenues on the top line which, frankly, are consistent with the revenues that I showed on my chart. It is shown in calendar years, according to the bill on certain pages which provided for a payment of $24.4 billion, $15.4 billion, $17.7 billion, and so on.

Mr. MCCAIN. Mr. President, will the Senator yield for an administrative question, not a substantive one?

Mr. NICKLES. The Senator is throwing me off track.

Mr. MCCAIN. About the schedule.

Mr. NICKLES. I will be finished shortly.

Mr. MCCAIN. I thank the Senator.

Mr. NICKLES. I want to make sure people understand. I am not sure my colleague from Arizona knows what was done.

Mr. MCCAIN. I was not trying to interfere.

Mr. NICKLES. I understand; no problem. I bragged on the Senator before.

But I want to talk a little bit about the volume adjustment. I am very familiar with the volume adjustment because I have been trying to figure out what they are doing with it.

Also the Senator from North Dakota tried to repudiate my number of $755 billion. I am telling you that is the same number OMB came up with, and they didn't volume adjust it, and they didn't volume adjust the $368 billion.

I want people to know that I am consistent with what was done before.

In addition to inflation, the bill that was reported out of the Commerce Committee was to have a volume adjustment. If you sell less, there would be less tax. So you have some reduction. But they do not know exactly what that would be.

What was rewritten by the administration on Sunday or Monday is that there will be a volume adjustment if and when volume gets less than 80 percent of last year's level. That is a big change.

Under the bill as originally written, the volume adjustments don't kick in until the sixth year. Then you would have some reduction. They say you will get a reduction if and when you reduce consumption below 80 percent down here.

My point is there is no volume reduction for the first several years, and after that you are guessing. But the volume reduction must be lower than 80 percent. To get any volume reduction whatsoever, you must reduce consumption total by more than 20 percent. It used to be that you only had to reduce it 1 percent to get a 1-percent reduction. Now, you have to reduce 21 percent to get a 1-percent reduction. It may be that they will never get a volume reduction as a result of that change. I don't know.

But my point being is that, one, we are being consistent in our analysis of the cost of the bill, as it pertains to OMB, as it pertains to the Attorney General.

I want people to know what the facts are. The fact is the bill says it has a CPI adjustment. The facts are that OMB said they used constant 1999 dollars to get $516 billion. I read it in the committee report. This is absurd. It said total payments shall not exceed $516 billion. That is not in the bill. It doesn't fit. It doesn't work.

If you use nominal dollars, as we use in every other budget projection, and you put a 3-percent kicker in, that is how you get up to $755 billion.

Then you can add the look-back assessment. One could say there will not be a look-back. Why was all this effort to add a look-back. I heard colleagues say on the floor that look-back is almost maybe 50 cents. I will tell you the look-back is a disaster. If anybody wants to raise tobacco prices another 50 cents, do it honestly. The look-back rests on the Secretary of Treasury taking a poll and saying, ''Did we meet our objectives? We want to reduce consumption by teenagers by a certain percentage. Did we make it? If we didn't make it, what happens then?'' If they miss it by a certain percent, there is a fine. If they miss it by a bigger percent, there is a bigger fine. That raises about $4 billion.

Then, they go to brand specific look-back assessments. This is absurd. They say they are going to, in the same poll, find out whether these youngsters buy X, Y, or Z brand. And if they smoke that brand, and that brand does not meet that target, there is a $1,000 penalty. For every teenager they identify that smoked more cigarettes in that particular percentage, then there is a $1,000 fine.

That is not really workable, and it needs to be fixed. It needs to be cleaned up. It needs to be deleted and then raise the tax whatever you want to raise it. Be honest. Tell people we want to raise taxes. The first year it is going to a dollar a pack. Just raise it a dollar a pack. Say next year, instead of 24 cents, it is going to be $1.24. Just do it. That would be the honest way. This thing is more than deceptive and, in my opinion, probably won't work.

Mr. President, I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, I am just going to repeat the point. I am

sorry to have set off my colleague from Oklahoma.

The simple fact is the numbers he has displayed here are not the official forecast for what this bill will raise. They just are not. They are dramatically higher than the official forecast before this body by the Joint Tax Committee, which is the forecasting service we all use. And so the numbers that he has presented to our colleagues, to anybody else who is listening, are numbers that are not the official forecast of what this bill is going to raise.

Mr. NICKLES. Will the Senator yield?

Mr. CONRAD. No. I asked repeatedly for the Senator to yield to me. He repeatedly refused, so I refuse.

The point is very simple. The reason his numbers are at dramatic variance with the official estimate of what this bill that is before this body will raise is because he takes no account of the volume adjustment that is contained clearly in the bill. And that volume adjustment calls for lower payments from the companies as the use of the product falls. Now, any economist and anybody with common sense understands that as you increase the price of something, you sell less of it. That is just basic. And so the legislation acknowledges that economic fact of life.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. I ask unanimous consent to have printed in the RECORD a Joint Tax report.

Now, first I want to reply to my colleague. This joint tax report, which I have been asking for every day, is dated May 20, yesterday. They didn't have this information before. No one has had a chart on what they thought the industry adjustment would be, but let me just give the facts according to Joint Tax if you worship at that altar.

In the first place, they say the figures I have on the gross industry payments, are accurate. They have the exact same figures that I have. They happen to be accurate. They estimate these for the first time. We don't have a CBO study. We don't have a GAO study. We don't have anything from the administration showing what they think the volume adjustment would be. No one has had volume adjustments in any of their charts, because it is a guess. But let me just repeat what the Joint Tax Committee has said. They say the gross figures that I have are identical. They say the total tax on consumers over the first 5 years is $102 billion. They say volume adjustment is $8.7 billion. So the net over the 5 years is $93.4 billion.

So this massive change in numbers that you are talking about is not that massive. The total amount of tax on tobacco consumers, according to joint tax, over five years is $93.4 billion. That is pretty significant.

So, Mr. President, I just got this yesterday, or maybe we got it today. We got it today. And I am happy to have it submitted for the RECORD. I am happy to debate facts all day long, and I want to debate facts.

I see my colleague from Vermont who supports, I believe, a straight excise tax. I just think you ought to do a tax. I think this scheme of having industry payments and having look-backs and surveys and polls, and those polls are deemed to be accurate—that is absurd, but that is what is in this bill.

You have an automatic volume reduction if you have an honest excise tax. Isn't that the truth? If you have an honest excise tax of $1.10 and there is less cigarettes sold, there will be less money going in to the trust fund. It is self-fulfilling if you do it right.

This bill does it wrong. This bill says we are going to have this formula for this money to go in, and it is indexed and there is additional formulas if we determine a certain number of people are using the wrong product. And so we will put that in. And then, oh, yes, we will reduce it by volume if we determine that.

Why not just have a tax per pack, and if there is less volume, there will be less money going into the pot. And no one will have to argue about volume adjustment that will be determined by the Secretary to send to these various companies, and, oh, he is going to forget to send that assessment to some companies.

That doesn't make sense. If somebody makes a different size of Skoal or a different size of snuff, he has a little different tax. You should put the same tax on every pack of cigarettes, the same tax on every brand of moist tobacco or every brand of smokeless tobacco and just do it. And then you have an automatic volume adjustment.

Mr. LEAHY. Mr. President, will the Senator from Oklahoma yield?

Mr. NICKLES. Sure.

Mr. LEAHY. I won't take but a couple minutes.

Mr. NICKLES. I did ask unanimous consent to print this chart in the RECORD.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

RECONCILIATION OF GENERAL TOBACCO INDUSTRY PAYMENTS UNDER S. 1415, AS AMENDED, AND NET FEDERAL REVENUE EFFECT OF SUCH PAYMENTS ESTIMATED BY THE JOINT COMMITTEE ON TAXATION ON MAY 19, 1998, BEFORE THE LOOK-BACK PROVISIONS

[In billions of dollars]

Provision	Fiscal year—											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2003	1998–2007
I. Calendar Years:												
1. Federal revenues from S. 1415 general tobacco industry payments as adjusted for inflation (by calendar years as in S. 1415)	10.0	14.4	15.4	17.7	21.0	23.6	24.3	25.0	25.8	26.6	102.1	203.8
2. Calendar year volume adjustment	.....	.....	.....	.....	−3.6	−5.0	−5.4	−5.8	−6.2	−6.6	−8.7	−32.7
3. Calendar year payments	10.0	14.4	15.4	17.7	17.4	18.6	18.9	19.2	19.6	20.0	93.4	171.1
II. Fiscal years:												
1. Adjustments:												
a. Convert Federal revenues from S. 1415 general tobacco industry payments to Federal fiscal years	.....	20.8	15.2	17.1	17.5	18.3	18.8	19.1	19.5	19.9	88.9	166.2
b. Change in net revenues from Federal income and payroll taxes (because of the impact of S. 1415 general tobacco industry payments on aggregate taxable income)	.....	−5.2	−3.8	−4.3	−4.4	−4.6	−4.7	−4.8	−4.9	−5.0	−22.3	−41.7
c. Change in net revenues from present-law Federal tobacco excise taxes (because of price increases from S. 1415 general tobacco industry payments)	.....	−0.8	−1.2	−1.5	−1.9	−2.1	−2.2	−2.2	−2.2	−2.2	−7.5	−16.3
d. Net revenue effect of replacing State by State tobacco settlements with S. 1415 payments	.....	0.5	0.9	1.1	1.4	1.6	1.9	2.2	2.4	2.7	5.5	14.7
2. Net Federal revenues from S. 1415 general tobacco industry payments (JCT May 19, 1998 estimate)	.....	15.4	11.0	12.5	12.7	13.2	13.8	14.3	14.8	15.4	64.6	122.9

Note: Details may not add to totals due to rounding.

Mr. LEAHY. Mr. President, I am sure my friend from Oklahoma will allow me to describe what my position will be on it, and I appreciate him stating it. And I do not want to get into the debate he and the Senator from North Dakota have been having. I was here to support, as I have, the amendment of the distinguished Senator from New Hampshire, Mr. GREGG. And what I have before me is an amendment that I think makes a great deal of sense.

I said yesterday that nobody is running up to me in the streets of Vermont and saying, ''Oh, please, whatever you do, be sure and give a lot of immunity to the poor tobacco companies.'' Nobody in Vermont is saying, ''Whatever you do, make sure first and foremost you protect the tobacco companies.''

They have made it very clear that they are concerned with protecting teenagers, concerned with protecting their children, concerned with getting back some of the costs that we in Vermont have spent on health care for those who have suffered from addiction to cigarettes.

But I ask, Mr. President, at the conclusion of my statement that I be allowed to put in the RECORD a letter from C. Everett Koop and David Kessler to Senator GREGG and myself dated May 20, 1998.

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

(See Exhibit 1.)

Mr. LEAHY. I just mention this about it. The letter very forcefully, very eloquently makes the case why the interests of public health are not served by giving big tobacco further special legal protection. They write:

Special legal protections for tobacco are unfair to patients and their families.

They write further:

Special legal protections for tobacco are bad for public health, especially children's health.

They write:

Special legal protections for tobacco are undeserved.

And they write:

If passed, the special legal protections in the Commerce Committee bill would be the biggest corporate giveaway in history.

And then they say:

For the sake of public health and children's health, for the sake of the people who are already sick and for those who will become sick, and for the sake of holding the industry accountable for its actions, we urge you to strip the special legal protections from the bill.

I agree with Dr. Koop. I agree with Dr. Kessler. I agree that first and foremost we should protect the people of this country. We should protect the health of the people of this country. We should protect the children of this country. And we should not be giving special limits on legal liability to big tobacco.

I disagree with the position of the White House in trying to allow special legal protection and special immunity for the tobacco companies.

Yesterday, the President wrote to the Senate leaders that:

If a cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to stop marketing cigarettes to kids, then it is well worth it for the American people.

Everybody agrees with that. What doesn't come out in the President's letter is this bill does have provisions that will prevent some parties from suing the tobacco industry. It does cap the total annual payments for the tobacco industry. The liability cap may very well affect the payment of future jury awards to tobacco victims.

So, I disagree with the White House and I disagree with those on both sides of the aisle who would limit some of the liability of the tobacco companies. If the tobacco companies hadn't faced unlimited liability for their actions, we would not even be here today. If the tobacco companies hadn't known that they could be sued, and sued successfully, they never would have admitted some of the things that have now come out. If the tobacco companies had not faced this, we never would have found out the years that they had lied. We never would have found out the internal memos where they were targeting 14-year-olds. We never would have found out even such things as their efforts to make cigarette placements in all kinds of movies, including, of all things, the ''Muppet Movie.'' These are things that we have found out only because they face that liability.

I concur with the distinguished Senator from New Hampshire. I am opposed to limiting liability. With that, I yield the floor.

EXHIBIT 1

ADVISORY COMMITTEE ON TOBACCO POLICY AND PUBLIC HEALTH,
May 20, 1998.

DEAR SENATOR GREGG AND SENATOR LEAHY: We are writing to endorse and support the Gregg-Leahy amendment to S. 1415 to eliminate all special liability protections for tobacco companies. We wish you success and would urge your colleagues to join with you in this effort.

Special legal protections for tobacco are unfair to patients and their families.

Millions of Americans are now sick with tobacco-related illnesses. Millions more will become sick in the future. These are people who started to smoke at a time when the tobacco industry lied about its products, hid scientific studies, and shredded documents. Most of these people started to smoke when they were children whom the industry targeted for special marketing. To protect the industry now would leave many of these patients, their families, and their survivors without remedy.

Special legal protections for tobacco are bad for public health, especially children's health.

Court oversight in the historic Minnesota suit led to the disclosure of thousands of documents about the addictiveness of nicotine and about the industry's plans to market to children. Other legal actions have resulted in consent decrees that will cut back on Big Tobacco's seduction of new young smokers. Under the Commerce Committee bill, these state and local suits would be impossible.

Special legal protections for tobacco are undeserved.

The tobacco industry has proven itself to be an irresponsible corporate citizen. Extending protection to this industry would be to subsidize and condone these activities. No other industry, no matter how valuable to the Nation, has such protections. We should not extend them to an industry whose product that serves only to kill Americans prematurely.

The Senate should not provide special legal protections for tobacco.

If an American jury finds tobacco companies owe damages, the Senate should not overturn that verdict.

If the most skilled lawyers that money can buy cannot get the tobacco industry out of court, the Senate should not become its defenders.

If passed, the special protections contained in the Commerce Committee bill would be the biggest corporate giveaway in history.

For the sake of public health and children's health, for the sake of the people who are already sick and those who will become sick, and for the sake of holding the industry accountable for its actions, we urge you to strip the special legal protections from the bill.

Sincerely,

C. EVERETT KOOP, M.D.
DAVID A. KESSLER, M.D.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I had printed in the RECORD this Joint Tax table. I also want to clarify a statement. I said, all of this money would be going into the trust fund. That was the way it was designed as it passed the Commerce Committee initially. The Commerce Committee now says the net revenues from this large payment goes into the trust fund. This chart says ''Industry Payments.'' That is not correct. It is consumers' payments. Consumers are going to be paying every dime of this tax.

Granted, they have a section in here that says industry, companies, you pay this amount. But they also have a section in here, on page 189, that says the tobacco companies must pass the cost on to consumers.

. . . an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such tobacco product manufacturer. . . .

In other words, consumers, you have to pay every dime of this, every single dime. This is not paid for by tobacco companies. This is not a tax on tobacco companies. This is a tax on consumers. The way to solve this ambiguity on volume adjustments is just say: ''Here is the tax per pack, or per can or whatever it is. And then, if volume goes down, there is less money.'' We do not do that in this bill.

I just mention, too, there is something really phony going on here. Joint Tax—and maybe I am not being as respectful to Joint Tax as I should be. But the way they scored this thing, as I know my colleague knows, they take 25 percent of the revenue from excise taxes and assume that is lost in transmission. So, if you raise $1 in tax, they assume only 75 cents gets to where you are trying to send it. That would usually be correct. If you were going to increase excise taxes on a farmer, he is going to have less money to spend on other products, it is going to slow the economy, so there would be some decline.

This assumption, I don't think, is applicable to these tobacco payments. Maybe the government would lose some percentage, but I don't think it would be as much as 25 percent. And the reason is the companies, by this language, are forced, mandated, to pass on every dime of this payment. I cannot think of any other business—if Nickles Machine Corporation I used to run, if we had an increase in excise tax, granted that might be in our cost of manufacturer. I might try to pass it on in higher prices to consumers and so on. Maybe I would be successful and maybe I wouldn't. Maybe I'd have to eat part of it.

We have language in here saying we don't want tobacco companies to pay a dime of this. We want consumers to pay every single dime of this part. Not the look-back. The look-back, they say, is not deductible, so maybe they are supposed to chew on part of that. But the big part of it is passed on to consumers.

So I want to make sure I was accurate. I think I said this money goes into the trust fund. That was not the

case. The language now says the net revenues go into the trust fund. And the net amount is really determined by the Secretary of the Treasury. He has a great deal of flexibility, I am afraid, to say, ''Oh, well, we think, since this is all passed through, the gross amount could be the net amount.'' He could say that this since it is all passed through.

Maybe I am getting too technical. I just want people to know, when you see estimates from Joint Tax that they agree that this is a $102 billion tax increase over the first 5 years. The look-backs are a question mark. Who knows? But evidently somebody thinks it is real money or they wouldn't be trying to jack up the look-back penalties.

And then the other variable is the volume adjustment, and no one has had scoring on volume adjustments until today. These are purely assumptions. I put those into the RECORD. So, if they were accurate, consumers will pay $102 billion, adjusted by 8.7, so $93.4 billion over the 5 years. So it reduces it somewhat.

For that to happen, you have to assume you are going to have volume less than 80 percent of 1997 over that period of time. Who knows? I don't know. But I always want to be factually correct. I may disagree with the colleagues on substance or philosophy or motives or whatever, but I want to be factually correct. And these numbers, I believe, are factually correct. The volume adjustment is speculative and now Joint Tax says it is minus $8 billion. Great. I do not agree with them that there would be such a large loss of revenue from gross to net, because of the language that says 100 percent of it shall be passed on to consumers. This figure, this payment by consumers, is accurate. Consumers, not tobacco companies, will pay the cost of this bill. I think it is too high.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The distinguished Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank the Senator from Oklahoma for a thorough exposition of the bill. He obviously has spent a great deal of time studying it. I, obviously, am not in agreement with a number of his conclusions, but this kind of exposition has been very educational and helpful to the entire Senate. I thank the Senator from Oklahoma, not only for his in-depth knowledge of the legislation but also the comity which has accompanied his and my relationship and difference of opinion on this issue.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. KERRY. Mr. President, I was not able to be here at the exact moment that the Senator from Vermont was speaking. But I do understand that the Senator suggested that a rationale for his cosponsorship of the Gregg amendment is that he opposes ''a lot of immunity for the tobacco companies,'' and opposes the ''protections'' that are contained in the Commerce Committee.

I will try to emphasize again, because I think we are really either talking past each other here or there is just not an awareness of what is in the bill—there are no protections for the tobacco companies. There is no protection. None. Zero protection. There is no such thing as a lot of immunity in this bill. There is no immunity in this bill. None. Zero immunity.

The tobacco companies will be liable to lawsuits under any circumstances. Whether they play in the tent or they are out of the tent, they are liable for lawsuits. The only distinction here is, if those lawsuits are successful, how much will they be required to pay out in 1 year? That is the only thing that is contained here that is some kind of a limitation.

Instead of being required conceivably to pay out $20 billion in 1 year and go bankrupt so you have no payments to kids, there is a limitation of $8 billion. So you can choose between the system that allows you to conceivably make them go bankrupt in the court system as, I might add, 70-plus percent of the asbestos companies did. We have lines of people who are suing today on asbestos who will never collect because the companies went bankrupt. In fact, there are people who want them to be able to collect under the tobacco settlement because there is a lot of confusion between those diseases that are asbestos-induced versus tobacco-related.

Let's get the terms of this debate correct. We are not talking about immunity; we are talking about whether or not, in exchange for companies giving up their constitutional rights to advertise, in exchange for companies abiding by the look-back provisions, in exchange for companies agreeing not to sue in court, in exchange for companies agreeing to be part of the document depository, in exchange for companies being part of the effort to get our kids not to smoke, we are going to tell them in any one year, ''You're liability is only going to be $8 billion.''

If the court finds that you are liable for $20 billion and there is no finding of liability next year in the court, they are going to have to pay the difference. The $8 billion from the $20 billion means they are still going to have to come in and pay an additional $12 billion, and they will pay up to $8 billion in the next year.

This is rational, in my judgment, Mr. President, because if you don't do this, then you are voting for the status quo, which is a system that is not a system. You would be voting to say, ''OK, we've got this one little option here that invites the companies to come in and be part of the process, but we're going to strip that option away because we want to show how tough we are on the tobacco companies and we're just going to let the lawyers go sue for the next''—whatever, recognizing that, for the last 20 years, not one lawsuit has yet produced a dime for a plaintiff.

Obviously, circumstances have changed. We now have evidence that no plaintiff had in those past years. I understand that. As a lawyer, I would love to go to court with the current level of documentation, and clearly, with the document depository, it will be a lot easier for a plaintiff to go into court and get a judgment. But you are not going to get that judgment in any sense of order. You are going to have what we call a rush to the bar: First lawyers come, first served. The first people to get the biggest judgments will be the first people paid off.

All these people coming in here and talking about the kids and talking about how they want to have some kind of system to get the kids to stop smoking will have abandoned those kids, because those kids are not going to benefit during those years of litigation. That is what we are talking about here. We are talking about whether or not we are going to have a rational approach to this or whether we are all going to feel good and say no liability.

I respect Dr. Koop and Dr. Kessler enormously. We wouldn't be where we are without them. There is no question about that. But I regret enormously that it is somehow their judgment that it is better off for the children to be in that position where we are just going to have these open-ended lawsuits without any incentive whatsoever to try to get the companies to become part of the process.

There is no guarantee they will. There is no guarantee that they will. We may well pass this legislation in its current form, and a lot of those companies will say, ''We still think it is too punitive. We don't want the look-back provisions. We're still going to challenge.'' This bill does not disadvantage us one iota with respect to that choice, because we have a two-part structure where, if they don't agree to participate in giving up their constitutional rights, in setting up the document depository, in being part of the look-back provision, then they can be sued under this bill in the very form that the Senator from New Hampshire is seeking. No loss, no setback, nothing.

The choice here is between whether you are going to go with the status quo

or you are going to hold out some hope that you are going to invite the tobacco companies to be part of a process of giving up what nobody will suggest under the law they could give up otherwise.

The Senator from Utah is one of our strongest experts on the law in the Senate, and he knows full well how the look-back provisions may be challenged. He knows full well how these constitutional rights cannot be given up except by consent. You can't restrict some of the advertising we seek to restrict unless the tobacco companies sign the protocol. Unless you are willing to say to them something that invites them in, they are not going to sign a protocol, and there is no guarantee they will sign it even if you say that.

So I think the choice for the U.S. Senate is very, very clear, and I hope colleagues will vote for common sense and not for the sense that the status quo is somehow going to serve the interests of the country.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank you. I rise to oppose this amendment. This amendment strikes the so-called ''immunity'' provisions of the floor vehicle.

First, let me say that there are no immunity provisions in the underlying bill. The traditional definition of the word ''immunity'' is: Being in a state ''free or exempt'' from disease or taxes or civil liability or the like. Under this definition, there is no immunity in the Commerce Committee bill or in the amendment that Senator FEINSTEIN and I have developed.

The tobacco companies are not exempt from anything. They will be and are accountable for their actions.

There are, however, in these bills limitations on liability procedures, but these should not be confused with immunity. Under the underlying bill, suits may still be brought. The tobacco companies could still face a multiplicity of suits for civil liability and possible criminal proceedings. This is not immunity by any stretch of the imagination. Indeed, when you are required to fork over a staggering $516 billion as the floor vehicle requires—which is really over $860 billion according to some estimates—you are not getting a free ride.

If this is really immunity, do you think a bipartisan group of 40 States' attorneys general and some of the leading plaintiffs' attorneys in this country who have been suing the tobacco industry for several years would have backed the June 20 settlement? Of course they wouldn't. It contained, justifiably, in my mind, limited liability provisions broader than the Commerce Committee bill, including a limitation on punitive damages for past bad behavior by the tobacco companies.

I am talking about some of the leading plaintiffs' lawyers in the country—men like Wendell Gauthier, Stan Chesley, John Climaco, Jim Parkinson, Ken Carter, John Coale, Bob Redfearn, and Don Hildry —I hate to leave any names out because there are literally dozens of them. I am talking about people who have pursued to the full limits of the law the asbestos industry, the Dow Chemical Bhopal disaster, the Dalkon Shield, and the breast implant manufacturers, and virtually every other plaintiffs' litigation that has taken place over the last 25 years.

And where would we be had these plaintiffs' lawyers not brought these suits? The States themselves are represented by very capable attorneys, attorneys general like Gail Norton of Colorado, Christine Gregoire of Washington, Jan Graham from my own home State of Utah, and Mike Moore of Mississippi, all of whom have worked very closely with me on this matter.

We are talking about top people here, tough-minded public servants. And the States also met the armies of litigators employed by the tobacco industry by contracting with their own legal experts on the part of the States.

Dick Scruggs from Mississippi has been in this from the start on behalf of Mississippi and other States. Professor Lawrence Tribe of Harvard has been hired by Massachusetts and other States.

So we are not talking about a bunch of pushovers here who will lay down in front of the big tobacco bulldozer. These top lawyers all knew they were fighting an uphill battle. And to date, there has never been a penny paid to a litigant in this country due to a jury award. In fact, there has only been one jury award to plaintiffs in the history of the country, I believe for $750,000, and it will be 10 years before that is paid, if it is paid at all.

I have been following tobacco litigation since my early days as a trial lawyer in Pittsburgh, PA, when I watched one of the greatest trial lawyers in the country, Jimmy McCardle of the law firm of McArdle, Harrington, Feeney, and McLaughlin on Prichard v. Liggett & Myers. It was a terrific battle publicized all over the world, as a matter of fact. And they lost because it is so difficult to win in these battles.

But nevertheless, once we establish this document repository, it should be easier to prove cases that can go to jury and, I think, increase the chances of jury awards. These top lawyers all knew that this is uphill. I have to say, from the time that Jimmy McArdle, that great attorney, lost, everybody else has lost since him, except for the one Florida case that is on appeal.

Why are these cases lost? Many legal observers have noted that American juries are very reluctant to award damages in situations where the complaining parties can be viewed as assuming a known risk. So we all have to recognize that the prevailing legal landscape has favored the companies for a long time.

The 40 State attorneys general and dozens of expert lawyers, like the Castano group, did what rational people do every day in litigation in this country. They proposed to resolve their claims through a settlement. And they did achieve a resolution. But they have to have a bill passed through this Congress that is similar to what they negotiated and brings the tobacco companies back on board, albeit screaming, kicking, and shouting all the way.

They brought us a proposal that settled the suits and involved massive payments and a brand new regulatory regime in return for some limited liability restrictions. These restrictions will provide an orderly mechanism for compensation payoffs and will provide the companies with financial certainty.

That is exactly what this legislation should do. The bill we adopt should help resolve these claims and do so in a manner that is in the best interests of the health of the American people.

So not only do I oppose amendments like these, but I think the most effective way to go about this legislation is to devise liability provisions that address the concerns of plaintiffs in a reasonable fashion.

When we consider this legislation, let us keep in mind that some 40 State attorneys general and some of the leading plaintiffs' lawyers in this country have already reached judgment that a fair and rational way to proceed, the best way to proceed, is to effectuate a national settlement of these claims.

Every day in our country lawsuits are settled by negotiating mutually agreeable resolutions that usually involve payments of money and with agreements to change certain behaviors. And that is exactly the theory behind the June 20 proposal and, I might add, the Hatch-Feinstein substitute amendment that we probably will bring up before this is over. So in one sense the June 20 proposal and our substitute amendment are typical.

Of course, what makes this June 20 proposal and our bill atypical is this approach represents the largest settlement proposal in the history of the world; requires the largest payment of punitive damages in the history of the world; contains unprecedented regulatory authority over tobacco products; and, provides for a broad array of public health programs, including public education, tobacco cessation, and counter advertising, that is, if the tobacco companies come back on board.

If they do not come back on board, many important restrictions are not going to happen and we will be immersed and mired in litigation for a long time, maybe 10 years. And then the bill on the floor, if that is the way it comes out, will likely fail dramatically as an unconstitutional piece of legislation.

But if we adopt this settlement approach and can drag the companies back on board, we can achieve advertising and look-back penalties far beyond what the Constitution would allow because we would have a consent decrees

and protocol contracts where the companies would voluntarily agree to waive certain rights. But to get them to do that, there has to be some incentive for them to do that, and that is some reasonable limited liability provisions.

Immunity has nothing to do with it. It is limited liability we are talking about here.

To just give one example, we currently have an FDA rule that is tied up in the courts. This rule bans tobacco billboard advertising within 1,000 feet from public schools.

The Judiciary Committee heard first amendment experts like Floyd Abrams tell us this rule cannot withstand constitutional scrutiny. But if we adopt a bill that contains liability provisions based on the June 20th settlement model that can bring back the companies, kicking and screaming all the way, we can achieve a total ban on all outdoor billboards.

This bill on the floor will not do that. But I believe before this battle is finished the final bill will accomplish that, or we just will not achieve as much public health protections as we can here.

So while the FDA rule wends its way through courts—and I think there is good reason to believe it will fail—today in Florida and Mississippi, through the settlement limited liability approach, there are no tobacco billboards in those States; and soon there will be no billboards in Minnesota because the companies have agreed to stop this advertising. Without reasonable liability limitations, there is no reason for them to just cave in and agree on these matters.

So there are good public policy reasons to oppose this so-called immunity amendment and favor legislation that, like mine, contains the liability limits modeled on the June 20 agreement.

Now, while I respect Drs. Koop and Kessler—I had a lot to do with both of them obtaining their Federal appointments that vaulted them to such prominence—I respect them to a large degree when they are commenting on public health matters within their expertise, when it comes to matters touching on the civil litigation system, I have to rely on the judgment of experts in the field, including 40 State attorneys general and the leading plaintiffs' lawyers in this country. As you would not go to a doctor to fix your car, so you would not go to a doctor for a legal opinion.

I might also add that I have tried some of these cases, too, in the past, not tobacco cases but difficult, contentious litigation. And I think I do know what I am talking about. And I do believe that I would like to see Drs. Koop and Kessler limit themselves to their expertise and not try to intrude into matters that literally they do not fully understand. As a matter of fact, in many respects they are gumming up any possibility of getting all these public health moneys that will help us solve some of these problems.

To be fair, although I do not favor the underlying bill, I have to oppose this amendment. I appreciate our distinguished friend, the Senator from New Hampshire. There is no question he is thoughtful, very decent and a good Senator. I have a tremendous amount of respect for him. I just happen to disagree with him on this matter.

And to be fair, although I do not favor the underlying bill, I have to oppose this amendment as well. There is simply nothing in the bill that would prohibit an individual from bringing suit against tobacco companies. There is nothing in this bill that would even reduce the amount litigants can be awarded.

All that is in the bill is an $8 billion yearly cap on the amount of damages that have been awarded. If the awards amount to over $8 billion, the amount will be paid in succeeding years. So there is really no limitation on liability other than that $8 billion cap. And I have to tell you, that is not enough to get the companies back to the table or to get the companies back to voluntarily agreeing to have advertising restrictions and look-back provisions that work.

In testimony before the Judiciary Committee, while defending the liability provisions of the June 20 settlement—which were even justifiably broader than the cap in the floor vehicle—Laurence H. Tribe, Tyler Professor of Law, Harvard Law School, demonstrated that liability limitations provisions are legal, constitutional, and not unique. As to his constitutional argument, he correctly asserts that the 1978 Duke Power Supreme Court case, allows Congress to alter common law rights such as the granting of punitive damages, and the capping of damages.

He also pointed out that there are a slew of federal statutes that grant limited liability to different industries and entities. The proponents of this amendment who say that no industry has ever received some liability limitations are just wrong. One example of a federal liability limitation is contained in the Price Anderson Act, which places a $560 million cap on compensatory damages in suits against the nuclear industry. The purpose of this cap is to create an incentive for the development of nuclear energy.

Another example is the Federal Credit Union Act, which limits damages for lost profits and pain and suffering for losses resulting in the liquidation of federal credit unions. Other examples include the Black Lung benefits program, the National Swine Flu Immunization program, the National Vaccine program, and certain provisions of both the Federal Employers Liability Act and the Jones Act. That is just mentioning a few.

I wish that the liability provisions in the underlying bill mirrored the liability provisions in my bill—which is modeled on those in the freely-bargained for June 20 settlement. Without those liability provisions which were gained through tough negotiations between 40 state attorney generals and the leading trial lawyers and agreed to by the industry, the industry will not participate to the fullest extent possible in any tobacco bill program.

So I must oppose both this amendment and the underlying bill because I think that the bi-partisan group of 40 state attorneys general and the leading trial lawyers in this country got it right the first time.

I urge my colleagues to reject this amendment and reject the Commerce Committee bill.

What we should do is pass legislation that closely models the settlement proposal brought to us last year by the 40 state attorney generals and the leading plaintiffs' lawyers in this country.

Having said all that, let me just conclude with these thoughts: There is no doubt in my mind the only way this is ever going to work without 10 years of litigation—and 10 million more kids unnecessarily put at greater risk—and a decision by the courts that the bill that is currently being argued on the floor is unconstitutional, is to get back to as close to the attorneys general agreement as we can. Yes, we can add some money to that agreement. It can be higher than the $368.5 billion, but it should be a reasonable amount that gets the companies back on board.

There is no guarantee by anybody that the companies are going to come back on board, but I think there is a pretty good guarantee they won't come back on board under the financial and other requirements of this particular bill, or without the incentive of having some reasonable form of limited liability.

If we can't do these things in a fair and reasonable manner, then why in the world should the tobacco companies come back and voluntarily agree to pay what really involves hundreds of billions of dollars, and without some protections for them with regard to future class action suits?

The industry has agreed that individual suits can be brought and brought with the aid of a document repository. With all the documents, it seems to me it would be easier to bring those individual suits. It would be easier to recover, and in my opinion, you don't need the punitive damages, because you will have a right to compensatory damages which is everything that you can possibly argue before a jury except punitive damages.

I have to say, as a former trial lawyer, I never needed punitive damages to get high verdicts in the cases I tried, and I don't think these plaintiffs' lawyers that we know today who will handle the bulk of the cases in the future will have any difficulties handling compensatory damages and getting very adequate awards for their clients from here on in. Unlike Jimmy McArdle, who had the world to fight as the first litigant attorney in Prichard

v. Liggett & Myers in the early 1960s, attorneys today will have everything going for them because of the tobacco settlement.

This law will work if we do this right. That will be a tremendous change from what poor Jimmy McArdle had to go through in the early days of Prichard v. Liggett & Myers. I remember that case. I was watching it closely. I was hoping he would win. I felt there was little likelihood he would win in Pennsylvania at that particular time because we didn't know then what we know today about the tobacco companies, about this industry and about what this industry has done to entice children to use their products.

I just have to tell you, if we keep doing what we are doing here on the floor, we will have millions more children exposed to a greater risk than they should and be exposed to during the course of the new litigation which could last for 10 years or so. Some of these children will ultimately die prematurely because of this increased risk as this litigation proceeds.

What is really unfortunate is that at the end of that litigation you will find that if this bill passes—the managers' amendment in its current form—the tobacco companies will likely prevail on a number of important matters. Then, where are we?

That means we would have let the American people down by passing legislation that will not work. And in the end, we would have done a lot of unnecessary harm to millions of children, and we will only have to start all over again, and we may not have a group of tobacco companies willing to deal at that time as they have with the attorneys general and plaintiffs' lawyers as we had under the June 20th proposal.

I yield the floor.

Mr. GREGG. It would be my intention to respond to a number of points made by the Senator from Utah and the Senator from Massachusetts. I see the Senators from Nebraska and Minnesota are here. I know they have been waiting, so I will wait for my response.

EXECUTIVE SESSION

NOMINATION OF DAVID R. OLIVER TO BE UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Mr. GREGG. Mr. President, I ask unanimous consent the Senate immediately proceed to executive session to consider the following nomination on the Executive Calendar, Calendar 562, David R. Oliver of Idaho, to be Deputy Under Secretary of Defense for Acquisition and Technology; I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and any statements relating to the nomination appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate immediately proceed to legislative session.

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

The nomination was considered and confirmed as follows:

DEPARTMENT OF DEFENSE

David R. Oliver, of Idaho, to be Deputy Under Secretary of Defense for Acquisition and Technology.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with consideration of the bill.

The PRESIDING OFFICER. The distinguished Senator from Minnesota.

AMENDMENT NO. 2433

Mr. WELLSTONE. I will speak for a couple of minutes on this amendment. I ask unanimous consent after I speak on this amendment that I have 2 minutes to speak as in morning business, and following that, that Senator KERREY be allowed to have the floor.

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

Mr. WELLSTONE. I thank the Chair.

Mr. President, let me join with my colleagues from Vermont and New Hampshire in supporting their amendment. I shall be very, very brief—uncharacteristically brief. I see the Presiding Officer smiling.

Minnesota is a State that has played a very central role in this debate about tobacco. I think if there is one thing that has come out of the litigation, the whole case against tobacco with Minnesota leading the way, Attorney General Humphrey and others, it is this: Minnesota unearthed a lot of documents, around 36,000 documents, and many of the documents have been referred to in the debates on the floor of the Senate. The one thing that you see over and over again is a pattern of lying. It is just a pattern of outright lying on the part of this industry. Mr. President, I don't believe that an industry that has walked away from an agreement, which has really willfully targeted our children, has really caused a tremendous amount of pain among children and their families, has really brought about the addiction of children and too many citizens dying an early death, deserves any immunity at all.

We should not give this industry any special deal. We don't in other cases. I don't think this industry should get immunity. I fully support this amendment. It is as simple as that. I see nothing in what this industry has done over many, many years—the way in which this industry has conducted itself, the way in which this industry has blatantly lied to people in this country, or, for that matter, the way this industry has related to what is going on here in the Senate—that would lead me to the conclusion that they deserve a special deal. I don't think people in the country think they deserve any special deal.

Therefore, this amendment is extremely important. I hope colleagues will support it.

NOMINATION OF JAMES C. HORMEL

Mr. WELLSTONE. Mr. President, I rise to speak one more time—and I have done this from time to time on the floor of the Senate—on behalf of the nomination of James C. Hormel to be U.S. Ambassador to Luxembourg. I have talked about Mr. Hormel's qualifications before, so I need not repeat that.

We are talking about someone who is a loving and devoted father and grandfather, an accomplished businessman, dean of students at the University of Chicago Law School, on the board of directors of all sorts of organizations, from the San Francisco Chamber of Commerce to Swarthmore College—you name it.

One of my colleagues—and I think it is extremely unfortunate—has compared Mr. Hormel, a highly qualified public servant and nominee, to Mr. David Duke who, among other credentials, is a former grand wizard of the Ku Klux Klan, founded the National Association for the Advancement of White People, and claimed that the ''Holocaust is primarily a historical hoax and not against Jews but perpetuated on Christians by Jews.''

Mr. James Hormel has been compared with this man, David Duke. I want to say to my colleagues that, given this kind of statement made publicly by a U.S. Senator, this kind of character assassination, it is more important now than ever that this man, Mr. Hormel, be allowed to have his day in the court of the U.S. Senate. There is overwhelming support for his nomination. He should be brought to the floor of the Senate, and we should have an up-or-down vote.

I want to just announce my intention to colleagues that when we come back, I will have sense-of-the-Senate amendments that the majority leader should bring this nomination to the floor of the U.S. Senate. When colleagues start making comparisons to David Duke to someone who has been such a sensitive, good public servant, that man or that woman—in this particular case, Mr. James Hormel—deserves, out of a sense of decency and fairness, to have his case brought before the U.S. Senate. I am going to be pushing very, very hard on this when we get back.

I thank my colleague from Nebraska for his courtesy.

I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 2434

Mr. KERREY. Mr. President, there are an awful lot of us who are now, as we head through the deliberation of this bill and the various amendments being offered—and, to be clear, I voted, on the budget resolution, in favor of the amendment being offered now by the Senator from New Hampshire. I will disclose, though, that I do not know how I am going to vote on the same amendment because I want to get a bill. I want the fine work that Senator MCCAIN and the Commerce Committee have done to yield a piece of legislation that the President can sign. I think it is terribly important. There are parts of this bill, on the other hand, that give me a considerable amount of concern.

First of all, I hope that at some point I can have this discussion in the presence of the chairman of the Judiciary Committee, who understands these issues very, very well.

First of all, I would like to talk about how we got to where we are today. The whole thing began back in 1996. There were a lot of discussions between the attorneys general, led by Michael Moore from the State of Mississippi. A settlement ensued as a result of one company, Liggett, disclosing information. This accelerated rapidly, and on the June 20, 1997, an agreement was reached. An agreement was reached between the tobacco companies and 40 States' attorneys general, and the settlement reached is very important for this debate because a number of things were in that settlement.

First of all, there was a stipulation. The tobacco industry has said that nicotine is addictive. I know a bit about addiction. I was a University of Nebraska graduate of the College of Pharmacy. I practiced pharmacy for a while. I remember in 1965 waiting in a Lincoln pharmacy for the opportunity to have my character molded by the U.S. Navy, having passed a physical examination provided by my Government. I was practicing pharmacy.

Remember, there was a great debate going on at that time in this country not just about Medicare but the regulation of drugs. At that time, in 1965, the most rapidly moving pharmaceutical in our store was a drug called Dexadrine, among other amphetamines. It is a very highly potent stimulant. At the time, the industry was saying it was habit forming, not addictive.

In 1965, prior to the enactment of changes in the law that increased the power of the FDA—and I point out to colleagues that I believe perhaps the most important section of this bill is title I, which gives the FDA increased authority to regulate tobacco and tobacco products. The tobacco industry stipulated and agreed that nicotine is addictive on June 27, 1997. That should not be in dispute today.

In 1965, Dexadrine was moving very rapidly with a powerful capacity to addict, and it was addicting a lot of people. We had to fill prescriptions for Seconal and phenobarbital just so people could get to sleep at night after taking this stuff. After this regulation went into effect, we saw a dramatic change in the accessibility to this particular drug. It went from being a very highly used medication to where, today, you would be lucky to see, even in a high-volume store, 100 Dexadrine a year. Today, it is only allowed to be used for narcolepsy.

Mr. President, a couple of weeks ago I had a meeting with some high school students at Burke High. I talked as well to other young people who are smoking. About 7 to 12 of these young people were smoking. What is quite apparent to me, Mr. President—and my suspicions are, though I have not polled it and I don't have accurate information—my guess is that most people in Nebraska, or a large percentage of people, don't understand that the landscape changed last June 20 with the tobacco industry saying yes, nicotine is addictive. They don't understand what being addicted means. They don't understand that there is a physical need and withdrawal symptoms associated with individuals who try to stop. Certainly, these young people did not understand what it means to be addicted. Indeed, when I asked them if they expected to be smoking when they reached adulthood, the majority of them said no, they did not expect to be—even though we now know that 90 percent of the people who smoke today started smoking when they were young.

The fact that we now know that nicotine is addictive and the tobacco industry is stipulating in their settlement that it is, it is an important and relevant fact, because what happens now is that we are transformed from dealing with an issue that has to do with personal freedom; we are now dealing with an issue that has to do with this question: Are we going to make an effort to save lives? In addition to being addicted, they are addicted to a substance that contains toxins, including carbon monoxide and other chemicals, which, if taken as directed, will result in the premature death of 1 out 36 people who start smoking, as well as all kinds of other health problems associated with tobacco.

So I want to begin, as I evaluate—and all colleagues should—whether to vote for the McCain bill, to understand that the industry agreed to the FDA regulation on June 27, 1997, as a consequence of the effort of Michael Moore and 39 other State attorneys general, and a settlement was reached. What the Commerce Committee has done is report out almost everything that was in that settlement. The tobacco industry agreed to pay $15 billion a year. Indeed, they agreed to pay $50 billion in punitive damages.

At the time, I remember in the aftermath of the settlement—and it seems like a hundred years ago, but it was less than a year ago—the big debate was: Would that $50 billion be tax deductible? Would the companies be able to deduct it from their income? Or would it have to be a post-tax payment? But it is $50 billion in punitive damages. They agreed to pay $15 billion more. What Senator MCCAIN and the Commerce Committee have done is say, since that time, a number of things have happened. We had a settlement in Texas, a settlement in Florida, and, most important, a settlement in Minnesota, which has the tobacco industry not only stipulating everything they did before, but releasing some 36,000 documents, most of which are still unread, my guess is, by most Members of Congress—certainly me. But just reinforcing for our citizens the idea, yes, I knew it was addictive; and, yes, I've been targeting your kids; and, yes, I've been doing some other things to try to increase sales, even though I understand that it is a terribly big public health problem.

The Commerce Committee has said we now have them agreeing to a 10-percent increase in Minnesota, and, instead of $15 billion, we are going to ramp it up to $23 billion a year. When we talk to citizens at home, please don't leave a citizen in your State with the illusion that somehow Congress or the Commerce Committee on their own came up with this number. This was agreed to by the tobacco industry on June 20, 1997. And, after the settlement in Minnesota, it seems to me the Commerce Committee is well within reason to say that instead of $15 billion it ought to be $23 billion. That is where we are.

Mr. President, the next thing I have to ask is, What are we going to do with it? What is the purpose? Where are we going? What is the idea that is most important with this legislation? For me, the most important idea—it may be different for others—is I want to save lives. I think that is what we are talking about. One out of three who start smoking dies prematurely. In Nebraska, $250 million is spent just on cigarettes; 100 million packs of cigarettes are sold every single year in Nebraska. I want to decrease the number of people who are buying cigarettes. If I can get 50,000 of the 350,000 Nebraskans who smoke, if I can help them stop smoking, not only do I save the lives, I save the money.

All of this conversation about a tax increase and being concerned about low-income Americans and the taxes they are going to be paying, if they would do this bill right, we would help people stop smoking and reduce their out-of-pocket spending for tobacco, not to mention the out-of-pocket spending for health care, the out-of-pocket spending that occurs as a result of not

being able to go to work, and the out-of-pocket spending for some other things.

I ask Members: Have you ever talked to anybody who has been able, after a long period of time, to quit smoking how they feel? Are they happy? Are they glad? The answer is always yes. They can do more. They and their kids are enjoying life better. They feel healthier. They have more money in their pocket as a consequence of not having the addiction as a part of their life. They do not say, ''Gee, I am mad at you because you helped me stop smoking.'' They are glad.

This piece of legislation, as far as I see it, that we are debating right now is an opportunity for me to go home and say, ''We are going to try to save lives, not just to try to prevent young people from smoking''—we have about 30,000 people in Nebraska who are underage who are smoking cigarettes—but also to go to the adults, the 350,000 adults who are buying 100 million packs of cigarettes a year, and help them stop smoking, to save their lives, to decrease their out-of-pocket spending for tobacco, and to give them a shot at the American dream—at least connected with tobacco—and able to say, ''I am healthier and, as a consequence of being healthier, happier as well.''

There are two provisions of this bill—I don't know if the Senator from Arizona wants to respond to any of them or not—that concern me. The first is the provision for the tobacco farmers. I will wait until my friend from Kentucky comes down to the floor. I will have a chance. The Senator from Indiana has an amendment down there.

First of all, I want to say that without the Senator from Kentucky and the Senator from South Carolina, there would be no provisions in here for tobacco farmers. I agree with them; there need to be some provisions for tobacco farmers to help them as we move from the old era, when we were neutral as to the health impact of this naturally grown product, to a point where we now say we want to help people stop smoking because it is killing them, it is ruining their lives and ruining their health. As we go from that point, it seems to me reasonable that we ought to have some transition payments for Americans who earn their living by growing tobacco.

There are about 740,000 acres of tobacco acreage nationwide. To put that in perspective, one of the reasons I am concerned about it is, in Nebraska we have about 22.5 million acres for other crops, and 1.5 billion nationwide; 740,000 acres of tobacco quota against about 1.5 billion acres for all other agricultural products. Freedom to Farm, which I think we ought to pattern the tobacco language after, Freedom to Farm was about $36 billion total for 1.5 billion acres.

It seems to me we ought to be looking for some way to pattern the tobacco farmer portion on what we have done for other farmers in this country as we transition into an era where we say, ''You are going to have the freedom to make your own decisions, plus the market will allow you to decide how you are going to plant and what you are going to plant.'' I have a very difficult time voting for something that has $28 billion for tobacco farmers when I did $36 billion for all farmers, including mine in Nebraska. We paid out at that time about 10 percent of the value of the crop. Ten percent of the value of the crop was one of the bases to come up to use for the payment.

I hope again I am able to work with the Senator from Kentucky, because I applaud his work, the work of the Senator from South Carolina, and the work of the Senators from Virginia and North Carolina. Lots of people have had input into this to make certain we do something to help the tobacco farmer. The question is, How much are we going to help?

I am troubled by that provision, I say to my friend, the chairman of the committee, who is trying to figure out how to manage this across the line. I hope to be constructive in getting that done. I voted against putting another 40 cents on. I will probably vote against the amendment of the Senator from New Hampshire, even though I voted for it before when it was on the budget resolution, because it seems to me that you have increased the cap on liability. I think it was 6.5 in the first bill. It is now $8 billion a year. That is a lot of money. We are not giving the tobacco companies—I think people said we don't want to give tobacco companies special treatment. They will be required under this legislation to pay $23 billion a year into a tobacco trust fund. That is not my idea of giving somebody in the private sector special treatment. It seems to me that it is a reasonable tradeoff in order to be able to fight this battle.

To me, the most exciting thing about this legislation, now that we have the full truth about what tobacco can do, is I will be able to go home and say this legislation will enable us to organize community-based efforts to help not just our children keep from starting to smoke but also help in my State 350,000 adults who currently smoke whose lives, in all likelihood, are going to be shorter and they will be less healthy as a consequence.

That leads me to the second concern I have. Again, I have an amendment on the tobacco farmer portion, depending on the disposition of the Lugar amendment, that will place a greater emphasis on prevention and smoking cessation. I really have come to a point now where I say what makes it work for me is to be able to go home to Nebraska and say this bill helps save lives. That is what we are doing. If I can get that done, if it enables me to save lives, it seems to me I have something that I can make work at home.

To that end, the amendment that I have prepared—and I am not going to lay it down right now because we have one that we are debating—would take the money and, instead of ramping up from I think $15 billion initially up to $23 billion a year, the breakdown is, 40 percent of that money goes to the States, 22 percent of that money goes to NIH, 22 percent of that money goes for smoking cessation, education, and international trafficking—to stop international trafficking—and, as I understand it, 16 percent I think is left that goes for tobacco farmers. As I said, I think that 16 percent is too high. We have prepared an amendment, depending upon the disposition of the Lugar amendment and depending upon my ability to be able to negotiate about the Senators who worked hard on this provision.

But I believe what would also increase the likelihood of being able to save lives at home, being able to make this thing not just a situation where, as a result of increased Federal regulation through FDA, as a result of the tobacco industry raising the price because of the fees they will be paying into this national trust fund, another way to do it would be to take that 40 percent that is allocated to the States and add the 6 percent that ends up being estimated for prevention in the third area, and consolidating all that into a block grant that would go for smoking prevention and cessation, insist in the language of the law that the Governors put together a community-based organization to come up with a plan to help people stop smoking and have HHS approve that plan. I think it would allow us to have a steady stream of money that would come into each one of our States.

I am uncomfortable about having anybody but Members of Congress deciding how money is going to be spent. I love my Governor. I love all Governors. They are all great Americans. But as far as I am concerned, the Constitution gives me the authority to vote to raise taxes and vote to spend money, and I think that is what we ought to be doing.

As concerned as I am about getting more money into Medicaid, the thing that I have to do in order to make this successful is I have to have those people out there who are smoking stop smoking.

So I would at some point come to the floor and offer an amendment. I hope to have some conversations with the chairman and the ranking member on this, because I think we could improve the bill substantially if our goal is to save lives and reduce the number of people who are smoking, not just stopping young people from becoming smokers but helping those who are already smoking stop in order to be able to save their lives. It seems to me we ought to consider that the funding language in here needs to be altered and a much greater emphasis placed—indeed, it ought to be the most important emphasis—on smoking cessation programs.

Let the Governors write a community-based plan. Make them engage the community. It is much more likely at the local level that real answers are going to be found for this problem. It is not as easy as it sounds not just because of addiction but because of other reasons to stop smoking. I think it is much more likely they will come up with plans that work.

Let us, as a consequence of our concern for public health, work with those community groups to make certain that the money is going in that direction.

I discussed as well with the managers creating a tobacco scholar through NIH funding for every State. I don't know about other Senators, but I need a lot of help with numbers, with what the research is saying. Not only do we put more money into research, but it is likely that all of us are going to see State-based efforts to reduce smoking, and if we have to scramble around and try to figure out what the data is, to try to figure out what the facts are, it gets difficult to do it.

So I am here. I say to my friend from Arizona, I like what you have done. You have a good bill, it seems to me, in the Chamber, one that if we can get it passed, get beyond all the problems of price increases and concern for the poor, and so forth, I say to my friend from Arizona, will enable you to say you have saved millions of lives as a consequence of this law.

That will be my hope. And, indeed, I believe it is reasonable to assume, as I look at the language of this law, that we will as a result of helping people not smoke to begin with and stop smoking if they have made that decision and became addicted to nicotine, their lives will be happier and longer and healthier as a consequence of this legislation. Thus, there is an urgency to do it, an urgency to make sure we don't make the perfect the enemy of the good. There are lots of good amendments coming up. I have some ideas. All of them are not going to be incorporated. We still have the House to get through and the conference to get through. So I praise very highly the fine work the chairman has done on this thing, and I hope the wishes of the majority leader will be heard and that we are able to get this thing done before we get out of here for the Memorial Day recess.

Mr. President, I yield the floor.

Mr. MCCAIN. Mr. President, I thank the Senator from Nebraska for his thoughtful and measured remarks, and I appreciate his willingness to compromise, which has been a trademark of the Senator from Nebraska for a long time.

I would not ask him if he felt the same way about our relations, congressional relations with Governors when he was Governor of the State of Nebraska. I will leave that question unanswered at this time. But I do again thank him for his thoughtful approach. Obviously, he has studied this very complex issue and a number of his recommendations, I believe, are important and may be adopted either by agreement or in amendment form. I thank the Senator from Nebraska.

Mr. President, because of the schedules of Senators, it is now my intention to move to table the amendment sometime around 2 o'clock. A number of Senators are off the Hill and will not be back until that time. Also, I understand the distinguished Democratic leader would like to make some remarks before the vote.

Mr. President, I know that the Senator from California and the Senator from Illinois and my friend from Texas all want to make remarks. But I will just take about 2 or 3 minutes to say I paid attention to the remarks of the Senator from Oklahoma. I appreciate them. Many of them were constructive. Many of them I profoundly disagree with and cannot and will not at this time respond to over an hour of comments and an in-depth discussion of the bill.

But the criticisms of the Senator from Oklahoma basically boil down to four fundamentals: One is a tax increase; second is big spending; the third is big government; and the fourth is the argument that it will not stop kids from smoking.

I will briefly address that in general terms and at a later time I will give more specific responses to the Senator's very strong and, by the way, well-meaning criticisms of the Senator from Oklahoma.

The argument that this is nothing but a tax increase would have some validity if it were not for the fact that there will be an increase in the price of cigarettes even if this body and the Congress of the United States do nothing.

Two weeks ago, there was another settlement, the fourth made between the industry and a State. It was between the industry and the State of Minnesota. What was the agreement? It was a $6.5 billion agreement, the largest yet on a per capita basis. And guess what is the result of that agreement? An increase in the price of a pack of cigarettes in Minnesota in order to pay for the settlement.

I might point out that settlement was double the settlement that was achieved by the attorneys general with the tobacco industry last June 20. As we see settlement after settlement after settlement, we will see an increase and an increase and an increase in the price of a pack of cigarettes. So we will either enact an increase in the price of the pack of cigarettes, earmark it to the worthy causes, the four that we have laid out, the States, public health, research, and the farmers, or we will watch as State after State goes to court, achieves a settlement or a jury verdict, and we see the same result.

What is the problem with that? The only problem with that is 3,000 teens start smoking every day and 1,000 will die early as a result of health-related illness. So, Mr. President, if you want to call this a price increase, that is fine. But if anybody in America believes there is not going to be a dramatic increase in the price of a pack of cigarettes as a result of negotiations or litigation, they simply have not observed what has happened in the case of the four previous States in the past several months. And 36 more States, at least, are lined up to go to court.

Now, this also does touch to some degree the argument my friends have about attorney's fees. The last I saw—and I don't keep close track of what happens in Florida—the plaintiff lawyers were going to get $2 billion out of the settlement. I think we need to address the issue of lawyer's fees, but if you are worried about it, I would think you would then support a comprehensive settlement as opposed to watching this go on. It isn't just the lawyer's fees that will cost the taxpayers. It is the cost of litigation, which we know is serious.

So if you want to call it a tax increase and quote the biggest in history, blah, blah, blah, then that is your right. But I think in all fairness, in all fairness, you ought to understand the consequences of failure to act, which will be larger increases in the cost of a pack of cigarettes, larger litigation and more delay and, finally, of course, the problem that we need to address and that is the issue of kids smoking.

The second argument is that it is big spending. Let me point out that 40 percent, the biggest chunk of this settlement, goes to States that have incurred costs associated with Medicaid. That is where 40 percent of the money goes. And we also know that we don't know—that we don't know—exactly what it is that causes kids to smoke. We have some pretty good ideas. And, by the way, every single expert, including—including the chief executive of Philip Morris, who, while they were negotiating with the attorneys general, said, ''We all know that price rates are more sensitive to kids smoking than adults.'' That makes sense, obviously, since kids generally don't have as much money as adults do.

But if you want to call it a big spending bill, let's look at where the money is going to, and that is for research, and it is to go to health care, and it is also to go to farmers who are going to be dislocated by this. Remember also that much of the smoking prevention and cessation is in block grants so that the States will be able to do what they think is best with it.

Big government? This may be a big government solution. This may not be the solution that I would have had envisioned nor that the Senator from Massachusetts would have envisioned. This is as a direct result of the agreement which was reached between the attorneys general, 40 of them, and the tobacco industry, which set the stage for the fact that the U.S. Congress needs to act—or at least address the

issue. We may not act. We may not act. We may decide, as my friend, the Senator from Texas, will so eloquently argue, that we can't do this. But when the stage was set with that agreement last June 20, and we were going to have to act it out, what we did in the Commerce Committee by a 19-to-1 vote was put our imprint on it, and the benefit of our wisdom, our knowledge, and, frankly, that of every public health group in America, as well as many other organizations.

Finally, and I apologize to the Senator from California for taking this much time, but the other is that it will not stop kids from smoking. You know, I challenge anyone who says this bill will not reduce teenage smoking to find a single public health organization in America, that is legitimate, that is not on the payroll of the tobacco companies, that will say that an increase in the cost of a pack of cigarettes, plus youth cessation programs, will not have a beneficial effect on this terrible problem.

There was a chart, the Senator from Massachusetts saw it the other day, of the deaths in America. The bar graph was dramatically higher, tobacco-related illnesses death, as opposed to drunk driving, as opposed to many other causes of death in America.

If it will not work, then are we satisfied with the status quo? Are we satisfied that in America today this problem is not only real but growing? We had a Centers for Disease Control study just recently, teenage smoking is on the rise. Minorities in America, those teenagers are starting to resort more and more and more to the use of cigarettes.

So maybe it will not—maybe it will not stop kids from smoking. Maybe this will not work. But to accept the status quo, in my view, and think that just by passing a tax increase on cigarettes we will address that issue, will not do it. I challenge my friend from Texas, who is waiting to speak, I think, very soon. If the Senator from Texas can find a single public health organization in America—the American Cancer Society, the American Lung Association, the Coalition for Tobacco-Free Kids, any living—any living Surgeon General of the United States of America, who will say to you and this body: OK, just pass a tax increase, fund some tobacco cessation programs and that will do the job—then I think that should be an important part of this debate.

But the reality is, not a single one of those organizations will say that anything less than a comprehensive approach to this problem will do the job.

So I just wanted to take a few minutes to respond to the very well thought out and very studied and scholarly, in many cases, objections that were raised by the Senator from Oklahoma. That is what this process is supposed to be all about. I appreciate his input, as I do that of my dearest friend, the Senator from Texas, who has promised me, and I have promised him, we will remain smiling throughout this debate.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished chairman for his excellent comments. I would not say anything more substantively except to say I think both the Senator from Arizona and I, and others involved in this, believe that there are a number of good suggestions that have been made. I think we laid this down with the statement this is not perfect in the way that no piece of legislation that comes here is perfect. I am confident that in the process, if we are not seeking to kill it, we can find a way to meld some of the good suggestions that are being made into both acceptable amendments and amendments which can pass by their own weight. I hope we will do that.

Mr. President, I ask unanimous consent the Senator from California be recognized for 10 minutes. Following the Senator from California, the Senator from Texas, Senator GRAMM, will be recognized—not for a specific period of time—and following the Senator, the Senator from Illinois, Senator CAROL MOSELEY-BRAUN, would be recognized for 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KERRY. I amend that by asking if Senator HAGEL, the Senator from Nebraska, could be recognized after Senator CAROL MOSELEY-BRAUN?

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator KERRY very much for his leadership on this issue. Senator KERRY, Senator MCCAIN and many other colleagues, including Senator CONRAD and Senator DASCHLE, our Democratic leader, have put in so much time and effort on this important issue. I extend my thanks to them.

Mr. President, I have not spoken yet on the floor on the subject of tobacco legislation. I am going to be concise. Let me tell you why. I am going to be concise because this not is a difficult call for me. I am going to support the strongest possible tobacco legislation we can put together. I am going to support not the weakest, but the strongest tobacco legislation we can put together. There are two reasons for this. First, Smoking kills our people. Second, kids are the targets of the tobacco companies, which is a crime against them and against all of us. For these two critical reasons we must act now to pass the strongest tobacco legislation possible.

I have a couple of charts that I am going to share which I think tell the story. This one says, ''Tobacco Kills and Smokers Get Hooked as Teenagers.'' Approximately 90 percent of adult smokers started smoking at or before the age of 18. When they are older, 66 percent of them say, ''Oh, my God, I wish I could quit.'' We need to do something to help young people so that they are not faced with this painful, horrible addiction later in life.

How do you do that? You don't do that by siding with the tobacco companies. You do that by siding with the public health experts in this country.

This chart very clearly shows how people die from tobacco. We will start off with stroke deaths, 23,281. I am not going to round off these figures, because each one represents a real person, your father, your mother, my grandmother, my grandfather, et cetera. It is all of us represented in these numbers.

Lung cancer, 116,920 deaths from lung cancer. 134,253 deaths from heart disease. Bronchitis/emphysema deaths, 14,865.

This many deaths occur every single year. Every single year Americans have these painful, awful deaths.

Pneumonia, 19,173 deaths. Hypertension, 5,450 deaths. All of these deaths are related to smoking. Secondhand smoke cancer deaths—how is this one? These individuals don't even smoke, but they breathe it because someone they work or live with smokes and 3,000 people die every year. Absolutely proven fact, secondhand smoke kills 3,000 innocent people every year.

Other cancer deaths related, 31,402. Other cardiovascular diseases, 16,854. Other respiratory diseases, 1,455. And how about infant diseases; 1,711 infants are dying. Burn deaths, 1,362. Chronic airway obstructions, 48,982.

It adds up to 400,000 dead Americans every single year. In spite of this terrible fact, some of my colleagues are standing with the tobacco companies. I am sorry—count me out of that crowd.

Who am I going to stand with? RJR Tobacco? Philip Morris? No. I am going to stand with Dr. Everett Koop. I am going to stand with Dr. David Kessler. I am going to stand with the medical community. I am not going to stand with the tobacco companies. I am going to stand with the American Association of Public Health Physicians, the American Lung Association, the American Medical Student Association, the American Medical Women's Association, the American Patient Association, the Americans For Nonsmokers' Rights, the Association of Military Surgeons of the United States, the Association of Black Cardiologists, the Center for Women Policy Studies, the Child Welfare League of America, Chinese American Antismoking Alliance, Citizens for a Tobacco-Free Society, Interreligious Coalition on Smoking and Health, National Asian Women's Coalition—the list goes on and on and on.

I am going to stand with the public health community. If my colleagues want to stand with the tobacco companies, that is their free choice; they are free to do it, and they are also free to explain it to their constituents.

One of the things I heard yesterday from one of our colleagues, Senator ASHCROFT, is how horrible it is to increase the cost of a pack of cigarettes; isn't that terrible for poor people. The very people on this floor who are complaining that we are hurting poor people were never there when we passed the earned income tax credit that helped lift Americans out of poverty. They were never there when we raised the minimum wage. Now, suddenly, they are concerned. It is my opinion what they are really concerned about is the tobacco companies.

I don't hear these same people saying, ''Well, America, if you really want to put money in your pocket, you can give up smoking and pocket the money from the two packs or three packs you smoke a day.'' That is what they could be saying. When they talk about the tax on cigarettes, I don't think they are really concerned about poor people. I think they are concerned about the tobacco industry.

What I am concerned about is not just the cost of cigarettes, not only in dollars but in lives. 400,000 lives every year and 80 percent of them are hooked as teenagers. I am going to show you another chart.

This chart must look very dizzying on TV. Let me tell you what it is. It is 3,000 stick figures of children. That is how many kids become new smokers every single day.

Today, 3,000 children will start to smoke. Every third one will die from a smoking-related illness. These children are shown in the darker shade. Every third one will die.

I have seen colleagues come to the floor with charts about how with tobacco legislation there is going to be bureaucracy, and it is going to be terrible. You want to take a look at this —3,000 teenagers starting to smoke every day and every third one of them will die. That is what is truly terrible. What is terrible is that children are smoking and these children will die.

That is why I am standing here today. I urge my colleagues to listen to the arguments on the floor and remember that it all comes back to two issues: One is that every day 1,000 kids put themselves at certainty of death from smoking, and in every year, 400,000 Americans die and almost 90 percent of them started just like this when they were kids.

I have to tell you, passing strong tobacco legislation isn't even a close call for me.

Under oath the tobacco companies said, ''We do not market to children.'' They said, ''Our advertising is not designed to attract young smokers.''

But when the lawsuits were filed against the tobacco industry, they came up with all these smoking guns, if you will.

We have to compliment the efforts of dedicated government attorneys who worked on this. I would like to extend a special thanks to Louise Renne, the City Attorney for the City and County of San Francisco. It was due to her tireless efforts of that we have many of the documents that show how the tobacco industry targeted our children.

From a Philip Morris memo in 1981:

> It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens . . . it is during the teenage years that initial brand choice is made.

This is from a private, internal memo. And how about this:

> . . . Because of our high share of market among the youngest smokers, Philip Morris will suffer more than the other companies from the decline in the number of teenage smokers.

Philip Morris is going to suffer? Philip Morris is going to suffer if kids stop smoking? It is in black and white. I ask them about the suffering of people who die from these diseases. Have you ever seen someone die of lung cancer? Have you ever seen someone sit near you on a plane with oxygen going up their nose because they can't breathe? Philip Morris is going to suffer? Smoking is what causes real suffering.

I am going to stand with the public health officials. I am going to stand with them, and I am going to stand with them proudly. People can come on this floor, and I welcome their debate, but when you cut to the chase, the arguments against strong tobacco legislation are same arguments Philip Morris is making, they are the same arguments RJR is making, they are the same arguments that tobacco companies and their sophisticated lawyers are making. Their arguments have nothing to do with the hard, cold facts that they are trying to hook our kids.

As Senator MCCAIN said today, we know, we can do something about it and at least we know we cannot tolerate the status quo. That is what this tobacco legislation is all about.

A draft report from RJR said:

> . . . The brands which these beginning smokers accept and use will become the dominant brands in [the] future. Evidence is now available to indicate that the 14- to 18-year-old group is an increasing segment of the smoking population. RJR [tobacco] must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

It is time that we expose this danger these companies pose to our children. It is time to end the horrific costs to our society of losing a wife, a mother, a grandma too soon because when they were young, they got hooked on tobacco; they got hooked by companies who swore to God in front of this Congress that they never went after kids.

Why should we stand with the tobacco companies? Why should we? We shouldn't. We should stand with C. Everett Koop. We should stand with the American Lung Association. We should stand with the people who care about our children.

Brown and Williamson in 1973, another tobacco company said:

> Kool has shown little or no growth in share of users in the 26 [plus] age group. Growth is from 16 to 25-year-olds . . . at the present rate, a smoker in the 16 to 25-year-old age group will soon be three times as important to Kool as a prospect in any other broad age category.

There it is. For anyone to think that we should stand with those companies who went after our children—for anyone who thinks that is the right thing to do—I guess I just don't understand their position.

It comes down to two things: Smoking kills and they grab our kids, and they grab 3,000 kids every single day, and every third one will die of smoking-related illness.

These cigarette companies even discussed adding honey to cigarettes so they could grab the youngsters. Here is that quote. A 1972 Brown and Williamson document states:

> It's a well-known fact that teenagers like sweet products. Honey might be considered.

We have to do something. We should pass the strongest possible tobacco bill.

One successful way to reach the children is through education, and one proven success is to make sure that in after-school programs, our kids are taught about the dangers of drugs, alcohol and smoking. It works.

I am working on an amendment to make sure that when we support tobacco cessation programs, we do not disqualify after school programs. I am excited to say that it looks like that amendment will be accepted.

Mr. President, I see that my colleague is ready to attack on his point of view, and I am going to yield. If I might have 20 seconds?

Mr. GRAMM. If the distinguished Senator from California needs a couple more minutes, I have no objection.

Mrs. BOXER. I thank the Senator. If I could finish in about 60 seconds.

Mr. GRAMM. I ask unanimous consent the Senator from California have 5 additional minutes.

The PRESIDING OFFICER (Mr. FRIST). Without objection, it is so ordered.

Mrs. BOXER. Thank you very much. I will not be using that much time, I say to my friend. So I urge him to just stay on the floor.

I do not have complicated reasons for supporting the strongest possible legislation. It is simply about life and death. And it is very obvious to me that by passing comprehensive, tough legislation, we have a chance to stop kids from smoking and to stop the deaths and turn these awful statistics around. We have what may be a once-in-a-lifetime opportunity to do it. I hope we are going to do it.

Not every amendment that I vote for is going to be in the final package. I understand that. But I am going to support the toughest bill possible. I am going to offer an amendment to make sure that we support after school programs to educate our children against the problems of smoking. There are many effective after school programs

that teach kids about tobacco in a very straightforward, good way so that they resist the temptation and peer pressure to smoke.

So I am glad to stand with my friends in the Senate who look at this as an opportunity to stop deaths, to stop the targeting of our children. And I am very hopeful, Mr. President, that we will, in fact, end up with a strong piece of anti-tobacco legislation.

Thank you very much, I say to my colleague from Texas, for his generous spirit. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say if we pass this bill I hope that we will be successful in inducing not only teenagers but other Americans to come to their senses and to stop smoking.

Once in my life I was an economist. And any economist will tell you, other things being the same, at a higher price people will consume less of a given product. The problem, of course, in the real world is generally other things are not the same.

A concern I have raised that has not been dealt with is that no country in the history of the world, so far as I am aware, has ever imposed a tax at the level we are debating here and not had a black market for cigarettes develop.

In Britain, 50 percent of cigarettes are sold on the black market. In Italy it is 20 percent. Canada raised cigarette taxes to try to induce teenagers to stop smoking, but then their country was inundated with illegal cigarettes. The effect was to actually lower the price of cigarettes bought on the black market. Canada, in an extraordinary action, actually repealed the tax increase. And the minister of health said that by repealing the tax increase, and thereby forcing teenagers to attempt to buy cigarettes through legal channels they would reduce teen smoking. By limiting the economic foundation of the black market, they might be more successful in reducing teen smoking.

I am hopeful that, if in fact we raise taxes to the degree we are talking about, something good will come from it. Obviously, inducing teenagers to smoke less would certainly be a good thing.

The issue I want to address today, and the issue that I hope we will vote on before we go home for the recess, is the issue of what we are going to do with this money. We can debate endlessly what the tax increase is going to do and what it is not going to do. I am still very much troubled by the impact of this tax increase on real people.

In listening to many of the strongest proponents of this bill, you get the idea they are taxing tobacco companies. That somehow we are getting revenues from companies that have conspired to deceive the public, that have conspired to induce teenagers to smoke. Therefore, not only are we getting the good of higher prices and the impact that might have on consumption, but in fact there is almost a retribution quality to it.

I guess I have to temper that with a cold recognition that in this bill we are not taxing tobacco companies. In fact, we have an extraordinary provision in this bill that makes it illegal for tobacco companies not to pass the cost increase through to consumers.

So except for a look-back provision, where we are actually going to poll teenagers, and if we find that teenage smoking has not declined, we will have a look-back tax on tobacco companies and target those who we find, through the poll, are the preferred brand names.

It is interesting, because article I of the Constitution gives Congress the power to impose taxes. Nowhere has it ever been contemplated we would allocate that power to a pollster. And it is clear to anyone that provision is unconstitutional. But beyond that provision every penny of taxes we impose in this bill will be paid for by people who consume cigarettes.

Now, we might wish that were not the case. I wish it were not the case. But, unfortunately, that is the way the bill is written. In fact, as I said a moment ago, the bill is actually structured so that tobacco companies could not pay the tax if they wanted to. They are forced, by law, to pass it through to the consumer.

One of the things that troubles me is who this consumer is. I mentioned these numbers the other day, but they are relevant to the amendment I want to talk about today. Thirty-four percent of the new tobacco taxes in this bill will be paid for by Americans who make less than $15,000 a year. They do not own Philip Morris or any other tobacco company.

These people are, by the logic of this bill, victims. They have been induced to smoke. They have, in the logic of this bill, become addicted to nicotine. And if you had to classify them into a category, it would be the category of ''victim.'' And yet for people who make less than $15,000 a year, they are going to pay 34 percent of these taxes.

This is not a trivial amount of money. When you add up all the tax provisions in the bill, most of the estimates tend to indicate that a pack of cigarettes, which in my State sells for about $2, will rise in price to about $4.50 to $4.75 a pack. These prices are for a $1.50 per pack increase, which is substantially less than this bill will produce when you add up all its provisions.

An individual who smokes an average amount would pay $356 a year in new tobacco taxes. And for a couple making less than $15,000 a year, they will pay a whopping $712 in tobacco taxes from an effective increase in price of $1.50 per pack. To someone making less than $15,000 a year, $712 a year is a lot of money.

So what concerns me, and obviously does not concern many of my colleagues, is the impact of this tax on blue-collar workers. When I listen to the proponents of the bill, they make two things very clear. They care about driving up the price of cigarettes, and they don't care about the money. In trying to respond to the fact that 70 percent of Americans believe this bill is about taxes and not about smoking, over and over again they say, ''We want the higher tax because we want to discourage smoking, not because we want the $700 billion.''

Senator GREGG has an amendment pending which I do not believe will be tabled. I intend to vote against tabling the Gregg amendment. The Gregg amendment says that we shouldn't be granting immunity to tobacco companies for future suits. Basically the Gregg amendment strikes the provision that caps liability. I intend to vote with Senator GREGG. I don't believe his amendment will be tabled.

When his amendment is acted on, I intend to offer an amendment that addresses what to do with the money. I hope my amendment will have very broad-based support. I thought I would take the time now to explain it so that if the Gregg amendment is not tabled, and I can offer the amendment at that point, people will know what is in dispute, and those who want to come and speak on it can do so. I will offer the amendment for myself and for Senator DOMENICI. I know he will want to come over at that point and speak, and I am sure many others will want to speak for and against it.

The issue here is the following: If we pass this bill, blue-collar Americans making $15,000 a year or less will pay 34 percent of the taxes the bill will impose. Individuals making less than $22,000 a year will pay 47 percent of the taxes that will be imposed by raising the price of cigarettes. Those making less than $30,000 a year will pay a whopping 59.1 cents out of every dollar of taxes collected under this bill. In other words, this is not a tax that is randomly distributed among the general population of the country. The plain truth is, with a few exceptions, smoking in America today is a blue-collar phenomenon. The vast majority of people in America who smoke, and therefore who will pay this tax, are blue-collar workers. Almost 60 percent of this tax will be paid for by Americans who make less than $30,000 a year.

Now, this produces some extraordinary results. Were the following numbers not from our own Joint Tax Committee, they would be difficult to believe. Let me give you just two numbers. For Americans who make less than $10,000 a year, the taxes embodied in this bill will raise their Federal taxes by 41.2 percent in 1999. In the year 2003, when this bill is fully implemented and the tax is fully phased in, Americans who make less than $10,000 a year will see their burden of Federal taxes rise by 44.6 percent.

If our objective is not the money but to get people not to smoke by raising the price of cigarettes, shouldn't we

take some of the money we are taking from very moderate-income Americans and give it back to them by cutting other taxes? Couldn't we find a tax cut that would apply to moderate-income Americans so that we wouldn't be lowering the real standard of living for people who are the victims of cigarettes by having become addicted to smoking and to nicotine?

If a motion to table the Gregg amendment fails, I will offer an amendment with Senator DOMENICI. This amendment aims to take roughly $1 out of every $3 collected in these cigarette taxes and give it back to Americans with family incomes of less than $50,000 a year. We do it by repealing a provision of the Tax Code that is generally known as the marriage penalty. Let me basically explain how the marriage penalty works, what our amendment will do, and then wrap up. I see other colleagues are here to speak.

Under the existing Tax Code, we have an incredibly destructive provision that actually says when two young people meet, fall in love and get married, if they both work outside the home, they actually have to pay more taxes as a married couple than they would have to pay if they were single. Under our Tax Code, that average marriage penalty is about $1,400 a year. Now, I think I speak for many people who are married in saying that my wife is easily worth $1,400 a year. I would gladly pay that price and more for the privilege of being married, but I don't think the Federal Government should get that money. Maybe my wife should get that money. Also, I don't understand discouraging the creation of families when families are the most powerful instruments for human happiness and progress that have ever been created.

Let me remind my colleagues, if anyone has followed this debate, they know that everyone who has spoken in favor of this bill has said the money is incidental; that this is not about the money, they just want to raise the price of cigarettes. I will offer this amendment with Senator DOMENICI to help them fulfill that commitment and prove that is what they want. So our amendment is a very targeted tax cut that takes roughly $1 out of every $3 raised by this tax and gives it back to Americans with family incomes of less than $50,000 a year.

Here is how our bill will work. It will target families that make less than $50,000 a year. Right now, a married couple filing a joint return can earn $6,900 before they have to start paying Federal income taxes. If they filed separately and they weren't married, they could jointly earn $10,200 a year. If you wanted to state it dramatically, you could say that if they live in sin they can earn $10,200 without having to pay any income taxes, but if they get married they have to start paying income taxes after they earn $6,900. Now, almost everyone realizes this is a destructive tax policy, but we haven't been able to fix it.

What the amendment that I will offer for myself and for Senator DOMENICI will do is: for those who make less than $50,000 a year as a family income, we will give them an additional deduction of $3,300 a year. They will pay the same taxes whether they get married or whether they don't. The net result is a substantial tax cut for moderate-income working families. We will adjust this for inflation to assure that we preserve the real value of this deduction.

Finally, we apply it to the earned-income tax credit. As almost everybody here knows, if you work and you make modest incomes, you can get an earned-income tax credit. What we will do in our amendment is allow the marriage penalty in tax terms to apply above the line so that a working couple, a very-modest-income working couple, can deduct this correction for the marriage penalty before they calculate their eligibility for the earned-income tax credit.

Among the largest beneficiaries of the amendment that Senator DOMENICI and I will offer will be very modest income, blue-collar workers earning very low wages. What we will do is allow this deduction to apply to the earned-income tax credit.

If our amendment is adopted, roughly one-third of the tax that is collected on cigarettes would be given back to the very blue-collar families that will bear the largest burden of taxation as a result of taxing cigarettes. Some couples will pay $712 a year in new cigarette taxes under this bill.

Under our amendment, the price of cigarettes would still go up as mandated by the underlying bill. To the degree that people respond to the higher price, we will have the impact of that rise in the price of cigarettes, but we will not be making modest-income workers poorer by the amount of the tax because we will take $1 out of every $3 of the tax and give it back to the very same families by repealing the marriage penalty for middle and moderate income couples.

Now, why is that important? It is important because the very people who are going to be hurt the most by this tax are moderate income people who have been victimized by tobacco companies. I am sure my colleagues are having their offices flooded with letters and postcards, as I am, from people who are basically saying, ''I have a very modest income and I smoke, don't raise my taxes; tax the cigarette companies.''

Well, what we are doing here in our amendment is allowing the increase in the price of cigarettes therefore discouraging smoking, but we are giving at least part of the money back to middle-income and moderate-income families.

So I hope my colleagues will support this amendment. I think it is very important that we vote on a tax cut as part of this bill before we adjourn. If we don't do this, we are going to have done something extraordinary in this bill, and I can't help but be struck by the paradox of it. In this bill, we are saying that people who smoke have been victimized by the tobacco companies; yet, we are turning around and taxing the people who smoke because the bill prohibits tobacco companies from not passing the tax through to the people who smoke.

So while many people view this bill as firing a shot with a tax at the tobacco companies, in reality, the tax is hitting very moderate-income, working Americans. It is hitting the very people who have been victimized by the tobacco companies. The amendment that Senator DOMENICI and I will offer after the motion to table the Gregg amendment fails says, since the proponents of the tax pledge that this is not about the money, that it is not the money they want, it's the higher price of cigarettes, go ahead and take the tax, but, as a modest down payment, let's take $1 out of every $3 we collect in cigarette taxes and give it back to moderate- and modest-income families. Let's make it subject to the earned-income tax credit so that very low-income, working Americans will not be hurt as badly. If both members of the married couple smoke, they will be paying $712 a year in Federal taxes under this bill. Let's eliminate the marriage penalty under the Tax Code for middle- and moderate-income families so that while the price of cigarettes goes up, they don't find themselves economically crushed by it. They will have an incentive to quit smoking, but at least a third of the money would come back to them by eliminating a discriminatory provision in the Tax Code.

I would like to go further than this amendment, and we will have an opportunity to do that. But this is a first installment. I think it is very important that we vote on this amendment before we recess, since it is clear that we will not finish the bill this week. I hope that my colleagues will support this amendment when Senator DOMENICI and I offer it to the Gregg amendment, hopefully, immediately following the motion to table the Gregg amendment.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized for 15 minutes, to be followed by the Senator from Nebraska.

Mr. CHAFEE. Mr. President, may I make a unanimous consent request? I ask unanimous consent that I might follow Senator HAGEL?

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

Mr. HATCH. Mr. President, I ask unanimous consent that I be privileged to follow the distinguished Senator from Rhode Island.

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

The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, I would like to take a moment to

share some general thoughts with regard to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act.

It has been said on the floor before that the fundamental goal of the legislation is to significantly reduce smoking among the Nation's youth. That, of course, is a goal that I think everyone can support. I certainly support it.

I am going to take a slightly different tack, Mr. President, because I am a reformed cigarette smoker. I say to the Senator from Kentucky, I recently stopped smoking—successfully. And this time, for real. I developed the habit when I was a teenager, at a time when the tobacco companies were still marketing their products as being ''safe.'' In fact, I am old enough to remember television commercials portraying a ''doctor'' with the white coat on, with a stethoscope around his neck, talking about how one cigarette brand was ''healthier'' for you than another brand. Well, of course, we all know now that they were lying to us, frankly. The tobacco industry knew at the time that cigarettes are not healthy, they are not safe, and that they are all addictive. Cigarettes lead directly to a variety of cancers, emphysema, heart disease, premature death and, I point out to the ladies, wrinkles on your face. That is something tobacco companies have known for a long time; they just did not tell us, and they were not very candid about it.

I very much wish that the measures we are discussing today had been in place when I was a teenager, because those measures might well have prevented me from starting to smoke in the first place. Since they were not, I started smoking many years ago and I have struggled since to quit smoking. I am now winning the battle. I haven't smoked in months. But I can tell you firsthand just how difficult it is to quit and stay off of cigarettes. It is a fact that cigarettes are addictive.

We all know, again, that the tobacco industry knew full well that once young people started smoking, it would be very difficult for them to ever break the habit. Eighty-nine percent of all smokers begin smoking by the time they are age 18. People tend to start young. And eager to maintain its market, based on its own research—because they had a lot of money to put into research, population studies, and the like—the industry came along and specifically targeted children and young people in the hopes of creating lifelong addicts.

Its efforts have paid off handsomely. Today, more than 4 million American children and teenagers, including over 180,000 Illinois children and teens, smoke cigarettes. Seventy percent of Illinois high school students have tried cigarette smoking and about 35 per cent are current smokers. Teen smoking has risen for five years in a row. And if nothing is done, 5 million Americans who are now children, including over 260,000 Illinois children, will die prematurely from tobacco-related diseases. Illinois children and teenagers currently illegally purchase over 12.9 million packs of cigarettes each year, resulting in almost $25 million in cigarette sales.

This is a lot of money. That is one of the reasons this bill is so contentious, because there is an awful lot of money involved in this debate.

But tobacco products are responsible for enormous damage to all of our citizens, not just children. Twenty-three percent of Illinois adults are smokers. Smoking accounts for nearly one in five deaths in the United States. It is related to over 419,000 U.S. deaths each year and over 19,000 deaths in Illinois—more than alcohol, car accidents, fires, suicides, drugs, and AIDS combined. Approximately half of all continuing smokers die prematurely from smoking. Of these, 50 percent die in middle age, losing, on average, 20 to 25 years of life.

That is probably one of the reasons my teenage son, who is not a smoker, badgered me about smoking. I mean he was just relentless. He would take cigarettes and put them in the toilet so they would get wet. He would hide them. He would send me pictures of diseased lungs. He even started sending me pictures from National Geographic of spectrographic outlines of nicotine, the chemical component of nicotine. When it is put on the spectrograph, it looks like cigarette smoke. He thought this was hilarious. He was continuing to put pressure on me, and he succeeded. In addition to the fact that he would come up with all of the evidence, probably the most profound thing that he did was to say to me, ''Mom, I want you to live, because I love you.'' Of course, no dollar amount can you put on that kind of motivation. In part, I tried to stop. I have at this point stopped because of those motivations.

But, in addition to the terrible human costs, the American affair with tobacco—as some have said on this floor, our country was built with tobacco from our earliest years—has exacted an immense economic toll.

Tobacco-related illnesses cost the United States more than $144 billion a year in health care costs and lost productivity. Even though smokers die younger than the average American, over the course of their lives, current and former smokers generate an estimated $501 billion in excess health care costs.

So the smokers account for a large part of the tremendous cost of health care in this country as well.

On average, each cigarette pack sold costs Americans more than $3.90 in smoking-related expenses. Whatever the cost is of the cigarette that you buy, the taxpayers of this great country all have to chip in to try to take care of people like me who got addicted by these cigarette when they were teenagers.

We now have proof that the tobacco companies knew precisely what the impact of their products would be. According to their own internal documents, these companies hid the truth regarding both the dangers associated with smoking and the addictiveness of their products. They even went so far as to testify falsely to the Congress when questioned on these issues for years, failing to disclose and hiding at all levels of industrial espionage associated with keeping the truth from the American people. But it is out now. Everybody knows the facts pertaining to the impact of smoking and the addictive nicotine and cigarettes. It is not even a debate anymore. These are true facts. They are indisputable facts. So the question becomes, What is it that we policymakers are going to do about it?

It is time for the tobacco industry not only to be held accountable for marketing a product it knew to be unsafe but to assist in the effort to drastically cut the number of children who become addicted to cigarettes. While the bill now before us is far from perfect, on balance, I believe it offers us the only real chance we have to accomplish that goal.

The original Commerce-reported bill, in my view, offered too much liability protection for tobacco companies, and too little penalties for failing to meet the legislation's targets for reducing smoking among our children and teenagers. I am pleased, therefore, that the yearly cap on surcharges for the tobacco industry for not meeting underage user reduction targets has been raised to $4 billion. I also strongly support the new uncapped, company-specific surcharge of $1,000 per underage user in excess of the yearly reduction target.

I particularly want to commend the negotiators for removing the grant of total immunity to the parent companies and affiliates of cigarette manufacturers. Parent companies are where some of the most significant—and reprehensive—decisions have been made, and they are where the profits from the sales of cigarettes ultimately go. Those companies must be held accountable and under this new version of S. 1415, they are.

I also think the bill's treatment of the liability cap issued has improved. I remain very uncomfortable, frankly, with the provision currently in the legislation which may get amended, that caps the amount that the industry must pay out in any given year for past, present, and future damages resulting from the use of its products at $8 billion annually. I recognize that this cap was raised over the weekend from $6.5 billion, but I do not believe that the tobacco industry is entitled to any cap at all. That is why I will vote in favor of an amendment that will remove the that cap. because I just think that people who have been harmed ought to be able to sue and to be compensated. It is just that kind of basic. I don't think putting a cap on liability and a shield like this is good policy in this situation.

I am very much in favor of the decision to establish a Public Health Account within the unified trust fund. I believe that it is critical to target the money that the government will receive from this settlement, and strongly support the negotiators' decision to allocate 22 percent of the government's annual receipts to smoking education, prevention, and cessation programs as well as to counter-advertising initiatives. Nothing can beat education. I think the fact that we have true facts and we have educated so many people is one of the reasons there has been a change in the climate of opinion around the propriety and the acceptability, not to mention the dangers, of smoking.

I am also concerned, however, about the fact that this new $1.10 fee that consumers will have to pay every time they buy a pack of cigarettes will fall mostly on moderate- and low-income Americans. That argument has been raised here on the floor, and it is true. Almost half of the tax increase—whether you call it a fee or a tax it is still money on top of the price of cigarettes. Almost half of that increased burden will fall on Americans who smoke and who make less than $30,000 annually, and 70 percent of it will fall on American smokers who make less than $50,000 annually. That means that smokers making $10,000 or less —which is really poverty in this country—annually will see their Federal tax burden rise by an astonishing 44 percent.

The sad truth is that smoking behavior, the actual cigarette smoking, is disproportionately concentrated among moderate- and low-income Americans, and they are the ones being asked, frankly, to make the greatest financial sacrifice on behalf of our children and the public health. This fact gives me real pause. Frankly, I didn't think I would ever want to support—as a matter of fact, I tend to take a position against regressive taxes of this kind. Everything that I know about hard-working Americans who are of marginal incomes tells me that this tax will be tough for them to swallow. But at the same time, the truth is that smoking is voluntary behavior. So it is a tax you can choose not to pay—a fee you can choose not to pay—and it is precisely that decision that we are trying to inspire.

It is also true that we do not have hard evidence that the reductions that are called for in the bill, the reductions in smoking behavior by our children, will be guaranteed. We do not have guarantees about that. We do not know for certain that price increases, advertising limitations, and the other provisions of this bill will ensure without any doubt that children and teenagers will not smoke. Smoking rates among the young dropped during the 1980s, and they have climbed up again during the 1990s. Frankly, there is no real explanation for these trends except that it is a matter of popular behavior and kids doing as they see their friends and their pals doing and role models in their own lives. I am hopeful that this new fee will help make smoking less glamorous, less appealing, and will encourage young people not to waste that money on something that is ultimately hurtful to them as well as the community as a whole.

I have used the word ''hope.'' It is used a lot in this debate. Those of us who support the legislation are hoping that this bill will mitigate and reduce teen smoking. We are hoping that it will improve the public health. We are hoping it will help reduce the amount spent on health care. And these hopes, I think, are well founded and well represented in this legislation.

This bill represents a huge gamble that we should and must take. Given what we know about the risks and consequences of smoking, we cannot just sit by and do nothing; we have to act. We have to do everything we possibly can to discourage our young people from taking up this habit. We have a duty to our children, to all of our Nation's children, to do everything we can to help them stay away from the addictive effects of nicotine.

Mr. President, a strong coalition of health, public interest, and governmental organizations agrees and shares those hopes. A coalition of at least 48 major organizations including the American Cancer Society, the American Academy of Pediatrics, the American Medical Association, the Campaign for Tobacco-Free Kids, the Association of American Medical Colleges, and the National Association of County and City Health Officials, all of these organizations support comprehensive, effective tobacco control legislation.

Moreover, while it is impossible to be certain that maybe price increases will achieve the kind of reductions in smoking by children this bill sets out, the best experts in this area in terms of the relationship between price and behavior, including economists from the University of Chicago in my hometown and others in the administration, tell us that a quick, dramatic increase in the price of cigarettes will likely result in major reductions in teen smoking. So I am hopeful that despite my real concerns about the inadequacies of this bill in the liability area, my real concerns about the regressive nature of the tax involved, and my real concern that this bill does not ask the tobacco companies to endure the same kind of sacrifice that it imposes on their adult customers, I do intend to support the legislation.

It seems to me there is no other choice. As someone said to me—and I don't know whether it has been mentioned in the debate—if it is a tossup between death and taxes, I will take taxes. This is a situation where the choice is pretty clear, that we have an obligation to the public health and we have an obligation to our children to at least try to do what we can to erect barriers to the kind of destructive behavior cigarette smoking represents.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Nebraska is recognized.

Mr. HAGEL. I thank the Chair.

Mr. President, I rise this afternoon to reflect on some of the dynamics of the debate on the tobacco bill. I think it is important we as a body step back and focus on some of the various dynamics and the consequences of what we may or may not do as this debate goes forward. And it should go forward. Nobody disagrees with trying to reduce teen smoking. That is not an issue. We are all here to try to do the right thing. The focus on teen smoking, after all, was the core issue that really began this debate more than just a year ago.

I do not question the motives of my colleagues on either side of this debate. My colleagues on both sides of this debate are trying to do the right thing, trying to focus on making this a better world. I should also say, in the interest of full disclosure, I do not smoke, never have smoked, don't care about smoking. I think it is an unhealthy, bad habit, but at the same time I think we owe this country a good, honest debate about the issue from many of the dynamics, and certainly the constitutional dynamic of what we are about to do or may do is important.

I also think it is important for us to look at some of the societal and cultural consequences of this debate and of what action we may bring in the Senate over the tobacco bill, because if we do do something, it will have an impact on society, and it will have an impact far beyond just raising taxes and making government bigger, with more unaccountable regulations. This will have a very significant impact on our society.

I do fear, as I believe many of my colleagues fear, the great law of unintended consequences when we do not think things through very clearly. As we frame the debate, as we frame this issue, I fear that we are not including all that needs to be framed and debated here. As I have listened to and observed a number of presentations, all using statistics, information, and numbers, we pull them from everywhere. But the fact is, we do not have good, accurate information on this issue. I look at the number that is being used by almost everyone here, that this bill would reduce teen smoking by 60 percent. But where do we get the number? Where are we pulling our assumptions from?

I have here a copy of the New York Times story yesterday headlined ''Politics of Youth Smoking Fueled by Unproven Data.'' It has some interesting points. This New York Times article says, for example:

> But with the Senate having begun debate on Monday on tobacco legislation, many experts warn that such predictions are little more than wild estimates that are raising what may be unreasonable expectations for change in rates of youth smoking.

Another point in this article I think is pretty important.

Politicians and policy makers have tossed out dozens of estimates about the impact of various strategies on youth smoking, figures that turn out to be based on projections rather than fact.

''I think this whole business of trying to prevent kids from smoking being the impetus behind legislation is great politics,'' said Richard Kluger, the author of ''Ashes to Ashes,'' a history of the United States' battle over smoking and health.

He goes on to say:

It is nonsense in terms of anything you can put numbers next to.

This certainly does not minimize the seriousness of what we are about. It does not minimize the seriousness of teenage smoking, again, if that is the focus, if that is the reason in fact we are debating this.

Other assumptions that get thrown into this as well are somewhat faulty. We know that we are today debating a massive tax and regulatory bill, and we tend to glide over that. I will give you some statistics that actually are accurate from my State, from Illinois, Hawaii, and Massachusetts, four States that have raised—raised—cigarette taxes in recent years, and they have all seen teen smoking increase. In 1993, Nebraska raised the cigarette tax to 34 cents. The number of Nebraska teenagers who smoke increased by about 20 percent over a 3-year period.

Now, some might say, well, 34 cents is not enough; you have to raise it to where it really hurts. But I think we can understand and get some sense of focus that increasing taxes at least predominantly as the great dissuader of teenage smoking is far, far from being proven. USA Today had a very interesting front-page survey a couple of weeks ago in its newspaper, and it reported such things as, ''Only 14 percent of teenage smokers said higher cigarette prices would make them quit.'' The same survey in the USA Today said only 12 percent believed requiring a photo ID to prove they are adults when buying cigarettes would make them quit.

Another dynamic of this debate, which again seems to get very little attention, is, How would this change the power of the Federal Government? Would it increase unaccountable, essential unaccountable Federal regulation through the Food and Drug administration? Yes. Considerably. It would give the Food and Drug Administration unprecedented authority to regulate as yet still a legal product. Now, if this body really is as concerned about tobacco as we are representing, why don't we have the guts to just step up and ban tobacco as an illegal drug? Why don't we do that? Why don't we be honest enough about this issue to bring it down here and debate it and say we are going to ban tobacco and say it is an illegal drug? Or let's nationalize the tobacco companies?

The point is that we are not being totally honest with what we are doing. Where will the money go? The numbers float around. Is it a $565 billion bill? Is it a $750 billion tax bill? Where is this? We do know it is in the hundreds of billions of dollars. We do know that. Where is this money going to go? Where is the money going to go? Because we also know that all that money, whether it is $500 billion, $600 billion, $800 billion, can't possibly be used for teen smoking programs. So, does that give us some impetus to tax more and to do more and, therefore, find, at the end of the rainbow, a pot of gold? More Government programs, more Government, more bureaucracy, more regulation. I think that is an important dynamic of this debate. Higher taxes, obviously. Nobody has yet denied that. Nobody has denied, yet, that we are, in fact, increasing taxes. Not just increasing taxes but we are really increasing taxes by a new dimension here.

Where does that money go? For example, we do know somewhere, in all these bills out there, there is a figure we can get pretty close to focusing on, that, over the next 8 years, at a minimum, we would be raising about $130 billion in new taxes.

There are some constitutional issues, believe it or not. Again, let's face the facts here. What we are doing here, we are expropriating a legal industry. We are expropriating a legal industry for the first time in the history of America. I said at the beginning of my remarks that I don't smoke. No one can come to the floor of the Senate and defend the tobacco companies' conduct, their behavior. It has been outrageous. That is not what this debate is about. Let's not get ensnared in the underbrush of that debate. Let's be careful here how we frame the debate.

Nobody that I know of is on the floor of the Senate defending the tobacco companies. That is not the issue. We are defending some constitutional rights here. We are defending the honesty of how we are getting at this issue. Again, if we wish to take tobacco and criminalize it, that is certainly an option. If we go forward and do what some in this body intend to do, and want to do, essentially expropriating a legal industry, then what kind of precedent does that set? I think, first of all, constitutionally it would be out, but what kind of precedent does that set? Who is next? Caffeine? Diesel fuel? Who is next? That is another consequence, another dynamic of this debate on which we should reflect.

Just one example of a constitutional question is—I think we all understand it does raise some very serious constitutional questions. For example, the Federal district court in North Carolina ruled that the FDA cannot restrict advertising and promotion of tobacco products. We have a legal system for this. We have a legal system that works pretty well in this country. It has worked over 200 years.

Again, this is not a matter of defending the tobacco companies. That is not what this is about. This debate, parts of it, remind me of other debates we have been engaged in about the environment or religious persecution. I do not know one Senator who wants dirty air and dirty water and a dirty environment. Nor do I know one Senator who supports religious persecution. It is always a matter of how you improve it, not either/or. This is a good example of that kind of debate.

Black market—my friend from Texas talked a little bit about that an hour ago. It is a very, very real concern, a very real issue. For example, after increasing its cigarette taxes in the late 1980s, Canada saw a huge increase in the black market for cigarettes. By 1994, one-third of the Canadian cigarette market was contraband. Is that where we are headed here? We need to talk about that. It isn't just Canada. How about Sweden? Recently, Sweden lowered its cigarette tax by 27 percent to reduce smuggling from Denmark. England estimates it loses over $1 billion in tax revenue every year because of smuggled cigarettes.

My friend from Montana, Senator BURNS, tells me the biggest export in Montana is—wheat? No, it is contraband going to Canada, illegal cigarettes—another dimension of this that we need to be very seriously looking at, the consequences of a well-intentioned action.

The State of Washington estimates that 27 percent of its cigarette market is now contraband—that is now. The State legislature moved the enforcement power of the cigarette tax from the State revenue department to its liquor control board, ''whose agents carry guns and have complete police powers.'' Is that a consequence we want from this?

Personal responsibility—my goodness, my goodness. The very foundation of this Nation is rooted in personal responsibility. Where has been the debate on this issue about personal responsibility? There was a lot of debate about blaming everybody for one's actions. It is the Army's fault. It is the Army's fault that I started smoking. It is the Government's fault. It is the tobacco company's fault. It is everybody's fault, except mine.

What does that say to our young people? Why have I not heard any connecting issue or debate in all the debate that has raged on so far about personal responsibility—consequences for one's actions? Our young people need to understand that actions have consequences. They need to understand that. Yes, we need to help them. Yes, we need to protect them. But that should be part of the debate, talking about personal responsibility—not that it is everybody else's fault. That is a dynamic of this.

Mr. HARKIN. Will the Senator yield on that point?

Mr. HAGEL. I will be very happy to yield when I finish. I thank the Senator.

The Federal Government, no government, can tax or regulate young people's behavior. That is silly. That is complete folly. Come on. How many

parents do we have in this body? How many people in this body have dealt with young people? I suppose everybody in this body remembers when they were 16, 17, 18—and you believe that the Government is going to regulate behavior and change behavior? We are going to make everybody's lifestyle healthier? That is another dynamic that has not been debated in this.

Ignoring other problems—isn't it interesting that the real problems in this country for young people, far more severe and far more immediate, are with illegal drugs and underage alcohol use, but, yet, we are not talking too much about those issues today. Why aren't we? Because we are losing the illegal drug debate and war. More young people today are on illegal drugs than before. It is a tougher issue. It is everybody's concern. But we beat our breasts down here and say, aren't we doing something great because we are going to take care of underage cigarette smoking.

By the way, you can look at numbers and polls on this. I know they all have them, and I have one done by Citizens for a Sound Economy, May 13 to 15 of this year, asking 1,200 Americans, as parents, what their biggest concern for teenagers is. No. 1, illegal drug use, 39 percent; gangs, 16 percent; alcohol, 9 percent; tobacco use, 3 percent. Again, does this diminish the importance of this issue? No, of course not, but let's have some perspective in this debate. And there are other problems that young people face. We have numbers from polls and from very conclusive studies that show what I am talking about.

Let me conclude, Mr. President, with a couple of final observations.

There is an interesting thread of arrogance that has run through this debate: Government is smarter; we can tell you what to do; you really don't understand the seriousness of tobacco use; you are not smart enough to sort it out yourself; but you see, we are in the Congress, we will tell you when something is dangerous and when it isn't; you can't read; you don't understand, I am sorry.

We can have that kind of society. We can have that kind of a world. Some countries do. But if that is what you opt for, you will opt for also giving up some personal freedom, some personal responsibility, and it might be a better world that way. But that is another part of this debate we haven't heard enough about, and it should be part of it.

As I said in my earlier remarks, all my colleagues mean well. They are well motivated, they want to make the world better, they want to do the right thing. There is no question about that. But I hope they will think for a few moments about some of the issues I have raised as we step back for a moment and try to put in perspective what we are doing. Are we really making the world better and accomplishing what we want to accomplish, focusing on teenage smoking, underage smoking, which, by the way, there are now laws on the books to deal with? Are we making it better by putting hundreds of billions of dollars of new taxes on our people, building a bigger Government and more programs and more regulations, and then on top of that, having to deal with the unintended consequences of our action that will affect culture and it will affect society? Those are all part of the total debate, Mr. President, that should be brought into focus.

I will vote against this bill, because I think it is not the right way to deal with some very serious problems.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, there are two unanimous consent requests to be made. Senator HARKIN briefly has one.

Mr. HARKIN. I thank the Senator for yielding. Mr. President, parliamentary inquiry, I understand the Senator from Rhode Island is speaking next under a unanimous consent agreement, and after that is Senator HATCH?

The PRESIDING OFFICER. Senator HATCH.

Mr. HARKIN. I ask unanimous consent that after Senator HATCH, the Senator from Iowa be recognized to speak.

Mr. MCCAIN. I object. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Rhode Island still has the floor.

Mr. CHAFEE. The Senator from New Hampshire has a unanimous consent request to make.

PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Con. Res. 98, the adjournment resolution. I further ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (S. Con. Res. 98) was agreed to, as follows:

S. CON. RES. 98

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, May 21, 1998, Friday, May 22, 1998, Saturday, May 23, 1998, or Sunday, May 24, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Monday, June 1, 1998, or until such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, May 22, 1998, or Saturday, May 23, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, June 3, 1998, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

AMENDMENT NO. 2433

Mr. CHAFEE. Mr. President, let me offer a few thoughts on why I believe the amendment authored by my good friend from New Hampshire, Senator GREGG, should be rejected.

Senators TOM HARKIN, BOB GRAHAM and I struggled with the liability issue when we were developing our own antitobacco bill, the so-called KIDS Act. We began our deliberations with a review of the global settlement that was reached by the 40 attorneys general from the various States. In summary, we concluded that we could not support some of the provisions of that legislation; namely, the prohibition on class action suits.

The attorneys general agreed that no class action suits would be permitted and there would be a ban on punitive damages against the industry. That is what the industry got out of the negotiation with the attorneys general, amongst other things.

Given the tobacco industry's behavior, how could we, the three of us working on that legislation, possibly accede to tort protections that would nullify entire categories of lawsuits, leaving injured parties high and dry?

But there were balancing factors which also had to be weighed, Mr. President. The industry's consent is terribly important to the implementation of a comprehensive national tobacco policy. It is far better to have the industry at the table and agreeing.

Certainly, endless litigation serves no one's interests but the lawyers. Thus, something had to be done to create a more certain environment, both for the plaintiffs and for the tobacco companies. Hence, we decided to include an annual liability cap in our bill of $8 billion; $8 billion would be paid out each year and that was it. If there were subsequent suits and judgments had been brought and earned previous thereto or subsequent, they would fall in line and collect in the ensuing years.

While the structure of the cap in Senator McCain's bill is somewhat different than the cap we had in our bill, nonetheless the intent is the same. The cap in the McCain bill does not stop a single lawsuit. It doesn't prevent a single lawsuit from being brought. It doesn't stop one injured party from being able to collect. Moreover, only those tobacco companies that accept and abide by the terms of this bill will be able to obtain the financial predictability that is provided by this liability cap. In other words, the company doesn't get the cap unless it agrees to a series of requirements upon the companies or company that we believe are very important to reach a fine settlement.

What are some of these? What do the tobacco companies have to do to be eligible for a so-called cap? It must sign a national protocol, a binding consent decree to assure it will abide by all terms of the McCain bill. It must agree not to delay its implementation through endless court challenges. These terms they must agree to, amongst other things, are: They must make very steep annual payments to the Federal Government. They must meet tough annual youth smoking reduction targets. In other words, there are percentages that youth smoking must go down each year. The companies have to meet those requirements. It obviously encourages them to come forward with ingenious stop-smoking efforts or cease from smoking or decline from taking up smoking. They must pay large fines if they fail to meet these goals.

What they also agree to is to fundamentally alter the way the tobacco products are manufactured and distributed, and they accept the regulation of tobacco products by the U.S. Food and Drug Administration, so-called FDA.

If tobacco companies fail to abide by the terms of this bill, they are not going to be eligible for the liability cap. The liability cap is something that helps the companies reach some certitude of what their payments are going to have to be. But if they don't meet these terms, they lose the rights under the cap. If they fail to meet the annual youth smoking reduction targets by more than 20 percent in any given year, they lose the protection of the cap. If they are caught evading the antismoking provisions, they lose the protection of the cap. So this isn't some giveaway to the tobacco industry. It is a necessary trade-off to obtain a strong national tobacco control policy.

At the end of the day, when all is said and done, we hope the tobacco industry will return to the table and sign the consent decrees which will accompany this bill. If the Gregg amendment is adopted, it reduces, obviously, the chances for that occurring.

What is the incentive for a tobacco company to come to the table if they lose even this cap protection? If we all are for obtaining the strongest possible antitobacco policy, then we ought to vote to table this amendment; that is, the amendment of the distinguished Senator from New Hampshire.

President Clinton supports the cap, as do many others who want a tough national policy to discourage youth smoking. Giving some predictability to tobacco companies who are willing to change the way they do business, it seems to me, is a small price to pay to get them at the table and participating in implementing these tough policies—indeed, the advertising policies to cease certain types of advertisements and to enter into other kinds of advertisement directed toward encouraging young people to give up smoking or to deter them from taking it up in the beginning.

So, Mr. President, I believe that the cap is a very worthwhile part of this McCain bill. And I urge my colleagues to reject the proposed amendment.

I thank the Chair.

Mr. MACK. Mr. President, there are few industries I consider more vile than the cigarette manufacturers. I believe they lied to the American people and knowingly addicted millions to their harmful product. It is with this disgust and anger in mind that I encourage my colleagues to vote against the Gregg Amendment.

Although at first blush it may seem the ''right'' thing to strike the liability cap if we want to punish the tobacco manufacturers, in effect we will have done exactly what they want us to do: Kill the bill. We should first ask ourselves what we are trying to accomplish with this legislation: Reduce teen smoking, fund worthy tobacco-related programs while holding harmless innocent parties such as farmers. Would the Gregg Amendment further any of those goals? No.

The provision stricken by this amendment does not grant immunity to anyone, rather it sets a yearly cap on what they will pay and allows us to charge fees, put in place advertising restrictions and conduct strict oversight. In essence, it keeps the companies out of bankruptcy thereby allowing us to keep a close eye on them and force them to undo some of the damage they have done. The liability cap of $8 billion per year cuts off no one's rights or payments, other than for those who want to settle their claims. Taking it away would likely result in many aggrieved parties going unpaid because the companies would file for bankruptcy protection, effectively shutting out meritorious plaintiffs from recovery.

For those of my colleagues worried about the tax burden imposed by tobacco legislation, I would think they would all vote against this amendment as well. If the Gregg Amendment is passed and the liability cap stricken, the fee would then become a pure tax and the overall tax burden on the American public would likely double. Here's why: The current bill would then not settle any state lawsuits, but rather simply impose a tax of at least $1.10. Because those state suites would continue, and likely be successful or settled, we should expect that the states will begin to impose their own taxes on tobacco. That means we see a $2–3.00 per pack increase in taxes—which is outrageous. In short, if you want to do nothing but tax and spend, vote for the Gregg Amendment. If you actually want to try and solve some of the problem of reducing teen smoking you should vote against it.

Mr. HARKIN. Mr. President, we are engaged in a historic debate and action on a plant that brought death and disease to millions of people in this country for 300 years. The outcome of our work will determine whether this nation moves to a sensible tobacco policy that will prevent the premature death of millions of our children or continues on the path of death and disease.

This is truly a historic, once in a lifetime opportunity to save lives and protect children. When else have we had legislation before us that truly could save millions of American lives? It is an opportunity I've been working towards since 1977 when I first introduced legislation to end taxpayer subsidies to tobacco advertising.

The need for bold action couldn't be clearer. Today, as in any other day, 3,000 children in America will take up a deadly habit that will cut 1,000 of their lives unnecessarily short. That's more than 3 jumbo jets full of children crashing every day. And the problem is getting worse. Smoking among high school seniors is at a 17-year high.

It is not reflected in this chart, but the CDC just reported that the percentage of high school students who smoke has increased from 27.5 percent in 1991 to 36.4 percent in 1997. They further found that a shocking 42.7 percent of students—and these are kids generally between 14 and 17—used cigarettes, smokeless tobacco or cigars in the past 30 days. We also know that the vast majority—fully 90 percent—of adult and lifelong smokers begin at or before their 18th birthday.

We can change all that. We know the key ingredients to reducing teen smoking. We know that a comprehensive set of reforms is needed. We need solid authority and resources for the FDA to oversee tobacco products. We need an aggressive education and counter advertising effort. We need community-based prevention. We need to expand our research. We need to have strong financial incentives for tobacco companies to take every action to cut teen smoking. And, most importantly, we need to price cigarettes out of the range of children.

Every major public health expert agrees that the single most important component of a comprehensive strategy to cut child smoking is a sudden and significant price increase. This is the centerpiece of S. 1889, the KIDS Act, I introduced with Senator JOHN CHAFEE and Senator BOB GRAHAM. Our bipartisan legislation provides for a

$1.50 increase in the per pack price of cigarettes—$1.00 the first year and another 50 cents the next.

As Dr. C. Everett Koop and Dr. David Kessler said, this proposal is ''tough medicine for a tough problem.''

Our approach, according to the CDC and other experts, would cut smoking by children in half, over the next three years. That's the sharpest and fastest reduction achieved by any bill proposed to date.

The bill before us, as reported out of the Commerce Committee, has a number of commendable features. In many ways it is very similar to the Harkin-Chafee-Graham KIDS Act. It has strong FDA provisions, strong public health provisions and its look-back and liability provisions have been substantially improved. We are very pleased that much of our work is reflected in the bill and we commend Senator MCCAIN for his good efforts.

However, on the crucial question of price, the bill is inadequate. The bill would increase the price of a pack of cigarettes by $1.10 over 5 years. To have the greatest impact on teen smoking the price should be increased by at least $1.50 a pack over a very short period of time.

I will be doing everything, working with my colleagues, on a bipartisan basis, to correct this fundamental shortcoming of the pending measure.

While I'll have a lot more to say about many aspects of this legislation, I want to focus the remainder of my remarks today on this critical issue of price. I do this not only because it is the most important feature of the legislation, but because it has been the focus of an onslaught of misleading television, radio and print ads as well as statements and mailings by the tobacco industry in my state of Iowa and around the nation.

The tobacco companies have been making a number of false arguments about the impact of increasing the price to cut down on teen smoking. Most disturbing have been their statements that teens don't respond to price increases—that increasing the price won't have an effect on the rates of underage smoking.

These accusations are not only run counter to the finding of every major public health organization and countless economists and studies, they contradict the industry's own internal documents and analyses that they tried to hide from the American people for so long.

Many studies published in respected journals have clearly documented the impact of price increases on teen smoking. The most recent estimates from the CDC is that for every 10 percent increase in the real price of cigarettes, the prevalence of teen smoking is cut by 7%.

In its report this year, Taking Action to Reduce Tobacco Use, the Institute of Medicine of the National Academy of Sciences concluded that ''the single most direct and reliable method for reducing consumption is to increase the price of tobacco products. . . .''

In 1994, the Surgeon General's report Preventing Tobacco Use Among Young People concluded that increases in the real price of cigarettes significantly reduces cigarette smoking and that young people are at least as price sensitive as adults.

And we have to look no further than our neighbors to the north—Canada—to find a real world example of the impact of price increases on teen smoking. As this table shows (attached) when real prices in Canada increased from $2.09 to $5.42, the number of 15–19 year olds smoking fell from 42 percent to 16 percent—a drop of 62 percent. However, when tobacco taxes were reduced, youth smoking began increasing after 15 years of decline.

As I said earlier, in addition to the abundant evidence on youth smoking and price, the tobacco industry themselves have admitted this in a number of their internal documents. For example, a 1981 Philip Morris document said, ''In any event, and for whatever reason, it is clear that price has a pronounced effect on the smoking prevalence of teenagers. . . .''

A 1987 Philip Morris document further details their knowledge and concern about the relationship to price and hooking kids as the next generation of smokers. The document says:

> You may recall from the article I sent you that Jeffrey Harris at MIT calculated, on the basis of Lewit and Coate data, that the 1982–83 round of price increases caused two million adults to quit smoking and prevented 600,000 teenagers from starting to smoke. Those teenagers are now 18–21 year olds . . ., 420,000 of the non-starters would have been PM smokers. Thus, if Harris is right, we were hit disproportionately hard. We don't need to have that happen again.

A 1982 RJR Reynolds document—that I ask unanimous consent to have included in the RECORD at this point—states clearly that an increase in the price of cigarettes will result in ''thousands of new smokers lost.'' This document says that a 15.1 percent increase in the real price will result in the loss of 93,000 ''new smokers'' aged 13 to 17 years old.

So when the tobacco companies now argue that increasing the price of tobacco products won't impact youth smoking—they are once again blowing smoke. They are once again trying to deceive the American people.

So, Mr. President, we have important work to do this week. We have the opportunity to do a lot of good and strike a blow for our children and for public health. I look forward to working with my colleagues, on a bipartisan basis, to seize this opportunity.

Tobacco reform is the issue of 1998. It is the crown jewel of this Congress. And passing a strong comprehensive tobacco bill is an opportunity we simply can't let pass by.

Unfortunately, victories in the tobacco wars have come few and far between. In 1988, we finally changed Federal law on smoking in airplanes. It was a full ten years later, and after failing one time, the Senate took its next step last September by passing the Harkin-Chafee plan to fully fund enforcement of the FDA youth ID check.

But I am more hopeful now than ever that we can pass a comprehensive plan that would once and for all change how this nation deals with tobacco and dramatically cut the number of our kids addicted to this deadly product. Mr. President, our goal is to be on the Senate Floor three years from now announcing that indeed, child smoking has been cut in half. We should all put our energies into making that happen.

Mr. FRIST. Mr. President, I rise to speak about the pending tobacco legislation. I am concerned that we have gotten off track in our consideration of comprehensive tobacco legislation and the importance of preventing children smoking.

Our focus must be youth smoking.

In an earlier speech on this floor, I reminded my colleagues of some of the alarming statistics about youth smoking. I will not dwell on all of those statistics; however, it is important to remember that 3,000 kids will start smoking today, and 1,000 of those children who start smoking over these 24 hours will die prematurely. Our purpose is to prevent these deaths.

I urge my colleagues to focus on the health of our children, and their children—to keep in mind youngsters traveling that tricky path from childhood to adulthood, surrounded by temptations and convinced of their own invincibility. What can we do to make it more likely that these children will arrive at adulthood without crippling addictions?

Mr. President, before answering that question and discussing the pending legislation, I want to pause and recall some recent history that helps explain how we have reached this point in the legislative process.

For many years, individuals were not successful in suing the tobacco industry because of the ''assumption of risk'' doctrine. No jury would side with the plaintiff because the smoker assumed the risks associated with smoking. However, a group of State attorneys general got together and started suing the industry to recover Medicaid cost for smoking related illness, thus avoiding the ''assumption of risk'' doctrine.

In the course of these lawsuits, internal industry documents were made public. From these documents, we learned that the Industry knew a lot more about the addictive nature of nicotine and the destructive effects of smoking tobacco than was previously thought.

Some states began to settle for huge sums from the tobacco industry. Mississippi settled in 1996 for $3 billion. Florida and Texas were the next to settle, for $11.5 billion and $15.3 billion respectively. And, as we have all read in the last week, Minnesota is the most recent to settle—at $6.6 billion.

In the spring of 1997, everyone came to the bargaining table —40 attorneys general, the industry, members of the plaintiffs' bar, and public health groups. They all sat down and worked out an historic tobacco settlement on June 20, 1997. The basic elements of the June 20th settlement included:

Industry payments of $368.5 billion over 25 years—to be funded by raising the price of cigarettes by $.70 per pack over 10 years;

Advertising restrictions—the industry voluntarily limited its First Amendment rights;

Youth access provisions and tough licensing for retailers who sell tobacco;

$2.5 billion per year for smoking cessation programs, public education campaigns and state enforcement;

FDA authority to regulate tobacco and smoking;

No class action suits or suits by any government entity;

Immunity for the industry from all punitive damages for past actions; and

Individuals were allowed to bring suits to recover compensatory damages for past conduct and compensatory and punitive damages for future conduct.

Because the settlement required the enactment of federal law, it came before Congress. We are here because the June 20th settlement requires us to be here. Implementing the provisions of that settlement, or provisions similar to it, requires federal legislation.

As we all know, several committees had jurisdiction over different provisions in the June 20th Agreement. Judiciary obviously had its role; the Labor Committee had its expertise in the public health programs and the FDA authority; Finance had jurisdiction over international trade aspects; Commerce, the liability and interstate commerce expertise; and the Agriculture Committee had a keen interest in the effects this type of unprecedented legislation will have on farmers—the one group not invited to the bargaining table during settlement negotiations.

After months of work, it became clear that it was impossible for all of these committees to put together their respective pieces of a comprehensive package in a vacuum. The Majority Leader asked Chairman MCCAIN to take on the herculean task of crafting comprehensive legislation to address underage smoking through the Commerce Committee.

The bipartisan bill produced by Senator MCCAIN and the Commerce Committee is by no means perfect. Even Senator MCCAIN admits that. But it is important that we not lose sight of the Commerce bill's virtue: it is a comprehensive approach. It is vital that the United States Senate address children smoking in a timely, thoughtful manner—the Commerce bill gives us the structure for doing this.

I return, then, to our central legislative focus: preventing youth smoking. After 6 hearings in the Labor Committee, 11 hearings in the Commerce Committee, and chairing a hearing on October 27, 1997 in my subcommittee on Public Health and Safety, I am convinced that the goal of cutting underage smoking in half over the next 10 years can be achieved only by a three-component comprehensive strategy. All three parts are necessary. No single part will accomplish this goal.

1. First, we must address advertising targeted to children. An article in the Journal of the American Medical Association reported on February 17 that advertising is more influential than peer pressure in enticing our children to try smoking, and it estimated approximately 700,000 kids a year are affected by advertising. The industry cannot continue to target kids, our society must stop glamorizing smoking on television and in the movies, and we must restrict advertising at sporting events and near our schools.

We tell our kids not to smoke, but then we look the other way when retailers sell to kids. We tell our kids that tobacco will shorten their lives, but clever advertising drowns out our message. So, we must restrict tobacco marketing that appeals to kids, but I know that the industry, like all industries marketing legal products, has substantial First Amendments rights that must be respected.

2. The second element of a comprehensive program is that there must be strong, effective public health initiatives, including tobacco-related research, treatment and surveillance. A bold effort is necessary to keep people from starting to smoke and to help people stop smoking. A strong commitment to basic science and behavioral research is critical. We need the very best scientific research on the physiology of nicotine addiction.

Such focused research made possible by this bill might even uncover a pill that eliminates the addictive nature of nicotine. Such a discovery alone would solve the destructive aspects of youth (and adult) smoking. This type of research might have benefits beyond tobacco; it also could be vital in our fight against substance abuse more generally.

3. Access is the third element. We must attack how easy it is for kids to get their hands on tobacco products. States must enforce the laws against youth smoking. Retail outlets must be a partner in our efforts to stop youth smoking. We must make vending machines far less accessible to kids. The price of cigarettes must go up—enough to discourage a teenager from purchasing, but not enough to create a black market—and there must be consequences for the underage teenagers who are caught with tobacco products.

As Chairman of the Public Health and Safety subcommittee, I heard chilling testimony from teens about how easily they purchased tobacco products. Nickita from Baltimore, now 18 years old, started smoking when she was 14. She testified that she would normally get her cigarettes from the store. She testified that she never had a problem buying cigarettes in the store, in fact, ''people in my community as young as 9 years old go to the store and get cigarettes. They do not ask for I.D.s.''

The lesson I learned from this testimony: We must enforce youth access laws. We must make it impossible for children to buy cigarettes in any neighborhood in this country. It is shameful that in America in 1998, a teenager can purchase tobacco in any of our neighborhoods.

Price is also a factor in access. While it is obviously only one of many factors, price does affect the level of a product's consumption. Consumption had been decreasing in the 1970s; however, between 1980–1993 the downward trend accelerated, with consumption falling by 3% a year at the same time that the inflation adjusted price of cigarettes increased by 80%. In addition, the early 1990s saw price cuts, and consumption leveled off with only modest decreases in price until 1996. Then, in 1997, prices rose by 2.3%, and consumption fell again by 3%.

Expert testimony, based on data from this country and others, clearly demonstrates that the price of cigarettes affects consumption. But a higher price alone won't solve this problem; a comprehensive solution is necessary.

Mr. President, I believe the Commerce Committee's bill is a good start toward addressing all three aspects of a comprehensive package: advertising, public health, and access. It also addresses an issue ignored by the June 20th settlement: tobacco farmers. These farmers were not at the table during the negotiation of the June 20th agreement. The industry ignored them. The attorneys general ignored them. Yet these hardworking men and women bear absolutely no responsibility for ads targeting kids or for underage sales. These men and women work hard for modest incomes, and we cannot ignore the impact that this legislation will have on their circumstances. The Commerce bill tries to rectify this oversight.

So, the Commerce bill addresses the three areas a comprehensive approach must include, and it protects tobacco farmers. That does not make the bill ideal. It is by no means perfect; however, it is not necessarily guilty of all the charges lodged against it.

Some urge that the bill is merely an attempt to destroy an industry that is producing a legal product, by raising the price too much. This is a legitimate concern. Are the numbers in the Commerce bill too high? We have had countless numbers of financial experts come before several of the committees of jurisdiction, and no one agrees on the answer to this question. Wall Street, the Treasury Department, and public health groups all have different levels.

We do know one thing: the industry agreed to $368.5 billion in exchange for some assurances that they were immune from future cost of unpredictable

lawsuits. Maybe the Commerce bill's figure of $516 billion is too high without similar assurances of protection. The industry obviously feels it is. But we know we cannot always trust the industry. I hope that, through our debate here, we can find common ground on the issue of the tobacco industry's payments.

I do not believe that those who support a comprehensive solution to teen smoking are trying to destroy the industry. Tobacco products are legal to manufacture and consume. We are engaged, however, in the tricky exercise of finding a price level that will help diminish teen consumption without bankrupting the industry or creating a black market. I am confident that we can work together in good faith to find that price.

I am gratified that the Senate rejected Senator KENNEDY's amendment, which would have treated industry payments as an excise tax of $1.50 per pack. This $1.50 tax was too much. The proponents were no longer as concerned with a comprehensive program targeted at preventing children from smoking as they were with enacting an excessively punitive excise tax, which would have punished smokers—who we need to be helping—and hit the working poor the hardest.

There is a temptation, especially among those who are always searching for revenue streams, to seize upon the opportunity of an excise tax to raise vast amounts of funds for other initiatives. We should be guided by health objectives and not by the search for revenue streams. The funds generated by the agreement should be used for tobacco related and health related activities—not the creation of new entitlements.

Mr. President, let me also address a related issue the tobacco industry is raising: Is the Commerce bill just a big tax bill? I find the industry's complaint that it is somewhat ironic. As I already noted, the industry volunteered to make over $368 billion in payments—all passed on to the consumer—as part of the July 20th payment. The industry called that payment a ''voluntary payment.'' That level was simply not enough; for one thing, it did nothing for the tobacco farmer, who was abandoned by the industry. Something more than $368 billion was necessary.

Yet now the industry complains that the entire amount of the payments included in the Commerce bill is a ''tax.'' Maybe, as I said, the Commerce bill's payments are too much. But it is disingenuous for the tobacco industry to now contend that the payments are all a tax; they came to us and sought our legislation, and they volunteered over $368 billion. We upped the ante a bit—in large part to protect farmers—and now it's suddenly a giant tax. We cannot treat this argument too seriously.

I want to emphasize how much more effective we can be with a settlement. We must have an industry that doesn't market to kids—a settlement gets us that—a price increase alone does not. Without the cooperation of the industry, there is no doubt that this bill will be held up in the courts—putting us years behind in our effort to reduce smoking. The industry does have First Amendment rights, and it can exercise them.

I invite the industry to come back to us and provide us with credible information about the level of payments they can afford. The industry can work with us to prevent youth smoking—or it can distort the record and continue to be vilified in the public eye. For the sake of stopping children smoking, I prefer that the industry rise above causing the problem of youth smoking and be part of the solution.

Some have charged that the Commerce bill is too bureaucratic. I believe that our families, communities and states should be empowered to fight teen smoking in the manner most suitable for the concerns of that state or community. We don't need big federal government structures to achieve our goal. The Manager's Amendment to the Commerce bill has done a good job of streamlining the bureaucracy it originally created. I am especially supportive of the increased empowerment and flexibility given to the States for the use of funds and for control over the public health initiatives.

Having said that, a comprehensive approach to prevent youth smoking isn't a simple undertaking. If we are after results, there must be a structure in place. I believe that we can effectively and efficiently use existing structures, in conjunction with the States, to have a comprehensive approach. Indeed, I played a crucial role in helping draft those portions of the Commerce bill dealing with the Food & Drug Administration. These provisions have earned widespread support, and I spoke on the floor Monday to explain them. They prove that we can use an existing agency to implement commonsense regulations to reduce youth smoking.

Another criticism of the Commerce bill concerns the possibility that it may create a black market. We should be realistic about the possibility of a black market. If we create a black market by raising the price too high—as was done in Canada—then we will lose all control over youth access. Again, this is one reason I voted against Senator KENNEDY's $1.50 per pack tax. Instinctively, and based on testimony to the Commerce Committee, I believe that price level is too high.

In short, Mr. President, I do have concerns with some parts of the Commerce bill. For this reason, I will be open-minded in considering amendments to it. The Commerce bill is a good starting point, but it is only a starting point. We can and should improve on it—as long as we do not lose sight of our ultimate objective: a comprehensive approach to prevent teen smoking.

The single criterion I will employ in assessing the amendments that come before the Senate is this: Is the amendment likely to complement a comprehensive strategy to prevent teen smoking? In other words, does it help restrict advertising targeted at children, promote public health, and address access to tobacco? If so, I will consider it; if not, I will reject it.

I respectfully suggest, Mr. President, that my colleagues keep the same focus. Rather than attempting to treat the tobacco bill as a new revenue stream—like my colleagues who want a $1.50 per pack excise tax—and rather than treating the bill as a chance to create many new federal programs, I urge my colleagues to focus on the children who will start to smoke during this debate. One-third of those children will die prematurely because they started to smoke. We must focus on stopping them from smoking.

Four years ago, I was saving lives as a heart and lung surgeon. I saw the ravages of tobacco in the operating room. The people of Tennessee elected me to use common sense to advance the public good. I submit that crafting a comprehensive approach to keep children from smoking is a chance for the Senate to save lives through the exercise of common sense. I urge my colleagues not to stray from that goal.

Mrs. MURRAY. Mr. President, we are engaging in one of the most important public health debates of this generation. We have a historic opportunity to enact a comprehensive, national antitobacco strategy to end the plague of death caused by smoking. As I listen to the debate here in the Senate I am discouraged by much of what I hear. This is not about taxes, or tax cuts. This is not about what the tobacco companies get or don't get in the deal. This is not about First Amendment rights or increased litigation. This is about one thing and one thing only. Will we stand up to the tobacco companies for our children?

Will the U.S. Senate say enough is enough. Will we fight to prevent the deaths of five million children under age 18 who will eventually die from smoking-related disease? Or will we allow the tobacco companies to shape the debate and beat back our efforts to protect children. Today, 4.1 million children age 12 to 17 are current smokers. Isn't this enough for the tobacco industry? Are we going to sacrifice more of our children?

I have listened very carefully to all sides on these issues. I have been told that a tax that is too high will bankrupt the industry. I have been lobbied by many claiming that without special deals, the tobacco companies will not agree to restrict advertising or will litigate this legislation to death. But, I have also heard from pediatricians; public health officials; former Surgeon General C. Everett Koop; and many Washington State members of the American Cancer Society, who have expressed their concerns by illustrating

the human costs of the lies and deceit utilized by the tobacco companies.

Tobacco kills more than 400,000 Americans every year. More people die in this country from smoking related illness than from AIDS, alcohol, car accidents, murders, suicides, drugs and fires. Twenty seven percent of Americans who die between the ages of 35 and 64 die from tobacco-related diseases. Isn't this enough? Why has it taken us so long to get to this point of the debate? 400,000 Americans die each year while we do nothing.

We owe our children more. I owe the children of Washington State more. I have an obligation to push for the toughest tobacco bill possible. I can promise you that on my watch the tobacco companies get no special deal and that protecting our children is what controls the debate. It is not what can the tobacco companies live with, but is right for our children.

The tobacco bill that I support will have economic sanctions that will force corporate culture changes by the industry. I will support efforts that penalize the companies if they continue to prey on our children. And I will not support anything that forgives an industry that sold a product that could potentially kill five million children alive today.

I have made some difficult decisions and votes throughout this process. But, I am proud of my votes to increase economic barriers to prevent children from purchasing cigarettes. I know the tobacco companies hate these kind of barriers. As we discovered in an internal Philip Morris document from 1981, ''In any event, and for whatever reason, it is clear that price has a pronounced effect on the smoking prevalence of teenagers.'' There is no dispute on the sensitiveness of children to price increases. Both public health advocates and the tobacco companies agree. The public health community supports these barriers and the tobacco industry fears them. But some in the U.S. Senate disagree that price matters. I stood up and said no you will not addict 3,000 children a day with cheap cigarettes.

Some of us argue on the floor that without special immunity protection or predictability, the tobacco companies will never accept tough advertising restrictions or consent to FDA regulation. To this I would respond simply by saying if we make the look-back surcharges so tough that without major cultural changes companies will see profits evaporate, we will get our advertising restrictions. If we show that these advertising strategies are aimed at our children we will get these restrictions. We do not need to give special deals that allow tobacco companies to walk away from their responsibilities.

The tobacco companies have lied to Congress and the American people now they want to negotiate in good faith. In the 1980's, there was legislation in the House of Representatives regarding safe cigarettes. There is technology that would allow tobacco companies to manufacture a cigarette that was almost fire safe. The Safe Cigarette Act, introduced by Representative MOAKLEY was fought at every level by the industry. They claimed that it was not cost effective to make a cigarette that would prevent the tragic death of children in fires caused by a carelessly discarded cigarette. Saving children from a horrific death from fire was not enough of an incentive for the manufacturers to sacrifice some of their billions of dollars in profits. Instead they sacrificed children.

Now the industry wants immunity. We are supposed to give them caps on their liability and responsibility in exchange they will become responsible corporate citizens. This claim simply has no merit. They do not deserve any special deals.

Will the tobacco companies challenge these provisions in court? It is hard to imagine an industry that has patented their own brand of litigation and used legal maneuvers to hide their deceit and lies, walking away from another opportunity to challenge restrictions in court. If this industry wants to tie this up in court for years to come, I would say we need to make the look-back surcharges so tough that their own stock holders will not allow this kind of irresponsible behavior. I caution the tobacco industry—if you want to spend the next few years litigating instead of cleaning up your practices you may very well become extinct in the next Century. What would the world be like without the plague of tobacco? Maybe this is what the industry should ask the American people?

I urge my Colleagues to think long and hard about this debate. We will never get another chance like this one to really make the world a safer and healthier place for our children. Let's side with our children today instead of the tobacco companies.

Mr. WYDEN. Mr. President, the international provisions of the tobacco legislation have been the subject of many hours of discussion and negotiation. The current provisions serve as a strong platform that I hope this body will continue to build upon in the years to come as we seek to protect all children from the diseases and the economic costs brought about by tobacco use. I received letters which demonstrate the breadth of support and the importance the public health community places on maintaining the international tobacco control provisions in the tobacco legislation.

I ask unanimous consent to have these letters printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

EFFECTIVE NATIONAL ACTION TO CONTROL TOBACCO
May 20, 1998.

Hon. RON WYDEN,
Hart Senate Office Building,
U.S. Senate, Washington, DC.

SENATOR WYDEN: Last summer's agreement between the tobacco industry and the Attorneys General was flawed because of its failure to consider international tobacco and health issues. We commend you for your strong leadership on this issue and support your efforts to ensure the greatest level of protection possible from tobacco for all children.

The international provisions in S. 1415 represent a good start. It is vital, however, that they not be weakened at all and that serious consideration be given to strengthening them.

Thank you for your tremendous leadership in protecting people from tobacco. We look forward to working with you on this issue.

Sincerely,

American Association of Physicians of Indian Origin; American Cancer Society; American College of Preventive Medicine; American Heart Association; Association of Teachers of Preventive Medicine; Campaign for Tobacco-Free Kids; Interreligious Coalition on Smoking OR Health; Latino Council on Alcohol and Tobacco; National Association of County and City Officials; Partnership for Prevention; Summit Health Coalition.

LATINO COUNCIL ON ALCOHOL AND TOBACCO,
Washington, DC, May 19, 1998.

Hon. RON WYDEN,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR WYDEN: The Latino Council on Alcohol and Tobacco (LCAT), members of the Hispanic Health and Education Working Group and other Latino professionals want to thank you and your staff for your hard work in supporting international provisions for tobacco control. You and your colleagues are putting forth a signal, a good beginning, a starting point for assuring that the children of the world will be protected from the unacceptable practices of the tobacco giants.

Latino parents, educators and public health experts believe that US standards should be upheld worldwide. Federal workers should not support tobacco companies or their subsidiaries abroad. International agencies such as the World Health Organization and the Pan American Health Organizations and non-profit organization should receive funding for their efforts to prevent, treat and stop the spread of smoking related diseases. Anti-smuggling provisions should be strengthened. The US should be a leader in the fight against the spread of tobacco related diseases. You have made it clear through your efforts that public health has no boundaries.

We trust that you will continue to work on international tobacco control. We thank you for your leadership and commitment to these issues.

Sincerely,

JEANNETTE NOLTENIUS.

AMERICAN LUNG ASSOCIATION,
May 19, 1998.

Hon. RON WYDEN,
U.S. Senate, Washington, DC.

DEAR SENATOR WYDEN: Thank you for your commitment to protect the world's children from tobacco. The American Lung Association shares your concern that children around the world are prime targets for the tobacco industry. The international provisions of S. 1415, as amended, represent a strong first step toward curbing the worldwide tobacco problem that the World Health Organization calls a global epidemic.

The result of tobacco legislation should not be to redirect the tobacco industry's focus from America's children to children elsewhere around the world. Because of your efforts, the bill's international measures will

fund a public health effort around the world, require cigarette labeling and permanently stop the U.S. government from marketing and promoting the export of cigarettes. We cannot allow this progress to be rolled back by weakening amendments on the Senate floor.

Strong international tobacco control measures are part of the sound tobacco control policy outlined by the public health community and leaders like Dr. Koop and Dr. Kessler. This approach also includes a significant increase in the cigarette excise tax, full authority for the Food and Drug Administration, complete document disclosure, strict penalties on the industry for marketing to children, protection from environmental tobacco smoke, potent public health programs and, of course, no special protections, like immunity or caps, for the tobacco industry.

Sincerely,

JOHN R. GARRISON,
CEO and Managing Director.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Utah is recognized at this time.

Mr. KERRY. If I could just ask a parliamentary, procedural question.

Mr. HATCH. I will be happy to yield without losing my right to the floor.

Mr. KERRY. Mr. President, with the agreement of the Senator from Arizona, we want to try to structure the order for the next three speakers, if we could. I ask unanimous consent that after the Senator from Utah speaks——

Mr. MCCAIN. Senator DASCHLE.

Mr. KERRY. The minority leader be recognized; and after the minority leader, the Senator from New Hampshire be recognized——

Mr. MCCAIN. Then do a tabling motion.

Mr. KERRY. At which point, Senator MCCAIN will move to table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KERRY. I thank the Chair. And I thank the Senator from Utah.

Mr. HATCH. You are welcome.

A critical component of our debate must be the issue of this bill's constitutionality. This is a matter of extreme seriousness.

We are considering a bill that is fundamentally flawed with respect to its constitutionality. And that is despite the fact that each one of us swore to uphold the Constitution of the United States of America when we were elected and sworn into this office.

Many skeptics, particularly in the media, contend that Congress will pass for political reasons any measure that gains any sort of consensus, even if it violates the Constitution.

I reject that. I certainly hope they are wrong. I believe that the most important job that members of Congress have is to protect, preserve, and defend the Constitution of the United States. And, as Judiciary Committee chairman, I take this job very seriously.

Why? The answer is, for over 2 centuries the Constitution has been the genesis of our liberty and a source of America's amazing growth and prosperity.

The Constitution fosters liberty and prosperity by circumscribing Government's ability to interfere in the lives of the people. Thus, our Government is termed one of limited powers.

In fact, I believe that the structure of the Constitution—the separation of powers, checks and balances, and federalism—and not the system of courts, is the best protection of our liberties.

The salient fact is that the Constitution itself was designed to be, in the words of Alexander Hamilton in the Federalist No. 84, ''in every rational sense, and to every useful purpose, a bill of rights.''

One such constitutional mechanism to protect liberty is limiting Congress' legislative authority to only those laws that are reasonably derived from its enumerated powers contained in Article I of the Constitution, which in practice means that such laws must be consistent with the meaning of the Constitution's provisions and the Bill of Rights. As such, Congress has a special role in defending the Constitution and safeguarding our liberty by policing itself and by controlling its own appetites.

I wholeheartedly agree with the sentiment of Justice Oliver Wendell Holmes, who in 1904 gave the opinion that, ''It must be remembered that legislatures are the ultimate guardians of the liberties and welfare of the people in quite as great degree as the court[s].''

So this is why we are having this debate—to exercise our authority to ensure that any legislation that is passed is, in fact, constitutional. Let us confound the cynics by doing the right thing.

I pray that the Senate will consider the constitutionality of the floor vehicle and any other bill offered as a substitute. To skirt this issue would be to violate our very oaths of office.

I believe that the bill now being considered in this chamber suffers from a number of serious constitutional problems.

These problems permeate the bill.

Besides jurisprudential concerns, there are significant practical considerations, because passage of the bill could result in constitutional challenges that, if successful, will nullify the key sections of the bill. This is true for the bill as reported, the bill as rewritten over the weekend, and the bill as modified on the floor on Monday. Removal of many ''consensual'' items to a new title XIV has not addressed these concerns.

Mr. President, if key provisions in the bill are nullified, the efforts of Congress to enact an effective and truly comprehensive antismoking, antisnuff, plan will be severely impaired and virtually nothing will have been done to effectively reduce youth smoking.

I want to stress that the constitutional problems primarily arise because the Commerce version and several other major bills have moved from being a codification of the June 20, 1997, proposed agreement—which contemplated voluntary participation of the tobacco companies—to tax-and-spend and command-and-control legislation.

Without the voluntary participation of the tobacco companies—and the State attorneys general—both the so-called ''look-back'' provisions and advertising restrictions contained in this Commerce bill become constitutionally problematic. These and other constitutional problems raise first amendment, bill of attainder, takings clause, and due process clause issues.

More specifically, without the voluntary cooperation of the parties, the advertising ban contained in S. 1415 as amended will probably fall. This is a shame, because almost all health experts believe that restricting advertising is necessary in order to reduce teen smoking. The advertising restrictions in the Commerce bill are contained in both the protocol and in a section that codifies an FDA rule that also restricts otherwise lawful tobacco advertising.

The Supreme Court, in the 1996 decision 44 Liquormart, Inc. v. Rhode Island, emphasized that any restrictions on truthful advertising must receive the highest scrutiny, and be narrowly tailored to meet the statutory goal. They required that other less restrictive alternatives be employed to resolve problems before speech is censored.

The majority of scholars and lawyers who have looked at the issue agree that unless the tobacco companies voluntarily waive their constitutional rights, which is what they did in the June 20, 1997, agreement, most restrictions on the advertising of a lawful product, such as tobacco, would run afoul of the first amendment.

Indeed, most conclude that the restrictions contained in the protocol and FDA rule are not narrowly tailored and that other alternatives exist to reduce teen smoking.

Experts from the left to the right agree. Professor Laurence Tribe of Harvard Law School; Judge Robert Bork; Floyd Abrams, one of the most notable first amendment lawyers; the liberal ACLU and the conservative Washington Legal Foundation, all oppose these advertising restrictions as unconstitutional. It does not matter whether the restrictions arise from the codified FDA rule or in the settlement itself, both are unconstitutional. Let me just read to you some of their views.

Let us take the testimony of Floyd Abrams before the Senate Judiciary Committee on February 10, 1998:

> Any legislation of Congress which would purport to do by law what the proposed settlement would do by agreement in terms of restricting constitutionally protected commercial speech, is, in my estimation, destined to be held unconstitutional. . . . It is unlikely that, at the end of the day, the FDA's proposed regulations could survive First Amendment scrutiny.

That was given before the Senate Judiciary Committee on February 10, 1998.

Let me go to the next chart here. These are quotes by the American Civil Liberties Union to the Senate Judiciary Committee on February 20, 1998.

Both the legislation and proposed regulation by the Food and Drug Administration. . .are wholly unprecedented and, if enacted, will most likely fail to withstand constitutional challenges.

There are solid arguments.

Let us go to the next one.

The next chart is of Judge Robert Bork, dated January 16, 1996, when he said:

The recent proposal of the FDA to restrict severely the First Amendment rights of American companies and individuals who, in one way or another, have any connection with tobacco products [is]. . .patently unconstitutional under the Supreme Court's current doctrine concerning commercial speech as well as under the original understanding of the First Amendment.

Those are very strong arguments from well-established constitutional authorities.

I also have a letter, dated March 17, 1998, from Floyd Abrams, to Senator MCCAIN, concluding that the FDA restrictions are as violative of the first amendment as the somewhat broader advertising restrictions contained in the protocol of the Commerce bill. I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CAHILL GORDON & REINDEL,
NEW YORK, NY, MARCH 17, 1998.

Re proposed restrictions on cigarette advertising.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MCCAIN: I take the liberty of writing to you with respect to the questions you posed to the Clinton Administration concerning its views about and general support of S. 1415. In my view, your questions were particularly well taken given that any ban on truthful advertising of products that may lawfully be sold to adults—whether of cigarettes or any other product—raises very serious First Amendment issues. Regrettably, the same cannot be said of the Administration's response to you by letter dated February 27, 1998. In that letter and its attachment, the Administration claims that the ''significant constitutional concerns'' and ''difficulties'' it believes are raised by S. 1415 are not presented by the proposed FDA regulations on tobacco product advertisements. That is not the case, not in my view nor that of many others who have studied the FDA rule and opined on its constitutionality.

The expansive sweep of the proposed FDA rule makes it no less constitutionally infirm than the advertising restrictions in S. 1415. The scope of the rule tells the story. All cigarette advertising would be banned in any media other than ''permissible outlets'' such as newspapers, magazines, periodicals and billboards. Those outlets would, in turn, be liable to criminal prosecution and the entry of civil injunctions if they published any cigarette advertisements other than ones in black and white text containing a second warning statement in addition to the current Surgeon General's warning. The only exception to the text-only requirement would be for certain ''adult'' publications, a category that apparently would exclude such mass-circulation magazines as Better Homes and Gardens, Life, National Enquirer, Newsweek, People, Popular Science, Sports Illustrated, and TV Guide. Adults, of course, comprise the vast majority of the readers of these publications.

That the proposed FDA rule's extreme breadth and rigidity would serve to all but ban cigarette advertising to adults should be indisputable. What else can be said of a proposed regulation which would ban all outdoor advertising within 1,000 feet—over three football fields in every direction—from any playground or school anywhere in the nation? The 1,000-foot rule seems particularly gratuitous in view of the fact that it would ban advertising that FDA, by virtue of its proposed text-only requirement, already has sought to strip of the features FDA claims make it appealing to young people. The unbridled sweep of these restrictions is in no manner tailored to their supposed aim. This is particularly true given the availability of far less speech-restrictive alternatives to an ad ban, including stricter enforcement of existing underage sales restrictions and enactment of tougher new laws against sales of cigarettes to minors.

The Administration cannot seriously quarrel with the reality that by so severely limiting the placement and the nature of ''informational messages'' that advertise tobacco products to adults, those messages will no longer reach them. That result, the Supreme Court repeatedly has held, is unconstitutional—the government may not ''reduce the population . . . to reading only what is fit for children.'' *Butler* v. *Michigan*, 352 U.S. 380, 383 (1957), *see also Reno* v. *American Civil Liberties Union*, 117 S. Ct. 2329, 2346 (1997); *Sable Communications Inc.* v. *FCC*, 492, U.S. 115 (1989); *Bolgar* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 71–72 (1983). In short, the FDA rule is no constitutional panacea. It, too, suffers the same fatal flaws evident in any scheme seeking broadly to ban truthful, nondeceptive advertising for a legal product.

In sum, I respectfully submit that the proposed FDA regulation could not withstand judicial scrutiny under the First Amendment.

Sincerely,

FLOYD ABRAMS.

Mr. HATCH. There are other provisions of the bill that are constitutionally infirm.

The look-back penalties in the Commerce bill, which are imposed on the tobacco companies if teen smoking does not meet certain goals for reduction, are subject to constitutional challenge unless they are voluntarily agreed to by the tobacco companies.

I must add that the Commerce bill now terms the penalties ''surcharges,'' but this simply is an attempt to elevate form over substance. No matter how it is termed, these payments are the functional equivalent of fines.

Chief among the grounds for challenging this provision is due process.

The Supreme Court has held that imposed penalties must be related to the objective of the legislation. Penalties should not be imposed without a showing of fault. I refer you to the Vlandis v. Kline case (412 U.S. 441) in 1973 which held that penalties without fault create an ''irrebuttable presumption.''

Given what we know—or do not know—about how teens react to advertising, it is possible that even if the tobacco industry does all that it can to prevent teen smoking, the target will not be met.

Moreover, besides the look-back penalties, the Commerce bill contains an additional provision that companies lose their liability cap protection if underage smoking exceeds the targets by a set amount. This is also done without a showing of fault.

Thus, it is clear that a court would interpret the Commerce bill's penalties as punitive. It is possible, then, that the look-back provisions could fall under the provision in the Constitution that prohibits Congress from passing a bill of attainder.

I refer my colleagues to the Cummings v. Missouri case (71 U.S. 277) in 1867. George III and the Parliament had used bills of attainder to punish their political enemies, and the framers of the Constitution wisely forbade Congress from doing the same.

Certain payments made by the industry raise fifth amendment takings clause issues. For instance, it could be argued that some of the payments made by the industry constitute a forced seizure of money. The initial $10 billion up-front payment and the first six annual payments are owed regardless of whether there are any tobacco-related incomes and regardless of whether there are any tobacco sales.

I might also direct my colleagues attention to a new provision which extends liability to the parent companies of tobacco subsidiaries, such as R.J. Reynolds and Philip Morris, just to mention two. The effect of that provision would be to extend the penalties to the conglomerates' food business, for example, even though they have independent operations and no fault on their part has been shown.

These payments can neither be characterized as a tax or a licensing fee and would constitute uncompensated takings under the fifth amendment. I refer, for example, to *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith* (499 U.S. 155, 162–163), a 1980 case where cash and bank account seizures were held to be uncompensated takings under the fifth amendment.

The current version of the Commerce bill requires all tobacco manufacturers to release attorney-client and work product documents to the FDA and establish, finance, and run a document depository. Now, while this is a worthwhile goal,

I believe that the wrongdoings of the tobacco companies have been hidden for far too long and this information should be brought to the light of day to help the FDA in regulating tobacco and assuring the public health.

What some of my colleagues fail to appreciate is that it must be done in a constitutional manner, or it is all for naught.

We must remember that the June 20 settlement agreement presupposed voluntarily participation by the tobacco companies in releasing proprietary documents and in establishing and financing the document depository.

While litigation documents already made public can be forwarded to the FDA, it is problematic that the industry could be required to release additional documents, especially work product, confidential, or privileged documents. Such documents are properly defined by the fifth amendment. I refer you, for example, to the Nika Corp. v. City of Kansas City (582 F.Supp. 343 (W.D.Mo.)), a 1983 case, where the corporation's documents were held to constitute property under the fifth amendment.

Moreover, pursuant to the same theory, the forced funding by the industry of the depository—the leasing of the building, the salaries of the personnel—indeed as for any confiscation of cash or other valuable assets, would constitute a taking under the fifth amendment requiring compensation. I refer you to Webb's Fabulous Pharmacies, Inc.

Let me conclude my remarks by saying unless we have the voluntarily participation of the tobacco industry, I doubt that a comprehensive bill like the present Commerce bill could be implemented. Such a bill will undoubtedly be successfully challenged in the courts, and I believe the litigation and the inevitable appeals could take years to resolve.

In other words, I make the case that if this bill passes in its current form, without the cooperation of the tobacco companies, which will be the case, then it will be litigated for at least 10 years.

And in the end, I believe, it is likely to be overturned because it will be found unconstitutional. If that is so, then we are risking the lives of 10 million more kids who will become addicted to tobacco and die prematurely as a result of our failure to do the right thing, right now, on the floor of the Senate and in the House of Representatives.

It is important that these constitutional issues be addressed. It is important we not ignore the Constitution. It is important that we uphold the Constitution.

I know that the health of our children is of paramount concern to all of my colleagues. So let us at least do the right thing and pass a bill that is constitutional. The protection of the Constitution and the promotion of public health are not inconsistent goals. The American people demand both and we should give it to them.

I hope all who are here today will pause a moment to consider this.

This total cost of this bill has been estimated by some to be $516 billion, although I believe it is far higher.

It is estimated that the bill will result in a price per pack cost increase of $1.10 per pack, although this is at the manufacturers' level and I believe it will go higher.

There are a whole raft of other add-on costs not included in the $1.10 figure: the wholesaler and retailer mark-ups; the impact of growing contraband sales which divert revenues; possible triggering of the look-back provisions; and new state excise taxes. That is why several analysts who have done detailed economic models have concluded that the cost will be over $5 per pack, or over $50 per carton, of cigarettes.

These are important considerations.

If we do not rectify the situation and approve a constitutional measure, then I think everybody who votes for this bill would deserve a great deal of criticism for what has happened. What really bothers me, to be honest with you, is how some who represent the public health community choose to ignore these issues. Their motives seem to be directed more at punishing the tobacco companies than at securing a tough, workable bill.

Nobody dislikes the tobacco companies more than I do, and nobody has fought harder to try to get the tobacco companies put in line.

But frankly, unless they come on board, unless we can bring them to the table, this whole thing could amount to an exercise in futility. The constitutionality issue is key here, and I just don't see how we can continue to ignore it.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Democratic leader.

Mr. DASCHLE. Mr. President, I know we are about to come to a vote on this amendment. I begin simply by complimenting the sponsors of the amendment for what I know is a well-intended effort to address one of the most consequential of all the issues we must face. I certainly don't deny a very strong case can be made for following through with what is described as the intent of this amendment. I happen to come down on the other side, and I am going to try to explain the reasons why I believe this amendment ought to be defeated. But it is not without high regard for the sponsors, both Senator GREGG and Senator LEAHY, and the effort they are making.

Let me just say, as to the question of immunity, one thing that I think needs to be said is that there is no immunity in this bill, period. There is none. No one should be misled. There is no immunity in this legislation. There are ways with which we deal with the tobacco companies and their legal standing, but no one should say that the bill provides immunity for the tobacco companies. On the issue of immunity, I think the managers of the bill have made great progress over the course of the last week. Working with the administration, they have improved dramatically what was done initially in the Commerce Committee. What the Commerce Committee itself did, in my view, is raise serious concerns that I, frankly, felt had to be addressed if, indeed, we were going to resolve the overall issue of how we approach tobacco policy in the future.

There were special protections for the tobacco industry that were written into the committee bill originally, which I believe were very, very seriously in error as a matter of public policy. For example, allowing parent companies of tobacco companies total immunity would have been wrong. To say that we are going to ban all claims based on addiction would have been wrong. To say that we were going to prevent State courts from hearing all claims would have been wrong.

Mr. President, I want to make sure that all of our colleagues understand that every one of those special provisions has now been eliminated. All of those special provisions no longer exist. The managers' amendment, which is now part of the bill, has eliminated all of them. The only remaining provision is a cap on yearly payments, and that cap has been raised from $6.5 billion to $8 billion. So before any Senator is called upon to make their vote, I hope they understand that simple fact—perhaps I should say those simple facts. There is no immunity in this bill; there are no special protections, unlike what was reported out of the Commerce Committee. What is left is a cap that has been raised by $1.5 billion annually.

Let me emphasize something else about that cap. The cap is available only to those companies that agree to additional advertising restrictions beyond what is contained in the FDA rule. They have to commit never to challenge the entire bill to be eligible to come under that cap. They can't advertise and they can't challenge the provisions of this legislation just to be eligible. And then there is one more thing. Everybody needs to understand that in order just to be able to do that, they have to pay out an upfront payment of $10 billion. So here is what we are offering the tobacco companies: You pay the country $10 billion; you agree to limit your advertising way beyond what the FDA rule will provide. You also agree not to challenge the provisions within this bill, and then we will fit you under an $8 billion liability cap. And only those companies which make those commitments are eligible. Only those companies that make those commitments will have State suits settled.

Any company that says, ''Wait a minute, that is too high a price. You are asking me to limit my advertising way beyond what FDA is going to tell me. You are telling me that I have to accept every provision in this legislation. You are telling me I have to pay forth $10 billion, and if I don't do that, you are saying I still have to face all those court suits in the States''—well, companies that refuse to sign the provisions under this bill get absolutely nothing. So a tobacco company is faced with the prospect of coming under an $8 billion liability cap by agreeing to all these additional provisions or getting nothing, under this legislation. They will continue to face lawsuits in the States if they don't sign onto the provisions that we have laid out in this legislation.

But it even gets more complicated for tobacco companies. We are not giving anything away by putting in an $8 billion cap. We are getting something we can't get through our own legislation. We can't legislate the advertising restrictions that go beyond the FDA rule without raising first amendment questions. And we could not prevent the tobacco industry from challenging other provisions of the bill. That is a problem. The cap is our way of addressing that particular, very serious problem.

Let me remind my colleagues of what the tobacco companies have to do to come under that $8 billion yearly cap, beyond what I have already mentioned. Of course, I have mentioned the advertising restrictions. I have mentioned the upfront payment. I have mentioned that they have to agree not to challenge the terms of the legislation, not to challenge the FDA authority. They cannot challenge the look-back surcharges. That is, they can't challenge the provisions that hold them accountable for reducing youth and teenage smoking. They can't challenge those look-back provisions or any of the payments, for if they challenge any of that, it is all over and they are back right where they started. They fall outside the cap and they are subject to every single state lawsuit and the unlimited liability that they are facing right now.

Let me also remind my colleagues that the tobacco companies will lose the protection of the cap if they fail to comply with any one of the terms—not all of them; all they have to do is miss on one of them.

So, Mr. President, I don't know how you get any tougher than that. Even if the companies comply with all of those provisions, they could lose the cap for other reasons: If they miss the youth smoking targets by 20 percent or more, if they are caught smuggling or aiding and abetting smuggling, and if they fail to make an annual payment within the year that it is owed. All of those additional criteria are locked in with this bill.

So I don't know, Mr. President. It sounds to me like that is about as tough as it gets. First of all, they have more restrictions than they have ever had in any other set of circumstances. They are required to pay more money. They are subject to discipline each and every year with regard to an array of very tight provisions. And what they get in return is an $8 billion cap on liability.

Mr. President, I will oppose the Gregg amendment because I believe the managers' amendment approaches the issue in the right way.

It gives protection only to those tobacco companies that go further than we legislate, that acknowledge the need to limit advertising in a way that we can't legislate in this bill. The other tobacco companies, those that do not sign up, will have no cap and will continue to fight it out in the courts in all of the States where these cases are being contested.

I think we have to do all we can to reduce teen smoking. Additional advertising restrictions and a commitment made by tobacco companies not to challenge the law will increase our likelihood of success—not decrease it, increase it.

Mr. President, for all those reasons, as well-intended as this amendment is, I hope my colleagues will think very carefully and very conscientiously about how important this question before the Senate truly is. We must do what we can to ensure passage of this legislation, to ensure that we stay tough on these companies, that we make them to do what we know they must do to reduce teen smoking, and to comply with the intent and the spirit of our objectives in this law.

I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I understand the regular order is that I am recognized, and then the Senator from Arizona is to be recognized for a tabling motion.

The PRESIDING OFFICER. The Senator is correct.

Mr. GREGG. Mr. President, a lot of folks have spoken today, and I reserved commenting on each speech until this time. I recognize that we want to get on with a vote—I don't want to delay that process—but I believe a few points need to be made to clarify the ground, to blow the smoke away, if I may use that metaphor, from the issue.

Let's begin with the question of immunity and whether or not immunity is granted in this bill.

Immunity for the purposes of this debate has become a term of art. Like so many terms that we use here in the Senate, it may not be the most precise term but it is the term that accurately from the political standpoint defines the event here.

The fact is that under this bill the tobacco industry is going to be given a special preferential position in the order of American commerce, a position which no other industry will have, a position which is totally outside of the traditional manner in which we have managed our marketplace under our capitalist system.

The limitations in this bill on the ability of individuals who have been harmed by the tobacco companies are considerable. They are significant and they will impact people. Pure logic tells you this, because, obviously, if the argument is being made that the only way you can get the tobacco company to come back to the table is if you give them these protections, there must be something pretty darned substantive to these protections.

So very obviously the limitations which are being placed on the capacity of the American consumer to recover for the damage that has been caused to him or her by the tobacco companies are significant, if this bill passes. Let me list a few of them.

There will be limitations on the amount of recovery on punitive damages because there is a cap. There will be limitations on the amount of damages recovered from compensation damages because there is a cap. There will be a preemption of actions by States, municipalities, and counties for future claims. There will be immunity for wholesalers, retailers, insurers, and the ingredient suppliers for past and future claims. There will be, most importantly, a structure set up where the tobacco companies will pick who is going to be the winner and who is going to be the loser on the issue of lawsuits brought against them.

What an ironic situation, as I have said before on this floor.

The way this cap works, it is the first person to the courthouse to get a settlement who gets the money. And the tobacco companies, since they are the ones being sued, can pick who is going to win. If they are sued by three different groups—a group of schoolteachers from New Hampshire, a group of kids from Pennsylvania, a group of friends from Ohio, and another group of friends from Illinois—they can settle with the friend from Ohio, and the friends from Illinois. If the cap is used up, the schoolteachers and the kids are out of it. They are out of it for that year, and they well may be out of it forever depending on how much the cap is used up, and in the next year, also.

So the people who are injured who have brought the lawsuit find themselves in the impossible position, or the ironic position, at a minimum, of having to go to the tobacco companies on bent knees and say, ''Please settle with me first so I can get into the fund before somebody else,'' which means that you inevitably create not an adversarial relationship but a supplicant relationship between those who are suing and those who are being sued, which is not in the tradition of the American jurisprudence system, to say the least.

Equally important, the concept that an industry will have protection from lawsuits in the marketplace is antithetic to the American concept of a free market. The protection that consumers have today, no matter what product they buy, is they can go into the courtroom, if they are harmed by that product, and get redress. There are a lot of other ways they can get redress, too. But the primary redress is that they can go into that courtroom or one of the primary redresses, if they have been physically damaged, or if somebody in their family has been killed, and they can get a recovery, if they can make their case. That is called the free market system. It is called the capitalist system. Under this proposal, that doesn't work.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. GREGG. No, I am going to make my statement. I know the Senator from Massachusetts has made his on a

series of occasions, and then we are going to go to a vote. I am not going back and forth carrying this on any further. I am going to make my statement. I have maintained a fair amount of reservation. So I didn't extend this debate for a lengthy period. I would like to get us to a vote.

Mr. KERRY. Fair enough. Might I ask, Mr. President, if the Senator would give me some idea of the length of time he expects to speak?

Mr. GREGG. I expect to speak for about another 10 minutes.

Mr. KERRY. I thank the Senator.

Mr. GREGG. So the marketplace is being fundamentally changed for one industry alone, the tobacco industry. That, in my opinion, is obviously a mistake.

Why is this being done? Representation as to why it is being done was made by a number of Senators, and I think they are accurate to their theories as to why it is being done. It is being done, to quote the Senator from Rhode Island, because they hope to bring the tobacco companies back to the table by putting in this significant benefit, which is protection from liability, immunity, or a form of immunity at a minimum.

It was interesting that the Senator from Utah, who is very familiar with this issue, said that even the caps, as it is presently structured, aren't strong enough to bring—they aren't enough protection to the tobacco industries to bring them back to the table, that they don't do enough, that they don't go far enough. That is an interesting comment, because what we do know is that the tobacco companies are not at the table right now. In fact, we know from the statement of the chairman of one of the tobacco companies that they have walked away from the table, and to quote him, ''There is no process which is even remotely likely to lead to an acceptable comprehensive solution this year.''

So they are not planning to come back to the table. Yet, here we have this deal which has been made, as I mentioned earlier, a deal with the devil, the producers of this product, which kills people and addicts people, and the devil walked away from the table. And now we have the unseemly situation of the U.S. Congress chasing after the devil saying, ''Please take my plan. Please take it. Take it, please. Please, please take this protection that we are offering.'' It really is unseemly. It is inappropriate. More importantly, it doesn't make any sense.

Why, if they are no longer participants in this process, would we want to give them a protection which no other industry in this country has today—it makes no sense—on the wish and the prayer that they are going to come back to the table someday in the future? I don't think so. I think it makes absolutely no sense that we should be making such a fundamental change in the way we manage our market, such a fundamental way in the way we manage our jurisprudence system, on a wish and a hope and a prayer that an industry, which has shown itself to be so endemically irresponsible, will for some reason suddenly become responsible and return to the table. I find that to be a concept which holds very little validity.

But the most substantive reason to support the amendment which has been offered by myself and the Senator from Vermont and to change the language in this bill—remember the language which we are offering here was the original language of the healthy kid amendment, which was supported by the President. I must say somebody should ask the President why he has changed his position on this because he did support this language initially. He formally and bluntly supported it.

But the primary concern here for supporting this language is this. We have an industry which produced a product that they knew killed people, and the evidence is conclusive on that. We have an industry which produced a product that they knew was addictive. Not only did they know it was addictive, but they increased the contents of that addictive part of the process, the nicotine, in order to increase the addictiveness of the product. They produced a product that was addictive, and they knew it was addictive. And then they took this product which killed people, which they knew killed people, which was addictive and which they knew was addictive, and they targeted the sales of it on our kids.

This is not an industry which deserves special protection from the U.S. Congress. Call it immunity, call it limited liability, use whatever term of art you want to use, but the fact is, this is an extraordinary step of special protection for an industry which has produced a product which is fundamentally bad, which they knew was bad, and which they targeted on kids.

While this Congress refuses to give that type of protection to other industries which are producing products which save lives—we do not give protection to medical devices which save lives; we do not give protections to automobile manufacturers that improve the style of life; we do not give protections to the computer manufacturer that improves the style of life; we don't give protections to the drug manufacturers that improve the style of life—we are going to give protection to the cigarette manufacturer, the tobacco producer that produced a product that kills you, that is addictive, and that was targeted on kids.

The choice I think here is pretty clear. We can stick with a system that has worked for 200 years, called the marketplace, where the consumer has the right to go into the court system and defend themselves and get a reasonable recovery, or we can structure a brand new system to protect an industry which has proven itself beyond any test to be a dishonorable industry, which has tried to destroy the lives of many Americans in order to sell its product.

From my standpoint, the choice should be simple. I hope the Members of the Senate will join with me and a fair number of other folks and Senator LEAHY, who has been a strong advocate—and I very much appreciate his participation as a cosponsor of this amendment—in passing our amendment to eliminate this liability limitation by defeating the motion to table which is going to be made by the Senator from Arizona.

I would like to say at this point before we go to the motion, I thank the Senator from Arizona for his courtesy and the Senator from Massachusetts for his courtesy in moving this amendment to a vote. I appreciate their courtesy. They have been more than fair in allowing us the opportunity to bring this forward and do it in a timely manner. I thank them for that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I move to table the Gregg amendment.

Mr. KERRY. Mr. President, before the Senator so moves, I would just ask him if he might answer one question.

Mr. MCCAIN. I will be glad to yield for a question from the Senator from Massachusetts.

Mr. KERRY. Mr. President, without prolonging this, I would ask the Senator from Arizona if he would agree—since there is no immunity and no liability limitation but only a cap on how much liability—that voting to sustain the cap and against the Gregg amendment is, in fact, completely consistent with the budget amendment vote?

Mr. MCCAIN. That is a very articulate and enlightening question. The answer is, the Senator is exactly right. Actually, it is a very important point.

I move to table the Gregg amendment and ask for the yeas and nays on amendment No. 2433.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the underlying Gregg amendment No. 2433. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT (when his name was called). Present.

Mrs. BOXER (when her named was called). Present.

The result was announced—yeas 37, nays 71, as follows:

[Rollcall Vote No. 145 Leg.]

YEAS—37

Akaka	Daschle	Frist
Bennett	DeWine	Glenn
Biden	Dodd	Gorton
Breaux	Faircloth	Graham
Byrd	Feinstein	Harkin
Chafee	Ford	Hatch

Helms	Landrieu	Robb
Hollings	Levin	Rockefeller
Hutchison	Lieberman	Sessions
Inouye	Mack	Stevens
Jeffords	McCain	Thurmond
Kerry	McConnell	
Kohl	Murkowski	

NAYS—61

Abraham	Durbin	Murray
Allard	Enzi	Nickles
Ashcroft	Feingold	Reed
Baucus	Gramm	Reid
Bingaman	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Bryan	Hagel	Sarbanes
Bumpers	Hutchinson	Shelby
Burns	Inhofe	Smith (NH)
Campbell	Johnson	Smith (OR)
Cleland	Kempthorne	Snowe
Coats	Kennedy	Specter
Cochran	Kerrey	Thomas
Collins	Kyl	Thompson
Conrad	Lautenberg	Torricelli
Coverdell	Leahy	Warner
Craig	Lugar	Wellstone
D'Amato	Mikulski	Wyden
Domenici	Moseley-Braun	
Dorgan	Moynihan	

ANSWERED ''PRESENT''—2

Lott	Boxer

The motion to lay on the table the amendment (No. 2433) was rejected.

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted ''present'' on the Gregg amendment related to liability limits for tobacco companies.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

The Ethics Committee has advised me that voting on an amendment such as this ''would not pose an actual conflict of interest'' under the Senate Code of Conduct.

However, I decided that this vote could create the appearance of a conflict of interest and therefore I abstained by voting ''present.''

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GRAMM. Could we have order, Mr. President? I can't hear.

The PRESIDING OFFICER. The Senate will come to order.

Mr. MCCAIN addressed the Chair.

Mr. LEAHY. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. The Senator from Massachusetts seeks recognition.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I send an amendment to the desk.

Mr. GRAMM. Parliamentary inquiry, Mr. President.

No amendment is in order.

The PRESIDING OFFICER. An amendment to the bill is in order. Is this an amendment to the bill?

Mr. MCCAIN. It is a second degree amendment.

Mr. LEAHY. I suggest the absence of a quorum. Mr. President, I suggest the absence of a quorum.

Mr. MCCAIN. Mr. President, I am recognized, I believe.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. No one else can suggest the absence of a quorum.

Mr. President, is it in order to send a second-degree amendment?

The PRESIDING OFFICER. A second-degree amendment is already pending.

Mr. MCCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senate is not in order.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I know of no further debate on the Gregg second-degree amendment.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

MOTION TO RECOMMIT WITH AMENDMENT NO. 2436

Mr. GRAMM. I send a motion to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Texas, [Mr. GRAMM] moves——

Mr. MCCAIN. I ask unanimous consent that reading of the amendment be dispensed with.

Mr. LEAHY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM] moves to recommit the bill, S. 1415, to the Committee on Finance with instructions to report back forthwith with all amendments agreed to in status quo and with the following amendment No. 2436 for [Mr. GRAMM], for himself and Mr. DOMENICI.

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later that 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

''SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1999, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 1998' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.
''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. DASCHLE. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue calling the roll.

The assistant legislative clerk continued calling the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 2437 TO AMENDMENT NO. 2436

(Purpose: To provide a substitute for provisions relating to reductions in underage tobacco usage)

Mr. DASCHLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. DURBIN, for himself, Mr. DEWINE, Mr. WYDEN, Mr. CHAFEE, Mr. HARKIN, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. DASCHLE, Mr. CONRAD, and Mr. REED proposes an amendment numbered 2437 to amendment No. 2436.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2438 TO AMENDMENT NO. 2437

(Purpose: To provide a substitute for provisions relating to reductions in underage tobacco usage)

Mr. DASCHLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] for Mr. DURBIN, for himself, Mr. DEWINE, Mr. WYDEN, Mr. Chaffee, Mr. HARKIN, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. DASCHLE, Mr. CONRAD, and Mr. REED proposes an amendment numbered 2438 to amendment No. 2437.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my colleagues for a very enlightening and informative debate. It has been an important discussion, not on the amendment just voted on, but on the bill itself. Obviously, we attempted to table the Gregg amendment, and it is something that is unfortunate, in my view, for the entire bill. At the same time, just like with the attorneys' fees and other aspects of this issue, we will revisit this issue again. I believe it is important for us to continue to work through the bill and get it through the U.S. Senate.

I think the American people expect us to do that, and I think it is important that we continue to work on the many amendments of significant importance to the bill. I believe this aspect of it not only will be revisited, but it is another chapter in a very long saga. Yesterday, we had two very significant victories. Today, we had a defeat. There will be more victories and more defeats as we go through this very difficult process.

But at the end of the day, I am totally confident that this body and the Congress will act in a responsible manner and adopt a comprehensive piece of legislation that will attack the nationwide problem of 3,000 children beginning to smoke every day and 1,000 of them being caused to die early as a result of tobacco-related illnesses. I thank all those who voted in favor of the amendment. And for those who opposed it, I respect the opposition. But I believe we will move forward with a comprehensive piece of legislation.

I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will be very brief. I join my colleague in saying that I think what Senator MCCAIN and I and others hoped for was the opportunity to be able to come to the floor and fight these tough issues. That is what we did. We just had a tough vote. Clearly, some of us had hoped that the outcome would be different, because we had a different view of where the bill might travel. But this by no means prevents us in any way from continuing forward in the process of molding this legislation. This is precisely what the Senate ought to be doing. It ought to be fighting hard over these votes. We ought to be able to come to an understanding of where the 51 votes lie. And then, ultimately, we all know that hopefully we can come together with a piece of legislation that finds a conference committee and, ultimately, both Houses of Congress.

So I thank my colleagues for this spirited debate and for the fact that we have voted on two of the most critical issues with respect to this legislation. I thank Senator DURBIN for now bringing to the floor, through the leadership, an amendment on the issues of the lookback, one of the other very important issues that needs to be resolved. I am confident that we will have another healthy round of debate on that. I look forward to continuing to proceed.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, I think we have had a defining moment in this debate. Throughout this debate, our colleagues, who have brought to the floor of the Senate a bill that will raise $700 billion in taxes, have said that they are not interested in the money, that the money is incidental, that what they want to do is raise the price of cigarettes.

We have made the point that this increase in the price of cigarettes, this tax, will fall very heavily on blue-collar workers. Those making $15,000 or less will pay 34 percent of the cost, the taxes that are built into this bill. Those making $22,000 or less will pay 47 percent of the cost. Those making $30,000 or less will pay 59.1 percent of the cost of the taxes embodied in this bill.

Even if this bill only raised the price of a pack of cigarettes by $1.50—and most estimates are that it will raise it by $2.50 at a minimum—it would mean that an average smoker in America would pay $356 of additional taxes as a result of this bill, and a blue-collar family where both the husband and wife smoke, would pay $712 a year more in Federal taxes. In fact, the table put out by the Joint Committee on Taxation shows something that, over and over, those who support the bill have tried to deny or neglect, which is that for those Americans who make $10,000 or less, their Federal taxes will rise by 41.2 percent as a result of the taxes embodied in this bill.

Now, what Senator DOMENICI and I did earlier was send an amendment to the desk that tried to give some of this money back to blue-collar workers in the form of a tax cut. Our colleagues say, it is not the money we want; they say, we just want to raise the price of cigarettes. So Senator DOMENICI and I took them at their word, sent an amendment to the desk that said raise the price of cigarettes; but since this is going to impose a bone-crushing tax on moderate-income Americans, let's take at least $1 out of every $3 that will be collected in this tax increase and let's give it back to working families by repealing the marriage penalty for families that make $50,000 or less. In other words, it gets the impact on smoking that may come from a higher price as a result of the taxes in this bill but with our tax cut we avoid lowering the real income or living standards of blue-collar Americans who, after all, are the victims here. The whole objective of the bill is to basically say people who smoke have been induced to smoke by the tobacco companies, and yet, paradoxically, the tax we are imposing is being imposed on the very people who have been exploited. In fact, the bill before us has an incredible provision which says every penny of the tax has to be passed through, and it is illegal if a tobacco company absorbs any of this tax increase. Every penny of it, 59.1 percent of the tax increase, is on families that make less than $30,000 a year. The victims of the smoking campaign by the tobacco companies are the people who are paying the taxes.

What Senator DOMENICI, Senator FAIRCLOTH, and I have said in our amendment is this: Raise the tax, but give a third of the money back to working families by repealing the marriage penalty for couples who make less than $50,000 a year. So you get the price impact on smoking, but you don't end up brutalizing economically moderate-income people.

I think it is very instructive that after 3 days of debate where our colleagues have said don't accuse us of wanting this money, we just want to raise the price of cigarettes, that we sent an amendment to the desk asking that $1 out of every $3 we are collecting in taxes be given back to moderate-income working families, and the Senate reacts in a convulsion, and the leadership uses right of privileged recognition to amend our amendment and to deny us the ability to offer a tax cut for the very people who are going to find themselves crippled economically as a result of this tax.

So let me just suggest two points:

No. 1, I think this is further evidence this bill is about money. Our amendment is hardly a far reaching amendment. We are just simply asking that roughly one out of every three dollars of the tax be given back.

Second, it also suggests, it seems to me, the objective here is to prevent us from having an opportunity to vote on a tax cut.

I want to assure my colleagues—and I know Senator DOMENICI feels exactly the same way—that there is no way we are going to be denied the right to offer this amendment. This won't be the last tax cut amendment that we are going to have. Quite frankly, I don't understand if those who are for the bill are saying what they really mean, why there isn't overwhelming support in both parties for giving a third of this tax increase back to working families.

Let me say very briefly what the amendment does and then yield the floor so that Senator DOMENICI, the cosponsor of the amendment, will have an opportunity to speak.

Under current law if two individuals, a man and a woman, both of whom are working in the economy outside of the home, fall in love and get married, under current law they pay on average an additional $1,400 a year in income taxes. So that, for example, if you had

two single people, and they didn't get married, and they filed an income tax return jointly, they don't pay taxes on any income of less than $10,200 a year. But if they fall in love and get married, even if they file separately, they have to pay taxes on income of above $6,900 a year. So we have an incredible provision of law that, in terms of deductions, penalizes working people who fall in love and get married by taking away $3,300 of deductions from them.

Mr. President, I think it would be a general bipartisan consensus that the family is the most powerful institution for progress and human happiness in history. Yet our Tax Code penalizes people who get married. If you want to state it in a dramatic way, you can say that the tax code provides an additional $3,300 of deduction by simply living in sin rather than getting married.

This has been much discussed. There is a strong basis of support for repealing it.

What we could do is simply this: Eliminate the marriage penalty imposed by the tax code for all families that make less than $50,000 a year—and those families will pay about 75 percent of this tobacco tax. Smoking is primarily a blue-collar, moderate-income phenomenon in America today. What we will do for couples that earn less than $50,000 a year is give them the additional $3,300 deduction so that there will be no economic penalty for people getting married. We will also allow those who get an earned income tax credit to take the deduction before they figure their eligibility for the earned income tax credit. So that even people who make very modest incomes will benefit from this tax cut.

This tax cut will take roughly $1 out of every $3 raised in taxes by the tobacco tax and give it back to working families. So those who want the higher price for tobacco to discourage consumption will get it, but we will not crush economically moderate income people who have become addicted to nicotine and who smoke. We will not have the terrible paradox that while talking about firing bullets at these big tobacco companies our bullets are actually hitting the victims who have become addicted to nicotine.

So on that basis, Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have not but for a few minutes spoken about the issue before the Senate.

I want to make it very clear that I understand the difficulty in managing a bill of this size. It is an enormous and contentious issue, and Senator MCCAIN should be commended for taking on such a difficult task. I have nothing but admiration for those who are attempting to develop this legislation.

But I can say to the Senate that I cannot imagine that the rules of this Senate are going to preclude Senators like GRAMM and DOMENICI from offering amendments to this bill. We want to vote on whether we want to have a tax cut as part of this new tax increase. Sooner or later we will vote. I don't know what the two amendments offered by Senator DASCHLE are. Whatever they are, in due course we will vote on them. If by chance one of them wipes out ours, we will be back to offer other amendments.

Let me talk about the history of imposing taxes on cigarette and related tobacco products. I am sure that I am not as good of a historian as my friend from Texas is, but is he aware the first reported effort to put a tax on tobacco was done by King James I in 1604.

King James just didn't like the odor of tobacco. He wasn't a U.S. Senator and he wasn't part of a democracy. He simply issued a proclamation. ''Smoking is a custom loathsome to the eye, hateful to the nose, harmful to the brain, and dangerous to the lungs.''

In 1604, King James said that. Now I used to be a smoker and I enjoyed it. I am just reporting on what King James said so I don't want the smokers listening to this debate to get mad at me.

Then he proceeded to put a 4,000 percent increase on imported tobacco.

He didn't pretend that he wanted to accomplish some worthy public purpose. He just wanted to raise revenue—and a lot of it. He was a dictator, king, benevolent, whatever they call them. But he didn't have to worry about what we have to worry about. And that is the impact on our citizens of this huge tax and the size of government. Frankly, there is not a word in history about this which said he was concerned about kids. He just said what I had described to you, and put the tax on and spent the money.

Frankly, people were no better off in those days. Even with a 4,000-percent increase people continued to smoke.

It is most interesting that without all of our science—I really think our science is great to find cures for cancer—King James I said that smoking was harmful to the brain and dangerous to the lungs. Having said that, he wasn't concerned about teenagers or about cancer because he didn't know about cancer.

But as we proceed to work on this bill, I want to ask myself and ask those who are working on this bill:

What do we really want to accomplish?

First, we contend that too many young people are starting to smoke. And we want to stop that. Make no bones about it. When we offer our substitute bill, we have done the best we can with a reasonable amount of money to try to stop teenagers from smoking. Too many young people are using drugs, and we want to try to stop that. And we want more research on serious illnesses, including cancer, so that someday we will stop them in their tracks.

Now, that is the kind of substitute amendment we are going to offer. But nowhere can anybody tell the Senate or the people of the United States that you need over the next 25 years $868 billion in new revenue from cigarette-related products.

Where do I get that number?

I don't think it has been said this way, but I want to make it simple.

The current Federal excise tax on tobacco is 24 cents a pack. It is scheduled to go to 39 cents a pack under current law. This bill includes an increase equal to $1.10 cents. That is 1.49 in straight arithmetic. And then the $1.10 is indexed for inflation or 3 percent, whichever is greater.

Frankly, we are not really sure how much this bill raises, but an acceptable number is $868 billion, I say to my friend from Texas.

Now, I want to try to put that in perspective. The biggest program we have taking care of the most people committed to monthly checks is the Social Security Program. $868 billion would pay for Social Security for 2 full years. $868 billion would pay for the entire Defense Department of America for 3 years.

This proposed tax increase in the McCain bill is bigger—when you put it into one basket, it is bigger than the gross domestic product of any of the following countries: Belgium, Austria, Canada, Denmark, Finland, Switzerland, et cetera.

Now, where did anybody come up with the idea that we needed every single penny of that to be spent on programs related to reimbursement to the States, to research, or to whatever? Where did the miraculous relationship of $868 billion, the total receipts, to the need for programs come from? There is no reason to it. There is no magic. I can assure you of that, if you only had a $300 billion tax increase, everyone would get by with $300 billion for this anti-smoking program.

But now we have gotten so grandiose about it that it is going to raise, over 25 years, over $868 billion under this bill.

Now, frankly, I believe it is only reasonable that part of this tax increase be given back to the American people, and I am going to have a lot more to say about that.

But a tax is a tax. This tax has a good motive: to stop kids from smoking. It may work—raise the price of cigarettes, and certain parts of the population may not buy them as much or may stop buying them. There is not conclusive evidence as to what price point you have to raise the price to, to have the most effect. But I can tell you, in our substitute we are going to propose 75 cents, period—no increases, just 75 cents. We believe that will keep the black market from going rampant and has as good a chance as any other number, by way of a tax, of deterring young people from starting smoking or encouraging them to quit smoking from the economic standpoint.

Having said that, I want to tell you that there is nothing more onerous in the United States than the marriage

penalty. Every once in a while, you will hear about a couple—it is not very frequent, but it gives you the dimension of this penalty—who will go to Mexico and get divorced the day before Christmas, and then they will go to Las Vegas and get married after New Year's. And guess what. They don't have to pay the marriage tax penalty. I am not sure if 500 do that, but we know some used to. I am not sure if it is 5,000. But imagine that you have a law on the books of America that invites that kind of conduct.

In the extreme, the marriage penalty is punitive. And it is just wonderful to hear Senators and political leaders say, ''We are for the family.'' I assume that when you say, ''We are for the family,'' without regard to one's philosophy, I guess you would have to say marriage is pretty important, too, because I think in some way it is related to the families. It used to be 100 percent related, but it is still very important.

Now, why would you impose a tax that would say to those two people who are married, ''You pay more if you are both working than if you are both working and living together and not married''? Frankly, I will tell you that I have heard, personally, in my own ear somebody say, ''We are not getting married because, after all, we love each other, but we would have to pay $2,800 more in taxes, and it is just crazy, so we are not going to get married.''

Now, I don't like to say that, but that is the case. And there are worse examples because they are much broader in terms of impact. The average marriage penalty in this country is $1,400. In some cases, it is much higher; in other cases, it is somewhat lower.

In fact, if you look at comparable countries, Mr. President, 27 of the OECD countries—they are tied together in terms of economic evaluations and assumptions and the like—19 countries tax husbands and wives separately, so there is no marriage penalty. What keeps the United States from doing that? Frankly, what has kept us in the past is that we had too big a deficit, and if we cut taxes, then we figured we were losing money and we would take it easy and careful and not fix everything in the Tax Code.

We have balanced the budget. Senator GRAMM and I do not intend to change a bit that approach to more and more surpluses. But when you impose a brand new tax—and it is inconceivable that you would need every penny of that tax for a program that deals with tobacco—frankly, there are organizations running around that have never seen so much money. I have stopped some in the hall with buttons saying, ''Cigarette Tax Now,'' and have asked them, ''Which one?'' Well, they said, ''We like Senator MCCAIN's improved.'' I said, ''Oh, but what's the goal?'' ''Well, the goal is the highest tax we can get and the biggest program we can get to spend money on teenagers and all kinds of health programs.''

Growing a big government is not why we are raising the cigarette tax. I thought our big goal was to try to stop our young people from smoking. Increasing the price of cigarettes plus a pro-active advertising campaign against smoking and drugs could be effective. We also need an attitude change at the cigarette companies. We also need a little more research. We need new penalties against those who sell to teenagers when they should not, and even to teenagers who smoke three or four times and they should not and know they are wrong. That is provided for in the GRAMM DOMENICI substitute. We would like to increase the budget DEA, FBI, Customs, and DOD drug interdiction programs.

But beyond that, what do we need all this money for? It is absolutely logical—I have been here a long time. I have worked on appropriations. Every year the chairman of the appropriations subcommittee comes to the floor. I will say, ''You can't imagine, fellow Senators, how many requests I had for money from my bill that I could not comply with.'' In fact, I have seen some where you take out a batch of letters and say, ''This is what I was asked to do that I can't do.'' But there is no relationship between the country prospering and being a great country and that pack of letters.

But now, look, here we have concluded—some have—that we would be remiss if we didn't dream up an expenditure for every penny of these tax dollars. Right? Now, why is that rational? Why should those of us say, how about one-third of it going back to the taxpayers and going back to fix the most onerous, discriminatory tax against an institution that we cherish and respect, one-third of the money.

I have not heard anybody say—and I hope, when we finally vote on the marriage penalty, and that is not going to be the only tax cut amendment offered, because if this one does not pass, there will be an amendment to cut 1 percent from the lower brackets. There will be a tax cut amendment to expand child care credits. There will be a number of tax cut amendments that should be considered.

But how can anybody stand up in the Senate and say, if you take a third of this huge tax increase the tobacco program for kids is not going to work?

I defy anybody to come up here and say, out of this pot of money and all these programs, if you don't keep them all, if you take one-third of the money and say, look, let's give it back to the taxpayers so we begin to get rid of this marriage penalty, at least for those families with $50,000 of income and under, I cannot imagine somebody will stand up and say:

''But we won't be doing what we must do for our kids.'' I mean, if it is $868 billion, and you have $650 billion instead of $868 billion, can you not put an effective anti-smoking and anti-drug program together?

Mr. FORD. Mr. President, will the Senator yield for a question, and I am on your side. I am on your side.

Mr. DOMENICI. I am just about finished and then I will be glad to yield.

Mr. FORD. I apologize.

Mr. DOMENICI. So, from my standpoint, as I told some of my friends to whom I said I was not in a hurry to pass this legislation, I said, why don't we continue to work on this bill until we get back. I said that because it is very contentious and Senators ought to have a chance to vent their positions and let the American people try to understand.

I have not been able to come to the floor because I been trying to help finish the ISTEA bill. I have noticed that the Senate floor time has been filled with Senators talking about this bill. There have been no long quorum calls. I do not think there has been anything dilatory.

But, frankly, I have a number of amendments that I believe should be offered. This is our best opportunity to consider tax cuts. I intend to talk about this bill.

I have dedicated 20 years of my career in the Senate getting our Government's size under control. I have had Senators congratulate me, saying we are finally getting Government down a reasonable in size; it is not going to be so big. And then all of a sudden I see this bill that will supersize Government—and I will gather more information for you so I can do more comparisons—but this bill will add probably as much in new programs to this Government as we have been able to cut from this Government in our deficit reduction programs of the last 4 or 5 years combined.

Government is government. Taxes are taxes. And, in our system, there is a relationship between the two. The higher the taxes, the bigger the government. And the higher the taxes, the less free are people.

I will commit that we ought to tax cigarettes to discourage kids from buying and smoking cigarettes. Senator GRAMM and I will propose taxing cigarettes at 75 cents a pack in our substitute. But I do not believe there is any magic formula as to how much you have to spend to try to dissuade kids from smoking.

If $600 billion is not enough, and we need $886 billion over 25 years, then you cannot give anything back to the taxpayers.

But what if $500 billion is enough?

Or $400 billion is enough?

Then I believe that some of the money should be given back to the people? That is essentially the issue.

It is as big an issue as any issue before us, because we do not need all the money called for in the McCain bill I have just told you about—a dollar and a dime plus 49 cents plus 3 percent added on every year. We do not need all that money for a cigarette program so we ought to not use it all.

Senator GRAMM and I are going to offer the Senate an opportunity to give some of the money back to people in the form of a tax cut.

I will be glad to yield for a question.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I appreciate the Senator from New Mexico yielding to me. I have a piece of legislation in to eliminate the marriage penalty, already having been introduced. I found, to my surprise, that 52 percent of married couples get a marriage bonus. Not many people know that. There is a marriage bonus for 52 percent. I forget how many million couples get a marriage bonus of about $1,300-plus. The marriage penalty is about $1,400-plus. If you wipe out the penalty and the bonus, we have a surplus of about $4 billion. If you take the marriage bonus away and wipe out the marriage penalty, it is almost a $4 billion surplus.

In the Senator's proposal here, what does the Senator propose, to make up the difference in the marriage penalty and you leave the marriage bonus in place?

Mr. DOMENICI. I am not aware. Maybe Senator GRAMM can help me. I am not aware we changed the marriage bonus if there is one on this.

Mr. BRYAN. Parliamentary inquiry, who has the floor?

Mrs. HUTCHISON. I have the answer to that question.

Mr. GRAMM. No, we did not change the marriage bonus.

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. FORD. What was the answer?

Mr. GRAMM. The answer was ''no.''

Mr. DOMENICI. We don't change the marriage bonus.

Mr. FORD. The marriage bonus still stays there at $32 billion? The bonus is $32 billion?

Several Senators addressed the Chair.

Mrs. HUTCHISON. If the Senator will yield, the marriage bonus was put in place for single-income-earning families years ago. At that time, under 50 percent of the families in this country had two incomes. But today, 69 percent of the families in this country have two incomes. So the bonus became a penalty, because people were not able to get married remain in the same tax bracket as two singles earning the same combined amount. My colleague from Texas and the Senator from New Mexico are doing here what I have done in another bill, which I introduced with Senator FAIRCLOTH of North Carolina. Our bill allows married persons to choose to file as they do now or to file as single persons. That way, marriage versus single status will not have any tax consequences whatsoever. What we want in this country is fairness and equity in our Tax Code.

Mr. FORD. I am trying to find out an answer here. I understand the marriage penalty. I am opposed to it, and I am trying to find an answer to it and the unfairness of it.

In 1986, we repealed the two-earner deduction, but increased the standard deduction for married couples, and reduced the number of tax brackets from 15 to 2. The combination of these changes reduced the marriage penalty considerably.

Now it appears the EITC gets involved here, and I understand the distinguished senior Senator from Texas is eliminating that, or is he keeping that in?

Mr. GRAMM. Will the Senator yield?

Mr. DOMENICI. I will be glad to yield.

Mr. GRAMM. First of all, I want to make it clear—and I assume both the Senator from Texas and the Senator from New Mexico agree with me—I am sure not ashamed of trying to let working families, moderate-income families, keep more of what they earn. What we are doing here on the EITC is saying—let's say that you have two very low-income people, both of whom work. They fall in love. They get married. What we are saying is, to see whether they are eligible for the earned-income tax credit, which they will be. In another example, a single mother with two children——

Mr. BRYAN. Mr. President, parliamentary inquiry, who has the floor? As I understand the rules, no Senator can yield to another Senator.

The PRESIDING OFFICER. The Senator is correct.

Mr. GRAMM. Will the Senator yield for a question?

Mr. DOMENICI. I still have the floor, Mr. President. I yield for a question.

Mr. GRAMM. Is the Senator aware that a waitress who had three children, and made $9,000 a year, and her prayers were answered and she met a janitor who made $12,000 a year and his prayers were answered and they got married, not only would she lose a $3,000 tax deduction, but she would lose her earned-income tax credit?

Mr. DOMENICI. That is correct. I understand that.

Mr. GRAMM. Is the Senator aware that under the amendment that we have offered, that same couple would be able to lower their income by $3,300, before they measured whether they qualified for the earned-income tax credit, so that the net result would be that moderate—people who make such a low income that they don't pay any income taxes, potentially, would still benefit from the provision in our amendment, so that people who are paying as much as $712 as a couple in these tobacco taxes would get some of that money back through lower income taxes?

Mr. DOMENICI. That is exactly right. I yield the floor.

The PRESIDING OFFICER (Mr. COATS). The Senator from Nevada.

Mr. BRYAN. Mr. President, I ask unanimous consent that upon my yielding the floor—it is my understanding the junior Senator from Texas requests 10 minutes, and I request that she be recognized. Following that, the junior Senator from Illinois? I propound that in the form of a unanimous consent request.

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

Mr. BRYAN. I thank the Chair for his courtesy, as well as his parliamentary ruling.

Mr. President, as we debate this historic tobacco legislation today, 3,000 children across the country will try smoking for the first time. Of those 3,000 children, one-third, or 1,000, will become addicted is the only way to describe it, addicted to nicotine and will face a future of diminished health. The health consequences of the use of tobacco products is our country's most preventable public health problem, and our goal in this legislation is to stop underage smoking.

Our debate on this tobacco legislation is, indeed, a historic event. Less than a year ago, with the announcement of the June 1997 settlement reached between the States' attorneys general and the tobacco industry, few would have foreseen that we would have comprehensive legislation to address the national problem of underage use of tobacco products on the floor of the U.S. Senate. I give particular commendation to the Nation's attorneys general who deserve much credit for putting this issue in the forefront of public debate.

A year ago, the conventional wisdom may very well have been that the Senate would be incapable of debating comprehensive tobacco legislation. It was then said the tobacco industry was too strong, its grip upon the Congress too powerful. Mr. President, a different force arose.

The sustained efforts of the public health community, and in particular the former Surgeon General of the United States, Dr. C. Everett Koop, and the former FDA Commissioner, Dr. David Kessler, these two, as well as other public health advocates, have kept the focus on a common goal: a major reduction and hopefully the eventual elimination of underage smoking.

This legislation may not be perfect, but it does represent an extraordinary accomplishment. The initial Commerce Committee bill offered by Senator MCCAIN was a crucial step in ensuring that the tobacco industry would not be allowed to stop the effort to protect our Nation's children. After the Commerce Committee reported out its bill—and I am proud to say as a member of that committee I joined with a great majority of my colleagues in voting to report that bill out of committee—the tobacco industry walked away from the legislative process and then began an orchestration by the industry to end our efforts to protect our children.

The tobacco industry badly miscalculated again. Instead, our resolve to protect our children's future has been strengthened. This effort is of vital importance for the children of our Nation and for their future health.

In the 11 months since the proposed 1997 settlement, 990,000 underage children have become smokers. One-third,

or approximately 330,000, of those children will eventually die prematurely because of tobacco-related illnesses. This is a tragic statistic. This undermining of our children's future health must end.

If a child begins smoking before he or she reaches the age of their 18th birthday, there is an 80 percent likelihood that child will continue to smoke into adulthood. For these young children, the decision to try smoking has ramifications far beyond their understanding at such a tender age. These young people view themselves as I suppose all generations of young people have—as being indestructible. They do not realize, nor fully comprehend, the significance of their decision. That is a condemnation to a possible future of lifetime addiction to tobacco and a possible lifetime threatening health condition.

I keep using that word ''addiction'' because that is what we are talking about, Mr. President, addiction. How urgent our efforts are to reinforce these efforts have been highlighted by the recent report from the Centers for Disease Control, a report which indicates that the increase of tobacco usage by underage youth has increased by alarming proportions.

Just 7 years ago, 27.5 percent of all high school students in America smoked. In 1997, that number had risen to 36.4 percent. At the same time, the number of adult smoking was declining. Young African-Americans historically have been able to resist the tobacco industry's advertising reach and had relatively low levels of underage tobacco use. Unfortunately, that is no longer the case. Smoking by African-American students has almost doubled in the past 7 years, the fastest growth rate of any youth group over the past 6 years. White youth smoking has increased by 28 percent, and Hispanics have increased by 34 percent over the same time period.

Overall, 5.5 million of our Nation's 15 million high-school-age children are smokers. This report's findings are most distressing. Rather than gaining, we are losing ground in our effort to protect our children's health.

The decision to smoke or not to smoke is, we are told, an adult choice, and I share that perspective. But we have learned that the tobacco industry has systematically focused its marketing strategies on underage smokers and then lied about it. They lied to the American people. They lied to the Congress.

To get middle-school-age children—these are youngsters who are not yet in high school—to try smoking and then to get them hooked on nicotine is the key to the tobacco industry's future markets and profits. To hook these children at this early age means these young people will have been smoking for 3 to 5 years before they have reached the legal age to make that decision, the age of majority or adulthood at 18. What the tobacco industry has done is tantamount to a crime.

Let me be clear I strongly believe underage children also bear responsibility when they attempt to use, purchase or possess tobacco products, and they need to be held accountable for their illegal activity. I am pleased that at my request this legislation includes provisions to require States to have penalties so that underage youth who do try to purchase a tobacco product will know it is illegal and that it carries consequences. These penalties can include community service, fines and suspension of driver's license privileges. But holding young people responsible for illegal smoking or possessing tobacco products in no way excuses the tobacco industry for its shameless efforts to encourage underage smoking.

Our underage children have been the premeditated focus of the tobacco industry's effort to ensure there is a future, and I use their terminology, ''replacement market'' for their products. This industry has for years strategized as to the methodology to entice our youngest children to identify tobacco product brands with the sole purpose of getting them to try smoking as early as possible. This industry knew the earlier a child tries smoking, the greater the likelihood will be that child will continue to smoke and become addicted to nicotine. Once addicted to nicotine, that child will very likely continue smoking into adulthood, and then the industry will have accomplished its goal: the creation of a future replacement market for its products.

In the tobacco industry documents recently made public, this is manifestly clear. An R.J. Reynolds document states:

> This young adult market, the 14 to 24 group. . . represent[s] tomorrow's cigarette business. As this 14 to 24 age group matures, they will account for a key share of the total cigarette volume—for at least the next 25 years.

Yesterday, Mr. President, I was privileged to attend the White House Campaign for Tobacco-Free Kids. I was impressed with the more than 1,400 youngsters who gathered, representing America's youth, who made a determination not to be fooled by the tobacco industry. These young people have already made a choice, and that choice is to say ''no'' to the tobacco industry's attempt to take their future health away from them.

The tobacco industry has tried to manipulate the legislative process by intimidation. But the industry's saber rattling about its ability to win trials has been seriously undermined by its own actions.

The tobacco industry, among other criticisms of this bill, has consistently maintained that any legislation not limited to the $386.5 billion originally negotiated amount by the attorneys general and the tobacco industry in their June 1997 settlement would result in the bankruptcy of the industry.

The legislation we debate today is estimated to cost over $516 billion over 25 years, and the tobacco industry is asserting that such an amount would result in their bankruptcy.

However, I think it is noteworthy to point out that during the course of the congressional deliberations on the attorneys general-industry settlement, the tobacco industry itself has settled that it has voluntarily entered into an agreement with the State of Mississippi for $3.4 billion, the State of Florida for $11.3 billion, the State of Texas for $15.3 billion, and, most recently, the State of Minnesota for $6.6 billion.

Now, the tobacco industry's willingness to pay these multibillion-dollar judgments in just 4 of the 41 States makes two very important points. First, the industry's contention with respect to bankruptcy has been proven to be specious. These four settlements extrapolated to the remaining State lawsuits would cost the industry approximately $500 billion, nearly the same amount as the cost of the McCain legislation.

A further note. This industry was prepared, as a consequence of the June 1997 settlement that it voluntarily entered into, to decrease youth smoking by approximately 40 percent. The industry did not seem too concerned in June of 1997 that a loss of 40 percent of their market would bring about bankruptcy. And it does seem logical to believe that the industry would not have voluntarily negotiated a settlement if they believed that settlement would put them out of business.

A second point, if I may, Mr. President. The magnitude of these settlements only served to verify the industry's determination not to allow any lawsuit to go to a jury because they are fearful of the outcome—just what a jury might do once a jury fully understands the egregious misconduct of this industry and the impact it has had upon our Nation's children.

So the tobacco industry has also pulled out another old scare tactic, that this legislation creates a monster, convoluted, massive new bureaucracy. Quite to the contrary, this legislation does not. All administrative efforts need to assure that the proper implementation of this historic legislation will be done by currently existing agencies.

This legislation does provide for a very strong Food and Drug Administration role in the efforts to stop underage tobacco use and to assure the public of our Nation that its safety and the safety of our young people will be its paramount concern.

Now, I have consistently supported the FDA's efforts to reduce underage smoking. I am pleased that this bill will reinforce and, indeed, strengthen the ability of the FDA to continue to protect the public health of our citizens. The legitimate concerns raised by convenience store retailers who had feared they could, as a retail group or class, be prevented from selling tobacco products under the proposed

FDA regulations have been addressed. These retailers have now expressed their support for the proposed State licensing of business entities selling tobacco products as a means of further controlling access of these products to underage children. Under the revised FDA regulation section, the FDA will be able to revoke a retailer's license, on an individual basis, to control those retailers who do not abide by sale restrictions. This will protect those responsible retailers who are committed to preventing underage access to tobacco products, and to punish those who irresponsibly do not do all they can to prevent young people from illegally purchasing tobacco products.

Mr. President, equally ridiculous to the bureaucracy ''scare'' is the assertion that a massive black market will emerge. On the floor, we have heard over and over again the black-market warnings of Jim Pasco, the executive director of the Fraternal Order of Police. What tobacco supporters fail to tell us is that this same gentleman is on the payroll of Philip Morris, this country's largest tobacco company.

So I conclude, Mr. President, by observing that the arguments made by the opponents of this legislation are pure smokescreens. The issue is really simple: Will Congress have the courage to vote on the side of America's youngsters and to protect our youngsters from the possible lifetime health-crippling afflictions that are attributed to the use of tobacco that cause the premature death of hundreds of thousands of people each year or will it support the tobacco industry?

I hope my colleagues will take the courageous and historic step to vote for this legislation and to protect the young people in America.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized to speak for 10 minutes.

Mrs. HUTCHISON. Thank you, Mr. President.

Mr. DEWINE. Will the Senator yield?

Mr. President, I ask unanimous consent that I be allowed to speak after Senator DURBIN. We have an amendment that we are offering together, and I would like to be able to speak right after his speech.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRAMM. Would the Senator yield before she starts for a unanimous consent request?

Mr. President, I ask unanimous consent that the Senator might yield to me for 1 minute.

Mr. FORD. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. HUTCHISON. Mr. President, everyone agrees that children should not smoke. They do not have the maturity or judgment to understand the risks of their decision.

Mr. FORD. May we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mrs. HUTCHISON. Where we differ is, how do we achieve this result? Forty States have now filed lawsuits to engage the tobacco industry in accepting the responsibility for its actions. Recent evidence demonstrates tobacco companies targeted children in their advertising, and the industry may have manipulated scientific research in its favor. This, obviously, is outrageous.

We have a historic opportunity to limit youth smoking and to disclose all the information concerning the health risks of adult tobacco use.

Four States have moved forward and reached settlements. My State is one of those. As a member of the Commerce Committee, which drafted the first version of the legislation before us, my principal concern was to ensure that nothing we did at the Federal level would undermine the agreements that have been reached by the individual States.

I appreciate Senator MCCAIN for his support of my amendments in the committee, most of which are in the bill before us, that would hold those States harmless.

In my view, the most critical aspect of the Texas settlement and of the State attorneys general agreement that was reached with the industry was the restrictions on advertising and marketing that the industry accepted. These restrictions were tacit admission by the industry that its practice of marketing to teens was unacceptable.

These restrictions are critical to our cause of reducing teen smoking. According to the Congressional Budget Office, if the tobacco industry did reduce its advertising, the greatest effect would probably be among teens. This report notes that studies show that teens are more sensitive than adults to brand-specific advertising.

I voted for the original version of this bill in the Commerce Committee in large part because of the testimony of the attorneys general. They said the industry acquiescence in a ban on advertising, combined with a limit on industry liability, was the critical policy mix needed to attack the problem of teen smoking. That is why I voted against the Gregg amendment that was just before the Senate. That amendment will remove the liability limits.

The reason a limit on liability was deemed important by the attorneys general was that the tobacco companies are the source of funds for the smoking cessation programs in this bill. If tobacco companies are sued out of business, new ones that aren t held to the standards of this bill will replace them and we will have the worst of all worlds. We will have new tobacco companies that do not have liabilities because they haven't advertised to teens and committed the other misdeeds of the present ones. They will not be bound by the restrictions on advertising. I am afraid we will do more damage if we pass a bill that has no limitations on liability and no restrictions on advertising. This balance between advertising restrictions and liability limitations is what the attorneys general put forward, and I think we must recapture it.

In the Texas agreement and in the State attorneys general agreement, the tobacco companies are partners in the effort to stop teen smoking. Largely through the voluntary advertising and marketing restrictions in the legislation that was before the Commerce Committee, we would be able to achieve our result to stop teen smoking. The tobacco companies have now walked, and I am afraid this is not a good development. I hope we can restore the balance and, in our zeal to punish the tobacco companies, that we do not destroy the very companies we expect to pay for the programs in our bill that can end teen smoking.

Without the advertising restrictions, I believe what we have before the Senate is a tax bill. We have to decide if raising the price of cigarettes would have the effect of stopping teens from buying them.

Now, most parents would be experts in answering the question: Will the demand for cigarettes by teenagers go down if we raise the price? They know, for example, that a $200 pair of tennis shoes or a $75 pair of sunglasses sound perfectly reasonable to a teenager. To those teens, there probably isn't much difference between a pack of cigarettes that costs $2.25 or $3.75. Unfortunately, the Congressional Budget Office study tends to support this common sense observation. According to the CBO study that said teens are sensitive to advertising, teens are not very responsive to tobacco price changes. In fact, studies show that, under some circumstances, there is no impact on teen demand when cigarette prices rise.

I have spoken to teens about this. I have asked them, Will raising the price from $2.25 to $3.75 make a difference? What I have found is that teens do think this is a pocketbook issue. But it is not the one you think. It is not the money in their pocketbooks that will make the difference to teens; it is their driver's license. Teens say that what will really deter them from smoking is the threat of losing their driving privileges. In fact, a study by the Texas Department of Health found that 64 percent of teenagers said they would not smoke if they thought they would lose their driver's licenses. This was compared to 48 percent who said a $250 fine would deter them. My State legislature passed legislation that imposed tough penalties on tobacco use for underage Texans, including suspension of their driver's licenses.

I am very concerned about what I consider to be essentially a tax bill, because we have lost the balance that we had in the attorneys general agreement. If it is going to be a tax bill, let's be honest; it is a tax bill on lower- and middle-income people. It may also lead to a black market problem.

Before I came to the U.S. Senate, I was the treasurer of the State of Texas. In Texas, the treasurer was the tobacco tax collector. I have dealt with the black market. I have seen how differences in tobacco taxes between states affect the black market. My agency did raids on flea markets and roadside sales of illegal cigarettes that didn't have stamps on them, and I can tell you something: We stopped truckloads coming from Louisiana into Texas and into the flea markets because there was a significant difference in taxes between Louisiana and Texas—it s a 21 cent a pack difference today. In fact, the estimates of the nonpartisan Tax Foundation show that my State of Texas loses $172 million in revenue annually due to the black market in tobacco. That is because we live next to a State that has a 21-cent lower tax and next to a country, Mexico, where cheaper cigarettes are available.

In Canada, they had the exact same experience when they increased the cigarette tax in 1991. Smuggling became such a problem that many provinces cut their own taxes to make it less lucrative. What did that lead to? Instead of smuggling, there was a black market between the Provinces. The government of British Columbia estimates losses of as much as $100 million a year.

This is the reason that the National Association of Police Organizations has asked us to be very cautious with the legislation before the Senate. According to the executive director, Mr. Robert Scully, this bill could lead to an increase in cigarette smuggling beyond the control of organized law enforcement.

All of us are struggling to try to do the right thing. I believe that I can truthfully say every Member of the U.S. Senate has the same goal: To stop teen smoking. However, how we get there is the question, and I don't think we are close to agreement on what is the right path to that goal.

I am not going to vote for taxes that will run out of business the tobacco companies that can pay for the health and smoking cessation programs. This would result in the emergence into the market of new companies not bound by our restrictions because they would have no history of wrong-doing. Then we would have no funding for the health programs, no voluntary restriction on the advertising, and we will never reach the goal of stopping teen smoking.

I am not going to vote for a tax increase that is so high that it causes a black market in my State of Texas as well as Arizona, New Mexico, and California, that borders Mexico, or where the price of cigarettes is very cheap. I am not going to vote for a bill that does not have a reasonable chance of a balance that will achieve the goal of stopping teen smoking.

We are going to have a lot of votes. I hope we can come up with a bill that I believe will reach that reasonable balance. I have not seen it yet. I hope that in the end we will not pass a bill that will create a black market, that will create more crime, that will take away the source of revenue that could help us pay for ads to stop teen smoking. And I hope we will not, in our zeal to punish the tobacco companies, have them walk away from the restrictions on advertising which they can only do voluntarily because it is their first amendment right to do so.

I hope I can vote for a responsible bill, Mr. President. I hope everyone in the Senate will come together to try to achieve an agreement that will produce the result of stopping teen smoking.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I believe the Senator from Oregon has a unanimous consent request. Would he be able to make that request without jeopardizing my time?

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

Mr. WYDEN. Mr. President, I ask unanimous consent at this time—I have offered an important look-back amendment in the Commerce Committee and worked with Senators DURBIN and DEWINE—that I be allowed to address this amendment after Senators DURBIN and DEWINE this afternoon.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

Mr. President, for those who are following this debate, I hope they will understand that we are genuinely trying to move this bill to final passage. This bipartisan bill is the product of the Commerce Committee, crafted by Senators MCCAIN, KERRY, HOLLINGS, and others in an effort to do something historic to reduce the number of teenagers and children in America who are lured into the addiction of smoking.

We have tried to establish a procedure on the floor, which occasionally we have been able to hold to, and occasionally we fail. But that procedure was to allow each side to offer an amendment. Of course, Senator GREGG had offered his amendment, and, after some motions, then Senator GRAMM of Texas offered his amendment. At that point, I was supposed to have been next. But as it stands, now I am coming up with this look-back amendment in this fashion. It is an amendment which I am happy to sponsor with Senator DEWINE of Ohio, as well as Senator WYDEN of Oregon, Senator CHAFEE of Rhode Island, Senators HARKIN, COLLINS, KENNEDY, SNOWE, DASCHLE, CONRAD, and REED. This is truly a bipartisan amendment. I hope that those who are following this debate will understand the significance of this amendment.

The look-back provisions in the bill are really important in terms of enforcement. This term look-back is a relatively new term. It is not one created by the Congress. It is, in fact, a term of art which came about as a result of negotiation after the State attorneys general sat down with the tobacco companies. This is really an effort to make certain that the tobacco companies keep their word and reduce the number of young people in America who are smoking.

We have talked about imposing a new tax, or fee, on tobacco products with the belief that it will reduce teen smoking. But we are not certain. We don't know how much we will be able to achieve by increasing the tobacco fee by $1.10 a pack. We believe it could be significant. But it may not be enough.

That is why we have what is called a look-back provision. This is how it works. In years to come, we will do a survey of teenagers across America, and we will take a look particularly at children who are smoking. We will try to determine how many are smoking. We will also be able to determine what brands of tobacco they are using. With that information, we will be able to measure the effectiveness of the goal of this bill. We will look back on a periodic basis to determine how many children have been taken from the ranks of smokers or have not been recruited in the first place, and we will take a look at what they are smoking.

The look-back provisions are an important part of the agreement with the States' attorneys general. The tobacco companies knew this had to be part of the bargain. They couldn't walk away from the table with all of the things they hoped for, walk away from liability in a State suit, for example, without some assurance that they were in fact going to be genuine in their efforts to reduce teen smoking. The look-back language that is included in the McCain bill which came from the Commerce Committee is a very good start, but only a start.

That is the reason I am offering this amendment with Senator DEWINE and others. We want to construct an effective look-back provision that will change companies' behavior and give them incentives to stop marketing to children.

Our look-back amendment does two very important things. First, it shifts the emphasis on any look-back assessment so that it will fall primarily onto tobacco companies that are the worst offenders rather than primarily on the industry as a whole. That is a major element in this debate.

If you were to ask what is the difference between the Durbin and DeWine amendment as opposed to the Commerce Committee bill, it is the fact that when we look back and determine whether or not the tobacco companies are keeping their word, whether in fact they are no longer marketing and selling to children, we believe at least in this amendment that we should hold individual companies responsible. The McCain bill, the Commerce bill, as good as it is—I think it

is a good bill—looks at it primarily from an industry viewpoint. I will try to spell out here in more detail why I think that is not the way to go.

The second thing we do that is very important is, we restore the smoking reduction targets that were originally agreed to by the tobacco industry in their proposed settlement with the States' attorneys general last June. On both scores, this amendment is about accountability. Will these companies change their behavior? Will they stop their insidious marketing practices? Will they get honest in terms of the retailing of their product? We can find out. We can measure it. We can hold them accountable. If they don't live up to the reduction levels proposed in the legislation, they will face financial incentives to create the right climate and the right results.

Why do we need look-backs? Effective look-back provisions can help achieve the goal of reducing youth tobacco use and change the current incentives that drive tobacco companies to market to children. Make no mistake. We have gone through this debate over and over. You will recall that for years the tobacco companies used to say, ''This isn't fair. We are not trying to sell to kids.'' Then, of course, lawsuits were filed across the Nation. We required them to disclose the documents they were using. Along come these documents. It turns out that these tobacco company executives were not as honest as they should have been.

You all may recall this great scene that occurred about 4 years ago in the U.S. House of Representatives when the eight tobacco company executives came before the Commerce Committee in the House of Representatives. This ''gang of eight'' raised their hands and solemnly said under oath that nicotine is not addictive. America laughed, because they knew that once again the tobacco companies had made an incredible statement, literally one that had no credence whatsoever. When the tobacco companies told us nicotine wasn't addictive, that they were not adding nicotine or manipulating it in cigarettes, that they were not trying to sell to kids, it turns out they were wrong on all counts. So much for the credibility of the ''gang of eight.'' Incidentally, they are no longer the managers of these companies. But, nevertheless, their successors still have to be held accountable.

Today, each new child who starts to smoke represents a new profit opportunity for tobacco companies. Tobacco companies have a tough go of it. Think about it. If you were running their business—every year they lose 2 million of their best customers. But a half a million people will die from tobacco-related diseases. Another 1.5 million will finally be able to quit and break the habit, or will die of other causes.

If you are running a company losing 2 million customers a year, you need new ones. Where will you turn? You know adults are not your most likely market. They are usually smarter, a little more mature, and they know the danger of tobacco. They are not easily lured into the addiction. You have to go after the kids, and get the kids in their rebellious youth when they are willing to try anything and think they are going to live forever, and get them started on tobacco. If you can get a kid to start smoking cigarettes or chewing tobacco, it will develop into an addiction. The drug in that tobacco will go into that child's system and create a craving for this product that is very tough to stop. For those children who think that it is an easy thing to quit this addiction, it is not. The earlier they try to stop, the better. But the tobacco companies know that.

Since most smokers start as children, children are the only available replacement smokers to take the place of these 2 million lost customers. In addition, we know that smokers are generally very loyal to the first brand that they smoke. We all know people who will only smoke certain brands—Marlboros, the cancer cowboy's cigarette, or Kools, Camels, whatever it happens to be. Many people who started with the brand when they were kids stay with it for a lifetime, albeit a shortened lifetime.

These facts and the desire to give their shareholders steady profits lead the tobacco companies to market to children to ensure their future markets. The strong look-back provisions will totally reverse the economic incentives for marketing to children. It will say to the industry and to each company that they have an incentive to prevent their products from appealing to children. Manufacturers will start using what they have learned about teenage tobacco use to avoid having children use their products because every new child who picks up a cigarette or pockets a can of snuff will be an economic loss to the company.

Our goal is not to punish the companies or gain revenues. If this never generates a cent, that would be fine. But basically what we are trying to do is meet the smoking reduction targets. Our goal is to create the incentives which help achieve actual reductions in underage tobacco use so companies might never have to pay a penny of these look-back assessments. We are going to do our part. We are going to have youth access restrictions, counteradvertising, public education, and other governmental efforts to reduce youth smoking. We expect the tobacco manufacturers to do their part as well. And that is what this amendment is all about—accountability.

Why focus on company-specific assessments? In the bill that is pending, a much greater share of the look-back assessments are imposed on the whole industry rather than on specific companies. There is a $4 billion annual cap on industry-wide payments that is much greater than the company-specific assessment. Although the company-specific charges could be as much as $3 to $4 billion in extreme cases, it is more likely they are going to be a lot smaller. If all the companies miss their target by 10 percentage points, the company-specific surcharges would only equal $640 million. If they miss by 20 percent, it would be $1.3 billion compared to nearly $4 billion for the industry as a whole.

Let me show a chart here which gives you an idea of the difference between the look-back provisions that we are discussing.

Consider the fact that we are setting these targets to reduce youth smoking, and these targets say that over a 10-year period of time we are going to bring down smoking among kids by a certain percentage.

What happens, let's say, in the fifth year after this legislation passes when the tobacco companies as an industry are supposed to reduce the number of kids smoking by 40 percent? What happens if the largest company misses it by 20 percent, if instead of having a 40-percent reduction, they only have a 20-percent reduction?

Look at what occurs. Under this comparison of the Commerce Committee bill, and this amendment by Senator DEWINE and myself, the industry as a whole would face a penalty of 10 cents a pack and the individual company 9 cents a pack if they miss it by 20 percent under the Commerce Committee bill.

But look at the other side now if our amendment prevails—6 cents for the industry per pack, but 29 cents for the offending company. Doesn't that make more sense? If we know as a result of our surveys that the kids are smoking Camels, for example, shouldn't R.J. Reynolds be held accountable? They are the company that makes the brand. They market the brand. They retail the brand. They have an obligation under this law to reduce teen usage of their brand of cigarettes.

If you don't do that, think of the perverse situation where one company is trying its best to reduce teen usage and youth usage and another company ignores it. Under this bill, the penalty is spread across the industry by and large, and there is not that much of a forfeiture of funds for the individual company as would occur under the DeWine and Durbin amendment. We want to make this more company-specific.

This approach, which currently is in the bill, risks creating incentives for some company to keep building future market share. There is money to be made here. As long as these kids are smoking, these companies are making money. We want to make sure the profit is taken out of this. Our amendment increases the company-specific payments, reduces the industry-wide payments.

This amendment will not necessarily increase the price of cigarettes. I want to really pause for a moment on this point because I think it is so important. We have had a lengthy debate

over the last several days about whether or not we are imposing, at least indirectly, new taxes on lower income individuals, whether by raising the price of a package of cigarettes we are passing along to lower income and middle-income individuals more of a tax burden.

Think about this for a moment. Assume we have two companies and the Durbin-DeWine amendment is enacted. One of the companies is doing a good job; it is reducing its sales to minors—very happy with the results. The other company has made a calculation. The other company says we are not going to be so tough or restrictive. We will, frankly, look the other way. We are going to continue to do some marketing that we know appeals to kids. We are going to kind of tell our retailers we are not going to enforce the law that stringently, and so look what happens. If that occurs under the existing bill, they are both going to be treated equally in the industry-wide assessments; both will be facing these additional costs per pack equally.

Under our approach, it will be significantly different and the company that is a bad actor, the company that is not trying to reduce sales to kids is a company that will face a much, much larger charge per pack. Now, what do you do? If you are the company that has been selling to kids, it turns out kids are smoking your brand, you are facing this kind of payment. You can't add this price to the package of cigarettes because your competitor isn't doing the same. You have to absorb this cost in your bottom line. So the consumers are protected from the price increase, and basically the company really pays a price for what they have done.

This bill presently before us also reduces youth smoking reduction targets relative to what the industry agreed to last year. This second and very important element in the bill is one I would like us to pause and reflect on. Just last year, these tobacco companies came together, and with the State attorneys general said we agree to the following targets to reduce the number of smokers each year.

Well, a year has passed. The issue has come to Capitol Hill. We debated it back and forth and now we have a chance to enact this legislation. What has happened during the course of that year? The tobacco companies have done very well. They have done very well in luring more children into this addiction. In fact, since 1991, we have seen a dramatic increase in the percentage of kids who are smoking. That is a sad commentary. It is a sad fact of life.

What Senator DEWINE and I are doing in our amendment is going back to the original targets the tobacco companies set in their agreement with the attorneys general. So instead of the McCain or Commerce Committee bill reducing smoking by 60 percent of kids over 10 years, we hit a target of 67 percent in the equivalent course of time, getting them to quit or sparing more kids from the possibility of becoming smokers and of facing disease and premature death. Four-hundred and fifty thousand more children will be protected with the Durbin-DeWine amendment by the year 2008 than in the underlying bill. There will be 450,000 fewer smokers if the tobacco companies continue to meet their reduction targets of 67 percent instead of 60 percent; 150,000 fewer premature deaths—we know that about a third of smokers are going to die young as a result of this habit; $2.8 billion in lifetime social costs are avoided; and we have the same real target as the original proposed settlement. I think that makes sense.

The next question is the constitutionality question. The tobacco companies claim that these look-back provisions are unconstitutional. But both the Department of Justice and the Congressional Research Service have studied the issue and concluded they are wrong. Just as we hold companies responsible for clean air attainment standards, we can hold them responsible to help reduce youth smoking rates.

The courts have required that there be a rational basis for this type of program, and this amendment is based on a very rational consideration. If companies' assessments or surcharges raise their cost of doing business as usual, they will consider it an incentive to change their behavior and use the knowledge they have gained over the years in terms of selling to kids, to stop selling to kids.

With regard to the argument that this might violate due process, the purpose of the look-back assessments is to supplement the other measures in the bill designed to reduce youth smoking rates, including the bill's price increases, and to encourage the industry, which is uniquely able to develop innovative strategies, to take the action to minimize youth smoking.

The look-back provisions don't violate the Constitution's bill of attainder. All of us who studied the Constitution over the years wondered if we would ever run into a case where somebody would start talking about a bill of attainder. I didn't think I would ever face that in my life on Earth, and here we are on the floor of the Senate talking about a bill of attainder.

The bill of attainder in the Constitution prohibits singling out particular individuals or entities for legislatively mandated punishments. The tobacco companies have said: Oh, this look-back provision is a bill of attainder. The Department of Justice states the look-back provisions apply to all manufacturers of tobacco products, not a single company, and would operate as one component of a comprehensive industry-wide reform. Additionally, look-back provisions are not penalties for industry misconduct so much as an affirmative step to reduce youth smoking.

I think the tobacco industry's constitutional argument is a weak one, designed to shift away the attention from their marketing to kids.

Let me respond quickly to a few other items, and then I will be happy to defer to my colleague and cosponsor, Senator DEWINE.

Mr. FORD. Will the Senator yield for a question?

Mr. DURBIN. I will be happy to yield for a question.

Mr. FORD. I understand where you are going with this, and it is beginning to take hold. But in this piece of legislation, does HHS have the ability to put on the educational programs that would reduce youth smoking and the tobacco industry would have no control over that?

Mr. DURBIN. Yes. I thank the Senator for raising that.

Mr. FORD. But the point here, then, is that I am putting out all this information, and it doesn't work; then you get fined. I am a little bit concerned about that. I understand where the Senator is coming from. But I think we need to cover one more base, that if the tobacco industry is going to be responsible for the percentage reduction, and, if it isn't, then they pay, they ought to be able to be charged with advertising, or something, rather than letting HHS do it. And if it doesn't work, they get penalized.

As we say down home, ''Something about that ain't right,'' and I hope the Senator, with all his knowledge of this area, would look somehow to be sure that, if you are going to be charged with a penalty here, somehow you ought to have some input on how it is completed. You might be able to clear me up on that.

Mr. DURBIN. The Senator from Kentucky raises a dilemma, and that is: How much could we trust the tobacco industry coming up with the goal?

Mr. FORD. They can't.

Mr. DURBIN. I think it is more likely a public health agency will try to reduce those numbers. I can recall a few years ago the tobacco companies said, ''We are going to stop marketing to kids, and we are going to tell these kids we don't want their business.'' And they delivered their message by buying full-page ads in the Wall Street Journal. There may be some kids who read the Wall Street Journal, but not a lot of them. It is far better to take that information and message and put it on a television show the kids are likely to watch.

Mr. FORD. I say to my friend, I take this as if they were doing it to me as an individual and saying that you are going to be penalized—I am going to be penalized if your program doesn't work. And some companies, a brand only has about 1 percent of youth. They don't like it, and they don't use it. But if you reduce it down, if it is 1 percent, which one brand is, then you have to reduce that to six-tenths of 1 percent. That becomes very difficult when it is all adults.

I agree with what you are trying to do. I hope somehow or another we can make it fair rather than unfair.

Mr. DURBIN. I thank the Senator for his question, and I hope what we are doing is a coordinated effort. It is an effort which increases the fee on a package of cigarettes, which we have been told by economists, in and of itself, will reduce youth usage. It is an effort to change the advertising so that, by and large, children are not affected by the lure of that advertising. It is an effort by the Government—and the Senator is right—through HHS and others, to deliver this message effectively. But finally it comes down to the tobacco companies themselves who make the product and market the product and sell the product. And they bear a responsibility, too, a responsibility which, if they don't live up to it, is going to result in a charge against each package of cigarettes.

Let me just conclude with two or three points before deferring to the Senator from Ohio. Some say the 67 percent reduction figure over 10 years is too high. I don't believe it is. Marijuana use by 12- to 17-year-olds declined 76 percent from the late 1970s to the early 1990s. The smoking rate among black 12th graders in the late 1970s was the same as the rate for all teenagers today. It declined by 76 percent from the late 1970s to the early 1990s, without advertising restrictions, education, and counteradvertising envisioned in the current legislation.

Mr. President, 80 percent of adult smokers and 70 percent of adolescent smokers regret ever starting to smoke. I think we have a situation here where 67 percent is a figure that can be reached, and the actual number of young people who would then stop smoking is one that was agreed to by the tobacco companies when they met with the attorneys general just last year.

Why do we want to strengthen this bill? Because, frankly, we believe that unless the industry is held to this standard on a specific company basis, the results will not be what we hope they will be. Some people say the amount of the payment here is more than the lifetime profit from each new young smoker.

First, let's not get caught up in the debate of what is a lifetime profit from a new smoker. Is it only $500 or $1,000 or $1,500? I am not sure we accept these claims.

Second, these companies are not just profit maximizers; they want volume. Why? Why would the tobacco industry want volume over profit? Because they are dealing with people who are addicted to nicotine, who will have to follow them up the track as the price increases. So they do not focus just on profits but also on volume. And we have to find a way to reduce the volume when it comes to children.

Third, even this calculation does not get to the true cost of addicting a child on tobacco. The American Medical Association has estimated we would have to increase the surcharges to $400 million per percentage point—more than 6 times what the bill does in its company-specific look-back—to cover the societal cost of each additional smoker. It is about more than tobacco company profits; it is about the cost to America and American families as a result.

I think what we are setting out to do here is create a payment structure that is reasonable. Under the bill, companies will pay an industry-wide payment of $80 million for each of the first 5 percentage points by which they missed the targets, $160 million for each of the next 5 points, $240 million for the next 12, maxing out at $4 billion. Each company that misses the target will pay a company-specific surcharge of $1,000 multiplied by the number of children by which a company falls short of in its target. There is no maximum for the company-specific surcharge, which could reach as much as 3 to 4 billion dollars in an extreme case.

Under our agreement, companies will pay an industry-wide payment of $40 million for each of the first 5 percentage points by which the industry as a whole misses the targets, plus $120 million for each of the next 15 points, with a maximum of $2 billion. Each company that misses the targets will also pay a company-specific surcharge equal to the company's share of youth smokers multiplied by $80 million for each of the first 5 percentage points, $240 million for each of the next 19 points, with a maximum of $5 billion.

The potential maximum surcharges are similar in the aggregate. Ours is weighted towards companies as opposed to towards the industry as a whole.

Let me close by saying that I am happy that this is, in fact, a bipartisan amendment. For those who have argued on the floor over the last 2 days that they want to make certain that we don't increase the price of the product too much for lower-income groups, the Durbin-DeWine amendment addresses that directly. When you go company-specific, the money comes off the bottom line. For those who say that the targets that the State attorneys general agreed on to reduce the number of kids smoking were reasonable, as those tobacco companies said then, this bill returns to those targets. We think this is sensible. Let us reward those companies which are engaged in good conduct, reducing youth usage. Let us make those pay who do not engage in good conduct.

I am happy to have this amendment offered today in the Senate, and I am proud to have as my cosponsor the Senator who will be speaking next, my friend who served in the other body with me and now is the Senator from Ohio, Senator MIKE DEWINE.

At this point, I yield back the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized.

Mr. DEWINE. I thank the Chair.

Mr. President, I am pleased to join with my friend and colleague from Illinois, Senator DURBIN, to offer this amendment, an amendment to make the tobacco companies more accountable in our collective effort to reduce youth smoking.

Specifically, our amendment would make a few improvements—a few improvements, but significant ones—to the so-called look-back provisions of this current legislation. The look-back provision in the current bill sets targets for the reduction of teen tobacco use. And, then, it imposes assessments, or surcharges, on individual tobacco companies and the entire tobacco industry if these reduction targets are not met.

Our amendment would make two simple modifications to Chairman MCCAIN's look-back provision.

No. 1, our amendment, like the McCain bill, would impose a surcharge on specific companies as well as the entire industry, if reduction targets are not met. Both our amendment and the McCain amendment are blends of those two formulas. They are different, a different blend, as I will talk about in a moment.

Our amendment puts a larger emphasis, though, on the company-specific surcharge. We do this because we believe the threat of a surcharge against specific companies will give them a much stronger incentive to limit teen tobacco use. In a sense, it is sort of the American way. We hold people accountable. We hold them accountable—we give them the benefit of what they do as well as the detriment if they do something wrong.

(Mr. BENNETT assumed the Chair.)

Mr. DEWINE. Second, Mr. President, our amendment will increase the targets for reduction of youth tobacco use over what is in the McCain bill. But actually with our amendment, we are restoring, as Senator DURBIN has pointed out, the original reduction targets that were agreed to by the industry last year in the global settlement. The net effect of our amendment is to restore what the tobacco companies said and agreed to last year and said that they could do.

Let me repeat, we are not increasing the final reduction targets. Rather, we are simply restoring the original targets that were agreed to in last year's settlement.

Before getting into the specifics of this amendment, I first congratulate my good friend, JOHN MCCAIN, who has put together a very credible, a comprehensive, a good bill. He has faced a very difficult challenge and has crafted an excellent piece of legislation. This is a comprehensive package that attacks teen smoking in a variety of ways. I believe this thorough approach, when all the pieces of the puzzle are finally put together, will significantly reduce teen smoking. Let's make no mistake about it, that is our objective—to reduce teen smoking; to reduce the number of young people every day in this country who start smoking.

I have followed the policy evolution of the look-back provisions since they

were first proposed in that global tobacco settlement announced last June, announced by the attorneys general and by the leading tobacco companies' executives. That settlement contained a look-back provision. That settlement contained this brand new and innovative idea—the idea that we could enlist the tobacco industry in our fight to reduce teen smoking by simply giving them a disincentive to hook young people on tobacco.

The look-back provision in the original settlement called on the companies to work with us to reduce youth smoking by 60 percent after the passage of 10 years. That 60 percent was to be phased in at several intermediate levels. The settlement negotiators, including the tobacco industry, all agreed to these reduction targets. They obviously believed that they were achievable.

The settlement then gave the tobacco industry a big shove, a big shove to meet these targets by calling for an industry-wide surcharge in any year the targets were missed. The amount of the surcharge was to be based on how much the industry missed the reduction targets, up to a maximum or limit, a cap of $2 billion.

While I look at this, I recognize really from the beginning, the look-back could be a tremendously useful tool in reducing youth smoking. The tobacco industry, driven by a profit motive, has been incredibly effective in convincing our children to start smoking. If the financial disincentive was strong enough, we would have a way to put the industry's expertise to prevent youth smoking and to turn this whole thing around.

After studying the settlement's look-back proposal, I have two basic concerns: First, I was concerned that the proposed surcharges were not high enough to work as a significant deterrent to the tobacco companies. Second, I had some concerns about the settlement's way of distributing the surcharges across the entire industry; in other words, how they determined who was going to pay what. This was an issue I explored in several committee hearings, both in the Judiciary Committee and in our Labor and Human Resources Committee.

This approach, frankly, if I can use the term, seems almost socialistic to me, the provision that was originally agreed to. The provision calls for looking back first at the end of 3 years and periodically after that to see how well the tobacco industry had done in reducing youth smoking, and then once we found that out, irrespective of how an individual brand did or individual company did in reducing youth smoking, to then say, ''OK, we're going to spread it out in the industry; in fact, we are going to spread it out, not based on the percentage of youth who were smoking a particular brand, we are going to take that penalty and spread it out among adult users.''

So if a particular company had 20 percent, for example, of the youth market, but 60 percent of the adult market, then, in fact, that company would end up taking 60 percent of the burden of the look-back penalty. It is, in effect, socialism. It is something I think that should offend every Member of the Senate. It is not right, it is not fair, and that is why we are changing it in this amendment. Frankly, that is why Senator MCCAIN put together an amendment, a compromise, that did, in fact, begin to go down this road. Our amendment simply goes a little further.

Any company under the original settlement that did its job in reducing youth tobacco use would have to share the benefit of this good behavior with its fellow tobacco companies. Likewise, a company that failed to reduce youth smoking would not bear the brunt of the resulting surcharges because the payments would be spread across the industry.

This approach would have the effect really of diluting the incentive for individual companies to work as hard as they can to prevent teens from using their products. After all, why would a company try to prevent kids from smoking its cigarettes, perhaps creating a competitive disadvantage for itself in the larger adult market when other companies would share in the reward for whatever success they had in reducing teen smoking? It just doesn't make sense.

The way the payments are allocated to the specific companies in an industry-wide approach on the basis, as I pointed out, of the adult market share, would also dilute the incentive for companies to do a good job. Let's take a quick look at the example of Philip Morris, the maker of Marlboro.

This company, through the use of the Marlboro Man and other marketing campaigns, has been unbelievably successful in selling cigarettes to our underage smokers, to our kids, to our children. In 1993, 60 percent—60 percent—of all teen smokers used Marlboro, when in the overall market for adults, Marlboro only had 23.5 percent of the market share.

Let's look at how the industry-wide look-back approach would affect Philip Morris. After all, Philip Morris is responsible for a majority of youth smoking. This is the main company at which look-back incentives should be aimed.

Industry-wide look-backs allocate the industry-wide assessments to each company based on its adult market share. So if the company misses its reduction targets and is then required to pay, Philip Morris is only responsible for 23 percent of that total, because that is the total market they have, even though Philip Morris is responsible for 60 percent of youth smoking.

In the case of Philip Morris, under these statistics, if in a year the tobacco industry did not meet its targets and there was a penalty that had to be assessed under the law, the division clearly would not be equitable. Philip Morris is responsible for 60 percent of the problem, 60 percent of the kids smoking, and yet they would only pay 23 percent under this straight provision.

Let me again point out that Senator MCCAIN has changed this and moved it in the right direction. Our amendment moves it even further towards more emphasis on company-specific penalties.

Mr. President, what do we think Philip Morris will do under this industry-wide look-back? Will the look-back do what it is supposed to do, get Philip Morris to try to reduce the number of children who it sells to? Mr. President, to me it is pretty obvious what would happen. Because this industry-wide look-back forces other companies to pay for the sins of Philip Morris, I would expect Philip Morris would simply ignore the look-back. The industry-wide look-back in this particular case would fail to do what it is supposed to do. In the case of Philip Morris, it would fail to give the proper incentive to the very company with the most responsibility for stopping kids from using its products.

That is why, Mr. President, I started calling for a tougher look-back than the original settlement and for one that would be imposed on individual companies that fail to reach the targets rather than on the entire industry. In other words, an effective look-back proposal is one that would commit each company, each tobacco company to feel the impact—whether good or bad—of its own behavior.

And let us not kid ourselves, Mr. President. The tobacco companies will be able to, through marketing techniques, through their dealings with their dealers, through what advertising they will still be able to do, they will be able to have a substantial impact on youth smoking.

Yes, the Government is going to come in under this bill and we will have some anticigarette campaigns. The Government will be involved in other things. This will not be brand specific. This will be across the industry. It will, we hope, have the effect we intend it to have. But the fate of each company will still remain in each company's hands. And they should be accountable for what they do. They should be given—sort of the American way, Mr. President—they should be given an incentive to do what is right and they should be, if I can use the term, ''punished'' if they do not do what is right. It is the right way to approach the problem.

Mr. President, I worked with the chairman of the Labor and Human Resources Committee, Senator JEFFORDS, to include a tough company-specific look-back in this legislation. Prior to the Commerce Committee's markup of S. 1415, I wrote to Chairman MCCAIN to request that his legislation's look-back surcharges be higher than the original settlement, and that they be assessed against individual companies.

Mr. President, by the time this legislation reached the Senate floor, Chairman MCCAIN and the Commerce Committee had improved the bill's look-back provisions, and they had done it in two very significant ways. I commend them for it. In the version of this bill that came out of the Commerce Committee, Senator MCCAIN increased the level of the industry-wide surcharge and the overall cap in the look-back. This served to provide a stronger incentive for tobacco companies not to target youth.

Further, the Senator from Arizona went even further in this regard in the managers' amendment he offered this week. Specifically, Senator MCCAIN added a company-specific look-back surcharge in addition to the industry-wide surcharge.

Mr. President, by including both a company-specific look-back and surcharges stronger than those in the settlement, Senator MCCAIN's look-back provision represents a clear improvement from last year's settlement. It will be more effective. It will be fair.

What the Senator from Illinois, Senator DURBIN, and I are doing as we offer this amendment is to simply refine and improve the McCain look-back provisions. And we do this in two fundamental but necessary ways.

Mr. President, the most important modification included in the Durbin-DeWine amendment is a stronger company-specific look-back. The argument for this is simple. The higher the company-specific surcharge is, the more powerful an incentive each company has to prevent children from using its products. By putting more of the burden on individual companies, we can provide a much more powerful incentive for tobacco companies——

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator's point is well taken. The Senate is not in order.

The Senator from Ohio.

Mr. DEWINE. I thank the Chair and my colleague from West Virginia.

By putting more of the burden on individual companies, Mr. President, we can provide a more powerful incentive for tobacco companies to meet these reduction targets, especially among those companies that have gained the most from the youth market.

Basically, the Durbin-DeWine amendment would direct more of the surcharge amounts to be paid on a company-specific basis. The initial assessments—ones that are charged if a company misses its reduction target by a few percentage points—in our amendment would be higher than in the McCain amendment. In addition, unlike the McCain bill, our amendment would also bump up the surcharge once a company misses its reduction target by more than 5 percentage points.

Let us look at one specific example to demonstrate the differences of the two approaches. Suppose we had two cigarette manufacturers—company A and company B. Each controls, let us assume, half the market, including half of the youth market. Let us say company A has succeeded in meeting its reduction goals for reducing youth use, but company B failed to reduce its targets and failed, in fact, by 10 percentage points.

Company A has done the job. Company B has not. Here is how the total surcharges, to take a specific example—including both the company-specific and the industry-wide assessments—would break down under the McCain bill and the Durbin-DeWine amendment.

Under McCain, company A, the good actor, the good company, is responsible to pay $200 million, but would only pay $100 million under the Durbin-DeWine amendment.

Company B, on the other hand, the company that saw the increase, caused the increase in youth smoking, would be charged $750 million under McCain, but would pay $900 million under Durbin-DeWine. That is a 20 percent higher payment under the Durbin-DeWine amendment for the company that failed. More equitable.

So, as you can see, our amendment would shift the financial burden toward the company or companies that are responsible for the continued youth smoking, but also away from companies that do the right thing. Because companies will know that they are on the hook for how well they do, they have that much more incentive to prevent children from using their products.

Another way to demonstrate this, Mr. President, and to demonstrate the shift we are asking for in our amendment is to look at the overall bottom line. The McCain bill would impose an industry-wide cap, a potential maximum of $4 billion. This cap represents the maximum amount which would be assessed against the entire industry under these provisions.

Although there is no cap in McCain for company-specific surcharges, let us assume each and every company missed its target by, say, 25 percentage points. In that case, the surcharges would all add to about $1.6 billion. So that is the bottom line for McCain—$4 billion imposed across the entire industry, shared among all the companies, and about $1.6 billion for the individual companies that had not met its goals.

The Durbin-DeWine bottom line is as follows: The industry-wide cap is $2 billion, and the total amount of company-specific surcharges, under similar circumstances, would be $5 billion. That is only for that specific example.

Mr. President, the real story I am trying to convey with these numbers is simple: Our amendment has a greater focus on the company-specific look-back and thus provides a stronger incentive for tobacco companies to prevent children from using their products.

Mr. President, our amendment makes one other fundamental change to the McCain bill. Our ultimate reduction target—10 years hence—is a 67-percent drop in the number of teens who smoke. In the McCain bill, the end goal or target is 60 percent. On the surface, the McCain target appears to be the same as the 60-percent target in the original settlement the attorneys general reached last June.

Again, I remind my colleagues, this is a settlement that everyone agreed to. And the tobacco companies said, ''Yes, we will be held accountable. And, yes, we can get these targets.'' So it seems as if it is the same under the current McCain language.

But actually, on closer examination, the McCain target falls a little short of that original target in real terms. The reason why it falls short is the McCain and settlement reduction goals—although the same on the surface; appear the same—each use different starting points or different baselines.

The McCain bill calls for a 60-percent reduction from a higher baseline figure than was used in last year's settlement. Because of this, the McCain youth reduction targets are easier to meet than the original settlement. Again, not a great deal of difference. But all our amendment does, very simply, is take us back effectively to that original settlement, which I think was our original intent of what we should do.

What the Senator from Illinois and I are doing is restoring the original reduction goals from youth tobacco use from the settlement. The Durbin-DeWine amendment sets a reduction target of 67 percent, but after accounting for the different baselines—our reduction goal is equivalent to what is in the settlement. It is exactly what the tobacco industry last year agreed was reasonable and that they said they could reach.

Again, I want to thank my friend from the land of Lincoln, Senator DURBIN, and his staff for their work in putting this proposal together. Let me also thank Senator WYDEN, who will speak in a moment, Senators CHAFEE, WYDEN, DASCHLE, SNOWE, and COLLINS for joining us as original cosponsors of this amendment. This is truly a bipartisan amendment. I also appreciate the work of the Campaign for Tobacco-Free Kids and others in the public health community for their assistance and support. This amendment also has had the active support of former Surgeon General C. Everett Koop—and I certainly appreciate that. Finally, I am pleased that the New York Times has expressed its support for the amendment in an editorial in yesterday's edition.

Mr. President, the choice before us is simple—we have the opportunity here to vote on an amendment that will improve the one basic purpose of this legislation: to reduce youth smoking. By holding individual tobacco companies more accountable for failing to reduce youth smoking, and by restoring the original targets set by the tobacco

companies themselves, the Durbin-DeWine amendment will make a real difference in young lives. I urge my colleagues to join us on behalf of our young people and support the Durbin-DeWine lookback amendment. It is the right thing to do.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Thank you, Mr. President.

Mr. President, I offered the amendment in the Senate Commerce Committee to toughen the look-back penalties for one reason. I believe that stronger look-back penalties provide a powerful tool to actually change the course of history and hold the tobacco companies accountable when they pursue youthful customers.

A brief review of the history indicates that the tobacco companies won't change on their own. For example, if you look at every previous effort, every single previous effort on the part of the Congress to hold the tobacco companies accountable, the tobacco companies, in fact, have found a way to get around those efforts. That is what happened when the Congress sought to go forward with restrictions on advertising. That is what happened when the Congress legislated warning labels. And that is what happened when the Synar amendment was enacted.

Many will remember our colleague who served in the other body. Mike Synar wrote very tough legislation that would, in effect, require that the States carry out the laws to protect our kids when they were targeted. The tobacco companies found a way around that.

So the tobacco companies have found a way around every single previous legislative effort on the part of the Congress to hold them accountable. Those who would like to know more about this history can learn about it simply from the documents that have come out since the 1994 hearings in the Health Subcommittee on the other side of the Capitol.

Now, the tobacco companies would like us to believe that they will change the course of history and their behavior on their own. Many of the Senators will remember after the original attorneys general settlement the tobacco companies took out very large advertisements in both the Nation's newspapers and in the electronic media. The basic message of those ads that were taken out by the tobacco industry when they were encouraging support for the original settlement, was their message that it was a new day. Tobacco companies said it is a new day. There will be improved corporate citizenship on the part of the tobacco industry, and that the sordid history that came out after 1994 in those various documents was a part of the past.

I think the inclination of every Member of the U.S. Senate is to say industry can change. Our colleague, Senator DURBIN, made mention of the fact that many of the executives who testified in 1994 aren't alive today. So a number of us were very hopeful that it would be a new day in terms of tobacco industry behavior. But when the Senate Commerce Committee held hearings earlier this year under the leadership of Chairman MCCAIN, we received powerful evidence that things really had not changed.

I will cite one example in which I was personally involved. In 1994, when I was a member of the Health Subcommittee on the other side of the Capitol, HENRY WAXMAN brought the Nation's tobacco executives before the Health Subcommittee. It came to light that the Brown & Williamson company at that time was genetically altering nicotine, genetically altering nicotine to give it a special punch and to hook their customers. This was, of course, a flagrant example of subverting the public interest. It was documented by the Food and Drug Administration. At that time, the Brown & Williamson company assured the country that they would not engage in that conduct again.

During the course of our preparation for the hearings in the Senate Commerce Committee 4 years later, I and other members of the committee learned from news reports and others that there was evidence that, in fact, Brown & Williamson was again genetically altering nicotine and again engaging in this detrimental conduct that they pledged to the country they would never engage in again in 1994.

So when the CEO of the Brown & Williamson company came to the Senate Commerce Committee with the other executives, I asked specifically about what kinds of practices the company was engaged in with respect to genetically altered nicotine. The CEO of that company said, in fact, that they were again selling this product, and in their words, in response to a question I asked that day, they admitted that they were working off ''a small stockpile of genetically altered nicotine,'' engaging in conduct that they pledged the country in 1994 that they would never engage in again.

The reason I bring this example up is that if a tobacco company will engage in that kind of brazen conduct, in that kind of conduct when they are under the hot spotlight of the U.S. Congress, as they have been for many months, what are they going to do when the attention of the Congress and the country turns elsewhere? This isn't about conduct of 20, 30, 40 years ago. We know that took place in the past. A number of us were very interested in knowing whether the companies really did want to change of their own accord. Many of those who have opposed tough look-back penalties have used this argument in the past. Companies are changing. These kind of tools of big government are certainly unnecessary, at best.

The Brown & Williamson example where they are working off a small stockpile of genetically altered nicotine at this time is certainly strong evidence that these companies have not really changed and it is not the new day that the Congress and the country were told about after the original settlement from the attorneys general.

Given that past history, over 20, 30, 40 years, and the most current history, the Brown & Williamson example which, by the way, the Justice Department is now conducting a criminal inquiry into, there have already been pleas in this regard—given that past history and the history present, many of us are not willing to say that it is actually a new day in the tobacco industry.

Mr. President, I want the Senate to know why I am particularly skeptical. I was a member of the Health Subcommittee of the other body in 1994, Chairman WAXMAN, the late Mike Synar, and others, did an extraordinarily good job of questioning the executives. But when it came to my turn during those hearings, I recognized that it had not yet been put on the public record whether these executives believed that nicotine was addictive.

So, in 1994, at those hearings, I went down the row with each of the executives, one by one by one, each of them, and asked them whether nicotine was addictive. And each of them under oath at that time said that nicotine was not addictive.

I like to think that moment contributed in some way to the important legislation we have before us, contributed to our positions for enacting strong legislation. But it seems to me that set of hearings and the documents that have come to light will only make a real difference over time if we now follow up on those early efforts and pass the strongest possible look-back legislation. That is why I offered a very tough set of additional penalties when companies don't meet their specific targets for reducing youth smoking under the Commerce Committee bill. That is why I am pleased to be able to join Senators DURBIN, DEWINE, CHAFEE, and others this afternoon.

The bottom line, with respect to our amendment—many of the details have been addressed—but the bottom line is if you do not have aggressive look-back penalties, look-back penalties that really zero in on aggressively the companies in a specific way, you effectively penalize the companies that try to change their behavior twice. You penalize them once through the industry assessment and second through the loss of market while other companies continue to market to children and a future market share.

This amendment represents a fairer approach. It does not allow the Congress, in effect, through loopholes in this look-back set of provisions, to place a company that does try to clean up its act, does try to change history, we make sure under our amendment that company wouldn't be placed at a competitive disadvantage when they said, now we are going to change and not seek out children.

Let me also say that because the number of teen smokers has actually grown since the original settlement was announced last summer, the changes that we offer today will essentially hold the industry to a reduction level to which they have already agreed. So, in fact, this amendment is stronger than what came out of the Senate Commerce Committee on the 19-to-1 basis. But given what we have seen with, again, the number of teen smokers actually increasing, this, in effect, simply ensures that the industry is held to a reduction level to which they have already agreed.

Mr. President, and colleagues, Senators DURBIN and DEWINE went into a number of the details with respect to how the look-back legislation works. I don't think all of that needs to be belabored at this time. But I would like to say that to me what this amendment is all about is reversing the course of history. History shows that in the past when we would write these laws, the tobacco companies would bring their entrepreneurial and advertising talents to the task then of getting around them. And the tobacco companies have more of that kind of advertising and entrepreneurial talent than anybody else around. They would always find a way to evade the law.

Learning from past history with respect to the warning labels, with respect to electronic ads, with respect to the way in which the industry got around the Synar amendment, we are making it clear that we are going to have the tools to rein in the scoff-law companies, those that do not clean up their acts as they have pledged to do. We do so in a realistic way. We do so in a fashion that makes sure that companies that really have changed won't be put at a competitive disadvantage.

I would say, finally, Mr. President, and colleagues, to those of you who have talked to me personally about those 1994 hearings, and what happened during the course of those 7 hours where the executives said that cigarettes were like Hostess Twinkies, cigarettes weren't addictive, and they never preyed on children, if you really want to reverse the course of history, if you really want to hold the companies accountable, if you really want to rein in the conduct that we saw demonstrated again in the Senate Commerce Committee when Brown & Williamson admitted that they are now using genetically altered nicotine, if you want to change that behavior, vote for this bipartisan amendment, because this is something that is going to change the course of history and make sure that these companies don't prey on our youngsters in the years ahead.

Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I want to respond to my colleagues who are proposing this amendment. But, first, I would like to make some general comments about the bill to complement some of the comments I made earlier today, some of which were related to a statement from the Joint Tax Committee which I inserted into the RECORD, the chart that they put together on the net cost of the bill. They have now added a line to their estimate. I want to include that in the RECORD as well. This is the price per pack of cigarettes under this bill with all these new taxes and surcharges and look-backs.

I will tell my colleagues that for 1998, the year that we are in right now, before this bill goes into effect, Joint Tax assumes the price of cigarettes is $1.98. They assume for 1999—I want our colleagues to hear this—Joint Tax says the cost of a pack of cigarettes goes up to $2.88, a 90-cent increase. The next year, $3.24; the next year, $3.41; the next year, $3.66; the next year, $3.83; by the year 2004, it is over $4, $4.06 per pack. The next year it is $4.12; the next year, $4.78; by the year 2007, 9 years from now, the price per pack, $4.48. The price today is less than $2.

This isn't coming from Don NICKLES. This came from Joint Tax. I haven't agreed with everything that Joint Tax has done in estimating this bill. But in this estimate, they have added some of the other aspects of the bill, including the look-back.

I ask unanimous consent to have this printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RECONCILIATION OF GENERAL TOBACCO INDUSTRY PAYMENTS UNDER S. 1415, AS AMENDED, AND NET FEDERAL REVENUE EFFECT OF SUCH PAYMENTS ESTIMATED BY THE JOINT COMMITTEE ON TAXATION ON MAY 19, 1998, BEFORE THE LOOK-BACK PROVISIONS

[In billions of dollars]

Provision	Fiscal year—											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	1998–2003	1998–2007
1. Calendar Years:												
1. Federal revenues from S. 1415 general tobacco indusry payments as adjusted for inflation (by calendar years as in S. 1415)	$10.0	$14.4	$15.4	$17.7	$21.0	$23.6	$24.3	$25.0	$25.8	$26.6	$102.1	$203.8
2. Calendar year volume adjustment	.....	.....	.....	.....	−3.6	−5.0	−5.4	−5.8	−6.2	−606	−8.7	−32.7
3. Calendar year payments	10.0	14.4	15.4	17.7	17.4	18.6	18.9	19.2	19.6	20.0	93.4	117.1
II Fiscal Years:												
1. Adjustments:												
a. Convert Federal revenues from S. 1415 general tobacco industry payments to Federal fiscal years	.....	−20.8	15.2	17.1	17.5	18.3	18.8	19.1	19.5	19.9	88.9	166.2
b. Change in the net revenues from Fedeal income and payroll taxes (because of the impact of S. 1415 general tobacco industry payments on aggregate taxable income	–	−5.2	−3.8	−4.3	−4.4	−4.6	−4.7	−4.8	−4.9	−5.0	−22.3	−41.7
c. Change in net revenues from present-law Federal tobacco excise taxes (because of price increases from S.1415 general tobacco industry payments)	–	−0.8	−1.2	−1.5	−1.9	−2.1	−2.2	−2.2	−2.2	−2.2	−7.5	−16.3
d. Net revenue effect of replacing State by State tobacco settlements with S. 1415 payments	–	0.5	0.9	1.1	1.4	1.6	1.9	2.2	2.4	2.7	5.5	14.7
2. Net Federal revenues from S. 1415 general tobacco industry payments (JCT May 19, 1998 estimate)	–	15.4	18.0	12.5	12.7	13.2	13.8	14.3	14.8	15.4	64.6	122.9
Nominal Calendar Year Price Per Pack With Youth Look Back	$1.98	$2.88	$3.24	$3.41	$3.66	$3.83	$4.06	$4.12	$4.78	$4.84	.....	.....

Note: Details may not add to totals due to rounding.

Mr. NICKLES. Mr. President, I wish to address the amendment by my friends and colleagues from Illinois, Ohio, and Oregon dealing with increasing the look-back penalties.

I made a statement earlier today that I think the look-back provision in this bill is one of the most unworkable provisions that anybody could dream up. I say ''unworkable.'' I don't think it will work. But I would like to maybe bring to my colleagues' attention how they propose that it should work.

To make the look-back penalties work, they say we are going to empower the Secretary of the Treasury to do a poll. It says to conduct a survey. The survey is on a national basis. They are going to measure the type of tobacco product used in the last 30 days. They are going to conduct this survey with methodology that he determines is appropriate. They are going to identify the name brand that the youngsters use. They are going to be surveying kids. They are going to be surveying people from ages 11 to 17. And they are going to ask them a question: ''Did you smoke, and what brand did you use?'' Then they are going to put all this information together. I don't think they are going to ask this of every teenager in America. So it is going to be a random survey.

Then they are going to compare the results of this survey to the mandates in the bill. If we don't meet the targets, or if the consumption of tobacco by teenagers is higher than what this bill says they should be, the tobacco companies are going to be assessed penalties. And the penalties are very large. The penalties in the look-back provision under the negotiated settlement with the attorneys general went up to $2 billion. The penalties that came out of the Commerce Committee were $4 billion—$3.96 billion.

And then the penalties which were rewritten by the administration and introduced on Monday came out $4.4

billion maximum, and now the amendment that we have in the Chamber says take that to $7.7 billion, and also increase the target rate to 67 percent.

Why do rates make a difference? Well, for every point you are out of compliance, you are assessed a penalty, and the penalty is large. The penalty for not making the target under the attorneys general negotiated agreement was $80 million per point missed.

Well, the penalty under this bill is $240 million per point missed. It is three times as large as that proposed under the original settlement. That is just the industry-wide look-back. There is also a segment that applies to the product, and it has a penalty that is $200 million per point missed.

If this sounds confusing, it is because it is, and it is in this bill. My point is it is not going to work very well. You are telling the Secretary of Treasury to take a poll, and then we are going to deem that this poll is correct.

Now, all of us have used surveys. We have all had polls. But this bill has language that I guess people want to become law which says the survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for the purposes of this act.

So we are saying, whatever the Secretary says, it is accurate. It is a done deal. And then they are going to and ask the kids, did you smoke? Now, they don't ask them, did you smoke 10 times? Did you smoke a pack a day? They can smoke one cigarette during that 30-day period and they are counted. And if this thing worked just right, a tobacco company would have to pay $1,000 because a youngster smoked one cigarette. I find that to be pretty high. And I might mention, this is really supposed to go after young people who are smoking illegally. They are smoking illegally. Let's put the penalty on the young person for breaking the law. Instead, we are going to do a random survey, a random survey that has to determine every single percentage for every single tobacco product. There is a de minimis level. We are not going to hit the smallest companies, I guess. I don't know how many different tobacco products there are. I don't know them very well. I don't smoke. I can only think of three or four cigarette brands. I don't smoke. And my guess is there is probably a lot of teenagers who don't either, but they can remember maybe the biggest name brands. I can remember Marlboro and Winston and maybe Virginia Slims. So if somebody said, do you smoke? I might be able to remember those name brands.

Mr. FORD. Mr. President, could I help the Senator with the names of some packs of cigarettes?

Mr. NICKLES. In a minute. That youngster taking the survey, if they mention a name brand, whether that was the brand they smoked or not, it comes out in the calculation of this data which is deemed accurate, proper, and correct. Then, that company can be subjected to enormous fines.

In the proposal, in the amendment that we have pending, the fines that are brand specific go up to $5 billion. They are also indexed for inflation. That is a pretty big penalty.

Then there is a $2.2 billion look-back that applies industry-wide. The Secretary of Treasury takes this survey and tries to determine what percentage of young people are smoking each brand in the country, and if each one of them by brand product missed this target, then they are assessed penalties that can go up to $7.7 billion and even higher in the outyears.

This is not a good plan. This is not a workable plan. I tell my colleagues, if you want to do something to reduce teenage smoking, come up with something else. If you want to come up with higher taxes, just increase the tax. I have heard some people say you don't need $1.50 because we have a big look-back and it's really $1.50 anyway. If you want to make it a $1.50, make it a $1.50, but call it a tax. Make it clear. Make it honest. This is a scheme. We are going to deem a poll to be accurate, and authorize the Secretary to assess enormous penalties, in the billions of dollars.

That doesn't make sense. Now, if you really want to reduce teen smoking, do something else. Say to teenagers, if you are caught smoking, we are going to slap your wrist. The second time we are going to make you clean up a park, the third time maybe a financial penalty. We don't have that in this bill. And I don't want the Federal Government to do it because I don't want to federalize these actions, but instead we should encourage the States to enforce the law.

It is against the law for teenagers below the age of 18 to smoke in any State. If you don't want anybody to smoke that is 18 years old, try and increase the age to 20 or 21. You have that right. But to come in——

Mr. FORD. Mr. President, may I correct the Senator?

Mr. NICKLES. Yes.

Mr. FORD. I don't believe it is unlawful to smoke. It is unlawful to purchase.

Mr. NICKLES. I appreciate the correction. Let me make the comment, Mr. President. In every State in the Nation it is unlawful to purchase cigarettes.

Mr. FORD. Now.

Mr. NICKLES. And if we want to decrease teenage consumption, maybe we should encourage the States to pass laws it is against the law to consume and put some responsibility back on the individual. Instead, we are allowing this massive growth of government.

It doesn't make sense. It is not workable. It is not fair. And I don't think it will be effective. I also don't think parts of it will be constitutional, and I don't think we have willing participants by the tobacco companies. So it is just not a good deal. For people who want to raise taxes, raise taxes. Be up front, be honest. If you want to do something else, do something else to get teen consumption down. But this bill is not going to work. It is just not a workable plan. Frankly, if it wouldn't work at $4.4 billion, it won't work at $7.7 billion.

I urge my colleagues examine this look-back provision, see how complicated it is, see how confusing it is to give the Secretary this power, and to decide this is not the right way to legislate. It is not the right way to tax, and let's come up with something better. I hope something better would include some personal responsibility and accountability for people who are breaking the law. If a teenager purchases, it is against the law if they are under the age of 18. And if you really don't want them to smoke, maybe we should encourage the States to have laws against the consumption as well.

I appreciate my——

Mr. DOMENICI. Will the Senator yield?

Mr. NICKLES. I will be happy to yield.

Mr. DOMENICI. I have a question. Is the Senator saying that tobacco companies do everything they are supposed to do and yet when we take the survey, we are not as successful as we hoped to be and so we are going to impose a fee on them?

Mr. NICKLES. The Senator is exactly right. You know, I am sure if this survey was taken during the Fourth of July break, it would have a little higher incidence of teen smoking than it would at some other time in the year. But if they smoke a cigarette, they are counted in the affirmative and the penalty would be $1,000.

Mr. MCCAIN. Will the Senator yield for one more question?

Mr. NICKLES. I will be happy to yield.

Mr. MCCAIN. Is the Senator aware that as part of the original agreement between the industry and the attorneys general, the industry itself was the one that agreed to this? All they are doing here is increasing it. Is the Senator aware of that? And is the Senator aware that this puts him in a position which is far different even from the industry by attacking a proposal that was agreed to by the tobacco industry itself, who would——

Mr. NICKLES. I will be happy to answer the question.

Mr. MCCAIN. Have experienced these penalties, who would have been subject to them and obviously must have had some confidence in the survey the Senator is deriding; otherwise they never would have entered into the agreement because the penalties would have accrued to them. Is the Senator aware of that?

Mr. NICKLES. I will be happy to tell my colleague from Arizona that he makes a good point but he is absolutely wrong. What the industry agreed to, according to the settlement, is that they would pay $80 million per point of noncompliance, up to a total of $2 billion. What we have before us is two

surveys, penalties up to $4.4 billion, and an amendment to go to $7.7 billion.

Does my colleague from Arizona realize there is a difference between $7.7 billion and $2 billion? and that $5.5 of this new penalty is product-specific? and the industry did not agree to a product-specific penalty? These provisions were not in the industry settlement, as I am reading it right now.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. Did you ask me a question?

Mr. NICKLES. No.

Mr. MCCAIN. You didn't.

Mr. GRAMM. Will the Senator not agree with me that whether the tobacco companies agreed to it or not, that article I of the Constitution gives the Congress the power to tax? and that we ought not to be delegating that power to a poll?

Mr. NICKLES. I agree totally. And I also tell my colleague and friend from Texas, I wasn't part of the tobacco companies' deal. I am part of the Finance Committee. And I think if we are going to legislate on taxes, we ought to do it right. This is not the right way to tax.

I will also tell my colleague from Texas, I have heard people say the tobacco industry is confident they can challenge these look-back assessments and win in court and have it thrown out as unconstitutional. Regardless of the constitutional argument, I say this is a crummy way to tax. I don't want to give the Secretary of the Treasury the authority to conduct a poll and then determine that the poll is accurate, proper, correct for purposes of this act, and be able to make assessments. Under the agreement the tobacco companies agreed to, it was up to $2 billion. Under the bill that came out of the Commerce Committee, it was $3.96 billion. Under the bill the administration wrote and introduced on Monday, it came up to $4.4 billion. And on the amendment we have pending now, it is $7.7 billion, also indexed for inflation.

The industry did not sign off on any $7.7 billion look-back.

Mr. GRAMM. Will the Senator yield further?

Mr. NICKLES. Yes.

Mr. GRAMM. Just two questions. No. 1, you are not here to represent the industry, are you?

Mr. NICKLES. No, sir. I could care less——

Mr. GRAMM. Second, when you put your hand on the Bible and you swore to uphold the Constitution of the United States against all enemies, foreign and domestic, you were not saying, well, I'll uphold the Constitution and article I, the power of Congress to tax, only in those cases where the tobacco companies didn't agree to let a pollster raise taxes, did you?

Mr. NICKLES. The Senator is absolutely right.

Mr. MCCAIN. A ''pollster''?

Mr. NICKLES. I got on the Finance Committee because I did not like the way our tax system was structured. I want to work with our colleagues from Mississippi and Texas, to take the Tax Code and rewrite it and come up with something that is fair, flat, and simple. This is tobacco bill just the opposite. This is a mess. We could clean this bill up a lot if we went through the conventional process, if we had the Finance Committee mark up this bill on the tax side and call a tax a tax.

Instead, we have this unbelievably complicated system, and the look-back is maybe the most complicated. Delegating to the Secretary of the Treasury to take a poll, and then, if they don't meet the targets that we set, we are going to assess them billions of dollars, up to $7 billion or $8 billion, I find to be ludicrous. It doesn't make sense. It is not a good way to legislate.

That is the reason that the Commerce Committee doesn't have taxation power, in the Senate. In the Senate, the Finance Committee has the power to raise taxes.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. NICKLES. And not the attorneys general and not the Commerce Committee.

I will be happy to yield.

Mr. MCCAIN. I thought the Finance Committee did take up this issue and ended up raising taxes, and doing all kinds of other havoc to it in 24 hours. I wonder what they would have done in 72.

Mr. NICKLES. I will tell my friend and colleague, the Finance Committee did consider this bill for 24 hours. I didn't support their $1.50 tax increase, but I think their $1.50 tax increase is a lot more honest, is a lot more plain, a lot more doable. We have excise taxes on tobacco today of 24 cents. Congress last year, when we passed the kid-care bill, increased that another 15 cents. So, tobacco taxes are going to 39 cents already in present law.

People say that the Commerce Committee bill, the administration bill, increases that another dollar and a dime. That takes the tax to $1.49. But they do not call it a tax, they call it a fee. So we are telling everybody who is in this industry—and we have wholesalers and distributors and so on—that the tax is $1.49 and it is increasing. But that bill, the bill that we have before us, doesn't saying anything about a dollar and a dime. It says put all these billions of dollars into a fund. That is not very workable. It is not very legitimate. I think we should have the committees of jurisdiction take this bill.

The Finance Committee did take the bill, but unfortunately the Commerce Committee and the administration looked at our changes, and they just ignored them. They dropped the changes that the Finance Committee made.

I resent having the Commerce Committee write the tax portions of this bill as well as I resent the Commerce Committee writing the ag portions of the bill. And I think those are two of the more contentious and two of the more difficult things that we have to deal with. The committee that marked it up didn't have, in my opinion, the taxation expertise, they didn't follow the same taxation procedures that we have on every other excise tax in history. And, frankly, I think the Agriculture Committee should have written that instead of the Commerce Committee as well.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Is the Senator—has the Senator from Oklahoma completed his remarks? Were you through with your remarks?

Mr. NICKLES. Yes.

MORNING BUSINESS

Mr. LOTT. Mr. President, I know we are having a lot of fun here, but for the information of all Senators, there will be no further votes this evening. The Senate has tried to work out an agreement that would resolve the impasse that we have right now parliamentary, and with regard to the substance of those amendments, but we have not been able to get that worked out yet. There are very strong feelings on both sides of the amendments that are pending, so I can understand that. So, since we haven't worked out an agreement, I now ask there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

Mr. GRAMM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas reserves the right to object.

Mr. GRAMM. Would it be possible for us to just have a short final statement on this issue? Or would you prefer we do it—

Mr. LOTT. I would prefer you do it in morning business, because if you had a short final statement, there would need to be a short final reaction. I see the Senator from Massachusetts is anxious to get recognition.

Mr. GRAMM. In that case, it is not worth it.

Mr. LOTT. You can continue in morning business.

Mr. GRAMM. Thank you.

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

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, tomorrow we will convene at 9:30, and there will be 1 hour for morning business, and then we will begin consideration of two items tomorrow, calendar No. 299, H.R. 2709, relative to Iran sanctions, with a total of 3 hours for debate. We already entered into an agreement back before the Easter recess as to how this issue would be considered, on or before May 22. So we will have this issue up tomorrow. There could be an amendment offered by Senator LEVIN. But we hope to get that up tomorrow.

I won't even announce at this moment exactly which one of these two bills will come first, because we will need to see, for instance, if the ISTEA highway and infrastructure bill is ready to go. As soon as we get it, we want to take that up. But it will be the Iran sanctions issue, and then we will consider and dispose of the ISTEA conference report. So, votes will occur tomorrow, probably at least one, maybe two or three. It will depend on how these issues develop.

Some people are saying, Will the ISTEA conference be completed? I am told by the leaders that they will be able to complete it tonight. They may need a little extra time in the morning to make sure that Senators who are affected one way or the other have been briefed as to exactly what is in it, but they know that we need to complete this legislation before we go home for Memorial Day recess, and we should be committed to get that done.

With that, I yield the floor and the morning business would be in order.

Mr. FORD. Will the majority leader yield?

Mr. LOTT. I am happy to.

Mr. FORD. I approve of what you have been doing. I think you have a hard job and you have done well. One thing that bothers me—you come to Kentucky to see friends and family one of these days. There are a lot of holds here and a lot of people are caught up in holds that have nothing to do with the disagreement among Senators. Next week, the Uranium Enrichment Corporation will make a final decision on whether they go public or whether they go sell to an individual. And we have one member who needs to be on that. She has been held up 4 months now, and that vote and that expertise, for 4 years, needs to be on that board.

I hope that somewhere—it is on our side as well—but when I get our side worked out, then it comes back on that side.

Mr. LOTT. If I can say to the Senator from Kentucky, I know he is interested in this nominee. Over a week ago, I believe, we had it cleared.

Mr. FORD. We did until we got problems on this side.

Mr. LOTT. Then I thought we worked it out again, and another problem popped up.

Mr. FORD. Oh, yes.

Mr. LOTT. But I think we will take another run at it tomorrow and see if we can maybe work it out.

Mr. FORD. The only reason I am asking is, we have the budget process. The Senator from New Mexico, Senator DOMENICI, has worked hard on this. It should not be jammed up because of a hold on the Senate floor for an individual who has nothing to do with it, and it is jeopardizing the budget process, because funds are in there as it relates to the sale of this item.

So I just—I plead with you, if you can, and I will do the best on my side, and if somehow, tomorrow, we will not be back, able to do it—and I do not want a recess appointment. It will all be over before the year expires. I don't like to do recess appointments.

Mr. LOTT. I will say to the Senator from Kentucky, I realize Margaret Greene——

Mr. FORD. Yes.

Mr. LOTT. Needs to be released. We also have worked out, I believe, an agreement that involves releasing Mr. Barry for the Department of the Interior and Mary Anne Sullivan to be counsel at the Department of Energy. We would like to move all three of those.

Mr. FORD. I agree with that, and I will try to help. My pleadings have fallen on hard times.

Mr. LOTT. We will work on it tonight and tomorrow. Keep working on it.

Mr. FORD. I appreciate it. I want you to know—I want everybody to know—we are trying to operate in an efficient manner, and other things are jeopardizing the ability to do it in an efficient manner.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I thank the Presiding Officer. I will proceed in morning business.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

Mr. MCCAIN. Mr. President, I need to respond, of course, to the Senator from Oklahoma who somehow now regrets or complains about the fact that this legislation went through the Commerce Committee. My understanding is, unless I am having some mental lapse, that the decision was made by the leadership to move the bill through the Commerce Committee.

My understanding is that was the instruction of the distinguished assistant majority leader and the other members of the leadership, to move it through the Commerce Committee, because it was clear it was not going to go through the other committees. Now the Senator from Oklahoma seems terribly distraught that it didn't go through the other committees when he was the major person to move it through the Commerce Committee.

Mr. NICKLES. May I answer to that?

Mr. MCCAIN. I will be glad to yield, if the Senator from Oklahoma has a short question, because we are operating——

Mr. NICKLES. I don't have a question. I want to respond.

Mr. MCCAIN. If you don't have a question, then I suggest you wait until the expiration of my time.

The second point is that the Finance Committee did insist, insist, insist and got this bill, and they came up with a result that the Senator from Oklahoma didn't like. There were amendments pending, that is my understanding, in the Finance Committee—I was watching on C-SPAN—that would have done even more damage to the legislation, at least from the viewpoint of the Senator from Oklahoma, who thinks that the bill is too encompassing, too large a tax increase, et cetera, which he has spoken at length about on this floor today. I am curious about what would have happened if the Finance Committee had kept the bill even longer.

As far as the Agriculture Committee is concerned, the Agriculture Committee bill is in the bill as a result of the majority leader inserting it. The Senate will have its way on that.

But I want to come back to the fundamental issue of the look-back provision. Mr. President, I didn't invent the look-back provision. It wasn't my idea. I have very talented staff and advisers and friends. The look-back provision came from the agreement that was entered into by the attorneys general of the 40 States and the industry.

Have they changed? Yes, the look-back provisions have changed. Should they be changed back? Should I support the Durbin amendment? No, because I think it makes it worse. But the look-back provision concept was generated by the belief of every public health group in America that you can't trust the tobacco companies.

Perhaps the Senator from Oklahoma and the Senator from New Mexico and others trust the tobacco companies and believe that they will really try to reduce teen smoking. They may do that, but most observers believe that after commitment after commitment and promise after promise and lying to Congress about the fact of whether they enticed kids to smoke or not, the fact is we found out they did. So the look-back provision, I inform my colleagues, does not mean you have any connection with the tobacco industry, but you ignore the fact that the tobacco industry can't be trusted, and unless there are penalties involved, then the industry will not do what they say they will do, because they have already said they would try not to entice kids to smoke, and they did. That is the reason for the look-back provision.

Philosophically, that may not be something that is acceptable to the Senator from Oklahoma, the Senator from Texas, or the Senator from New Mexico. But the reality is that is the view of every public health organization in America. Every living—every living—Surgeon General in America today has said you have to have these provisions in the legislation if you want to attack the issue of kids smoking.

That is the view—and we have the letter, I have the letter from the Surgeons General, every Surgeon General since 1973. Perhaps those who oppose this know more than they do. I don't know, I don't know more than they do.

With startling candor, Dr. Claude Teague set forth the plain facts about the addictive nature of nicotine in his chilling 1972 internal memorandum discussing the crucial role of nicotine. He said:

Happily for the tobacco industry, nicotine is both habituating and unique in its variety

of physiological actions. Realistically, if our company is to survive and prosper over the long term, we must get our share of the youth market.

''We must get our share of the youth market.''

I commend this to the reading of the Senator from Texas and the Senator from Oklahoma. It is clear that the tobacco companies attempted to entice youths to smoke. So, therefore, in the agreement made by the tobacco companies, freely entered into by the tobacco companies, there were look-back provisions. Perhaps the Senator from Oklahoma doesn't like the size of them, but it is hard for me to understand how he can argue against the rationale behind it.

Another slip occurred——

Mr. NICKLES. I will be happy to answer it.

Mr. MCCAIN. In 1987, just months before the national launch of the Joe Camel campaign, on October 15, 1987, a memorandum stamped ''RJ secret'' from a file that, incredibly, bears the name ''youth target'':

Project LF is a wider circumference nonmenthol cigarette targeted at younger adult male smokers, primarily 14- to 24-year-old male smokers.

I can go through document after document for the Senator from Oklahoma. What I am asking him to understand is why these look-back provisions are there, because the tobacco companies tried to entice young people to smoke, and here are the documents. In the agreement of June 20, 1997, the tobacco industry admitted that they had enticed kids to smoke. Therefore, since they could not be trusted, then there should be provisions that penalize the tobacco companies if, indeed, youth smoking went up, which they are committed not to do. That is something in which they freely engaged.

I can understand if the Senator from Oklahoma has a problem with the size of those look-back provisions. I cannot understand why the Senator from Oklahoma would not understand why the look-back provisions are there. When we talk about all the adjectives that the Senator from Oklahoma has described these look-back provisions, the facts are, according to every living Surgeon General, according to every public health organization in America, according to Dr. Koop, according to Dr. Kessler, according to every health expert in America, the fact is there has to be provisions that will punish the tobacco companies, as well as incentivize them to stop and reduce teenage smoking.

Now that, I suggest, is reality. Again, I am not speaking from my knowledge and expertise. I am not speaking from my background. I have to go, when I don't know about issues, to the experts. It is rarely that I find experts who are completely in agreement on an issue, and every expert in America is unanimous in saying we have to have some provisions that punish the tobacco companies if they don't do what they say they are going to do.

When the tobacco industry entered into the agreement, they promised to do everything they could to reduce teen smoking. That was part of the agreement they entered into. So how in the world somebody would say that when you swear to defend the Constitution of the United States that you would totally disagree with every health expert in America, frankly, is something I don't understand.

These proposals have been pummeled pretty heavily for the last couple of days, including from the Senator from Texas who has been here quite awhile, and including others.

I want to say, I am coming to respond to this because this legislation is based on an agreement the tobacco industry voluntarily entered into. It seems to me the Senator from Oklahoma's and the Senator from Texas' problem is not with this legislation, it is with the original agreement. And, frankly, they have every right to disagree with it.

But the reason why many of the provisions were put in that legislation and were entered into was because the best minds in America on this issue said, ''You need look-back provisions, you need to restrict advertising, you need to have programs that have to do with youth cessation, you need to have research, you need to have funding for the NIH and the Centers for Disease Control. This is what you need in order to stop kids from smoking.''

Mr. NICKLES. Will the Senator yield?

Mr. MCCAIN. Now, if you want—for a question, I would be glad to respond, which is the normal—

Mr. NICKLES. The Senator used my name about 14 times. I would like to respond, because you made a couple allegations I resent and I would like to respond. But I would like to make a statement, not a question. I would like to make a statement. It would only take me about 4 minutes. But I would like to respond since my name has personally been mentioned, I think, 14 times. I am counting.

Mr. MCCAIN. Of course the Senator from Oklahoma's name has been mentioned, because I am trying to respond to the Senator's statements about the legislation. If he would prefer I not mention the Senator from Oklahoma or saying a certain Senator, but I listened very carefully as a certain Senator attacked this legislation very strongly, in all candor and sincerity.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. I am trying to respond to those comments that were made about the legislation. I think that is the normal give-and-take of debate here on the floor. I am saying that—

The PRESIDING OFFICER (Mr. SESSIONS). The Senator's time has expired.

Several Senators addressed the Chair.

Mr. NICKLES. Mr. President, I will be brief. I know my colleague from Texas has been waiting to speak on the amendment. But there were a few things implied by my colleague's statements, the chairman of the Commerce Committee. He said, ''The Senator from Oklahoma doesn't agree with the look-back assessments that were part of the attorney general's agreement. And if the tobacco companies agree to it, why would he be opposed to look-back?''

I was not part of that agreement. I think my colleague from Arizona once said, ''Why don't you introduce the tobacco settlement so we can mark up from that bill?'' I did not do it. The chairman of the Commerce Committee did. I did not do it because I was not comfortable with it. I did not do it because I do not want to introduce a bill that says tobacco companies will be exempt from class action suits.

I did not do it because I looked at look-back assessments and said, ''That's no way to tax.'' I think there is a right way to tax and a wrong way to tax. This is the wrong way to tax. And so to attack me and say that if I am against look-back penalties I am also against every health professional or expert is ridiculous.

I think this is a crummy way to tax. I have told my colleagues, you want a tax? Tax. Call it a tax. Don't hide behind saying, ''It's a fee. It's an assessment.''

I just read the attorneys general's deal with the tobacco companies. They did not say anything about having a survey and deeming it ''proper and correct'' and so on. My point being, I am not part of the deal that the attorneys general negotiated. They did not ask me. I am part of the Finance Committee, which is responsible for raising taxes. This Congress has already raised tobacco taxes. And if Senators want to increase them again, they have the right.

We raised the tobacco tax last year. I did not vote for it. I do not know if my friend and colleague from Arizona did or not. But we increased tobacco taxes last year 15 cents. The increases have not gone into effect yet, but they will. They are on the books. And that is the way we should do it. That is the way the system works. This convoluted system of industry payments going up to $1.10, plus look-back penalty is wrong. Originally the look-back was $2 billion in the settlement, and then the Commerce Committee bill was $3.96 billion, and then the bill that was introduced on Monday that we have before us is $4.4 billion. And then the amendment that was offered this afternoon goes to $7.7 billion.

I am just saying this is not a workable tax. And I did not agree to the tobacco settlement. So my colleague from Arizona, I believe insinuated that I support the tobacco companies. I do not support the tobacco companies. I just think this is a crummy way to tax, and I resent this idea that whoever opposes look-back is supportive of the tobacco industry.

Mr. MCCAIN. Could I—

Mr. NICKLES. That is not true.

Mr. MCCAIN. If I could comment, I in no way intended that——

Mr. NICKLES. I appreciate it.

Mr. MCCAIN. In any way, that implication, I say to my friend from Oklahoma. I said on numerous occasions that his views on this are sincere and heartfelt. I hope the Senator understands that. And I say, I understand that my colleague from Oklahoma knows that I have been here for a number of days now, and there have been assaults not only on the bill itself but on the committee.

You made some remarks about it, et cetera, and I just felt I would defend it. But at the same time, the Senator from Oklahoma is sincere in his beliefs, and they are held with integrity. And I do not in any way imply that there is any relationship there. I wanted to clear that up.

Mr. NICKLES. I appreciate that.

I am going to make two other very quick remarks. One, the negotiated look-back with the attorney generals was not product specific. And the amendment that we have before us goes to $5.5 billion in penalties on a product specific basis, which means we are going to do a survey on every tobacco product used by teenagers and assess penalties on every single product. Now, isn't that bureaucratic, isn't that a mess.

I hope people will understand this is a big expense. And some people think it is a move in the right direction. I think it is a move in the wrong direction.

Before my colleague from Arizona leaves, he said, ''Didn't Senator LOTT ask Senator NICKLES to head this tobacco effort up and pull all the committee Chairs together,'' and we then assigned the responsibilities to the Commerce Committee chairman?

I say that when I was involved in this particular phase of it, that the linchpin of granting immunity—and I see that as a linchpin in this legislation fell to the Commerce Committee. If there was going to be a deal—and that is what the attorneys general's settlement was predicated on—the fact that if you grant tobacco companies limited immunity from class action suits, they will pay so many billions of dollars, about $15 billion.

Now, conceivably, that could be put in the Commerce Committee. But I really believe that the Finance Committee should have jurisdiction over the tax. I have been upset about it ever since. I do think that if we are going to have a tax, we ought to call it a tax. We should not hide behind fees and we should not have look-backs assessments. I think these issues are the responsibility of the Finance Committee. And I think if we did that, we would tax tobacco just like we always taxed tobacco.

I think the Commerce Committee, with all due respect, did a crummy job. Its bill has different prices for different brands of snuff. It exempts some tobacco companies from a tax. It hits other tobacco companies hard. I find that to be inequitable. I think the tax should be so much per product, and let us just say how much a pack it is, how much a can it is and how much a pouch, so people will know. I believe that very, very strongly. And so I communicate that to my friend and colleague.

I appreciate the fact that my friend from Texas has been so patient. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we have debated this thing all week. We are in morning business and we are carrying on the debate, so I guess it shows people feel strongly about it.

I want to make it very clear what the issue is on this look-back provision. The Senator from Arizona acts as if by the tobacco companies agreeing to the procedure that somehow that sanctifies this procedure. The Senator from Arizona acts as if by the public health experts believing we should have a penalty that somehow that sanctions this look-back provision.

My concern with the look-back provision is not that it is a penalty; my objection to the look-back provision is that it is clearly patently unconstitutional. And it is unconstitutional on two bases. No. 1, the Constitution, in article I, says it shall be the power of Congress to lay taxes. The most fundamental power of Congress is to tax. This bill delegates the power to tax to a public opinion poll and to the Secretary of the Treasury —clearly unconstitutional.

Secondly, this bill puts a company in a position that if they have no control over the decision of a 14-year-old, and the 14-year-old makes a decision, that company can be punished for the decision of the 14-year-old, even though there is no evidence whatsoever that they have had any impact on that decision. Clearly, that violates British common law and it violates the Constitution of the United States.

So the point I am making is not that public experts don't have a position, not that tobacco companies don't have a position, not that the Senator from Arizona doesn't have a position, but there is a Constitution. When we all stood right down there below that first step and put our hand on the Bible and swore to uphold the Constitution against all enemies, foreign and domestic, we made a commitment, one I take very seriously.

So the problem with this provision besides it being absolutely comical—who would have ever thought we would have a bill where you would do a public opinion poll, and based on what 12- and 13-year-olds say in a public opinion poll, you would have a pollster, in essence, empowered to raise taxes? Who ever heard of such a thing? Not only does this not pass the Constitution test, this doesn't pass the laugh test. This is one of the most absurd provisions I have ever seen.

Now, granted, if our only defense of it is, well, the tobacco companies supported it, I didn't know that we had turned the writing of law over to the tobacco companies or the health experts or the public choice advocates.

My point is, this provision is embarrassingly silly and unconstitutional. I would be ashamed to vote for a bill that had a provision in it where you let a pollster's finding trigger tax increases, rather than an act of Congress, where Congress, in general session, assembled, passes a tax bill that is signed by the President. That is the issue we have raised here—not who cut what deal and who signed off on what, but, basically, two very relevant tests: No. 1, the Constitution test; and, No. 2, the laugh test. I think this provision fails both of those tests.

I think the more people know about these provisions, the less support there is going to be for this bill. To the extent that we draw public attention to this, perhaps we will come to our senses, and if we want to make taxes higher, make them higher. But don't empower some pollster to take over the constitutional powers of the Congress. It won't stand constitutional muster for a minute, and it makes us potentially the laughingstock of the public. That is what the issue was about—not that all of these so-called advocates for the public interest support the provision, not that the tobacco companies have endorsed it. The question is: Is it constitutional, and is it laughable? The answer is: No, and yes.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, the Senator from Texas has indicated that the bill is unconstitutional with respect to the look-back provisions. We have an opinion from the Congressional Research Service on the look-back provisions, and this is what they say: ''We conclude that the bill which may be refined further in the amendment process does not appear to pose serious constitutional concerns and would seem to satisfy a showing of rationality and legitimate government action.''

So while the Senator from Texas has determined this bill unconstitutional, the Congressional Research Service says otherwise. They say this bill is constitutional. They say that it will satisfy a showing of rationality and legitimate government action.

We have heard a lot of arguments out on the floor today. We have had a number of Senators dominate the discussion, and, frankly, I had begun to wonder if they were afraid to debate and afraid to vote. That is what is going on here. We are in the ''stall,'' because some are afraid to debate and they are afraid to vote. They won't even allow a debate to occur out here on the floor. They reject any interchange, any discussion. Instead, they just want to give speeches to stall and delay.

So, maybe it is time for us to have a debate. I don't know why they won't

come out here and debate. Let's have a debate, and let's see what the American people conclude after that.

Now, we have heard all day that this is disproportionately affecting the lowest-income people. This is a levy on them. The first thing I point out is, people choose what they do. Nobody is going to pay a penny of tax if they don't go to the store and buy the cigarettes. They don't have to do that. There is no requirement to do that. This is no levy on their income; this is their choice.

Our friends on the other side of the aisle talk about personal responsibility. This is a question of personal responsibility. It goes beyond that. Nobody is talking about the taxes imposed on all the rest of us who are expected to pick up the tab because this industry imposes costs on society that aren't being covered by them. Mr. President, the rest of us are being expected to pay taxes, to pay the Medicare bill estimated at $22 billion a year imposed by this industry. The Medicaid Program has over $11 billion a year of cost imposed on them because of this industry. That is not covered.

How did we get here? We got here because State attorneys general sued the tobacco companies—sued them. And the basis for the lawsuit was, the tobacco industry was imposing costs on State Medicaid Programs. Of course, part of State Medicaid Programs is financed not only by State taxpayers but by Federal taxpayers. Federal taxpayers have had costs imposed on them because of the use of tobacco products. It is only fair to the vast majority of people who don't smoke that they have some of these costs relieved from them. Three-quarters of the people in this country do not smoke, and they are being expected to pick up the tab for the industry's actions, for what this industry has done. That is not fair. It is time to redress some of this balance. The three-quarters of the people who get stuck with the bill each and every year say, ''Wait just a minute now. It is time for this industry to pay a fuller share of the costs it imposes in this society.''

The best estimates we have are that the use of tobacco products costs this society $130 billion a year. Those are the costs being imposed by this industry. People smoke 24 billion packs of cigarettes a year. So the costs per pack being imposed on this society are $5 a pack. Those are the costs being imposed by this industry on all the rest of us. Who is paying that tab? Every other taxpayer, every single one that doesn't smoke, is being stuck with that bill.

We are saying it is time for the industry to start paying a fair share of the costs that it imposes on this society and all the rest of us. That is just a matter of fairness.

Now, why do we have look-back provisions? Senator MCCAIN is precisely right: The reason there are look-back penalties imposed is because this industry has a history of going after young people. They try to addict them because they know they become lifetime smokers, and they know if they don't get them young and early, they don't get them.

If there is any question about what this industry has done, let me go back to my top 10 tobacco tall tales. No. 7 was, ''Tobacco companies don't market to children.'' Here is their own document, a 1978 memo from a Lorillard tobacco executive. These are not words, these are the words from a tobacco company executive: ''The base of our business are high school students.'' That is the base of their business. They know what the base of it is. That is why they have been going after kids with their marketing and advertising campaigns for years.

Tall Tale No. 8: Again, the claim, ''Tobacco companies don't market to children.'' Their own documents, a 1976 R.J. Reynolds research department forecast: ''Evidence is now available to indicate that the 14 to 18-year-old-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.''

What could be more clear?

They are going after kids with advertising, with marketing, because they understand they are the base of their business.

Tall tale No. 9: Again, the claim that the tobacco companies don't market to children.

From their own documents, a 1975 report from Philip Morris researcher, Myron Johnston:

> Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data . . . shows even higher Marlboro market penetration among 15–17-year-olds.

This is why it is necessary to have a look-back provision. This is why it is necessary to say, if you do not achieve the goals for reduction of youth smoking, you are going to pay an economic penalty, because nobody knows more about marketing to kids and how to successfully hook them than the tobacco industry. They spend hundreds of millions of dollars learning how to effectively get across to them. And they are the only ones that have the best information, or I should say they are the ones who have the best information on what might work to allow youth smoking to decline. The best way to get an effect of what we are serious about here, reducing youth smoking, is to give the companies an economic incentive to achieve those goals.

Unfortunately, in the McCain bill most of the penalty is given on an industry-wide basis. The Durbin amendment is seeking to shift that so most of the penalty is on a company-specific basis. Why? First, if you punish everybody equally you punish the good with the bad. Unfortunately, that is what the McCain bill does because they put most of the penalty industry-wide. It doesn't matter if you are a good company and you really achieve the goals for reducing youth smoking, or you are a bad company. You still pay the penalty. That is not individual responsibility. Frankly, that is socialism. That has everybody in the pot together, good or bad.

Second, having a penalty that is largely based, industry-wide, creates a perverse incentive. With an industry-wide penalty, if a company does the right thing and reduces youth smoking, it still pays the penalty. In fact, it pays twice. It pays the penalty, and it suffers the loss of market share from not addicting young kids. What a perverse incentive that is.

Mr. President, the third point that needs to be made is that because all the companies will pay the same surcharge, they can just treat this as a cost of doing business and pass that surcharge along to the customers.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CONRAD. Mr. President, I ask for 1 additional minute.

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

Mr. CONRAD. Mr. President, it all boils down to the question at the bottom, which is, What are we going to do to reduce smoking in this country? Why is that the goal? Because we have 400,000 of our fellow citizens dying every year from smoking-related diseases. It is the No. 1 health challenge in the country that is avoidable. It is No. 1. There is nothing else that kills this number of our fellow citizens. The estimate is for every three that are smoking, one will die of smoking-related diseases.

I have held hearings now all across America. Everywhere we have gone people have come forward and described the agony and the tragedy caused in American families by the use of this product. This is the only legal product in America when used as intended by the manufacturers that addicts and kills its customers. There is no other product that fits that bill. The only one, the only legal product, when used as intended by the manufacturer that addicts and kills its customers.

People in this country are asking us to stand up and do something to help them—to help them keep their kids from using this drug, and a drug it is—to help them avoid the disability and death that attends the use of tobacco products. We are not going to prohibit the use of tobacco because we have 45 million people in this country that smoke. We don't have a very good history with prohibition.

We can do something to help American families deal with the agony caused by the use of these products. We should not avoid the opportunity to act.

I thank the Chair. I yield the floor.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in morning business with Senators to speak for up to 10 minutes each.

Mr. BIDEN. Mr. President, I thank the Chair.

(The remarks of Mr. BIDEN pertaining to the introduction of S. 2110 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BIDEN. I thank the Chair.

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed for 20 minutes.

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

Mr. DEWINE. Mr. President, we are ready to close down the Senate tonight, and we are about ready to end, really, the debate on the tobacco bill for this week. This bill will be back in the Chamber. We will be debating it in the future. I think we got off to a very good start. No one ever said that this was going to be an easy bill. This is a very complicated bill. Congress is doing something we have never done before. It is very complex. So we knew going in it was not going to be easy.

Nothing important ever is easy. It is important that we continue to push on because there is a lot at stake. I would submit what is at stake, really, is the future of tens of thousands of our young people. We all know the statistics. We all know what the facts are. We all know how important it is we stop young people from starting to smoke. We know the reality that if the child does not start tobacco use at 19 or 20, hasn't smoked, the odds are the child isn't going to smoke. We also know most people start when they are young, start when they are way underage and it is illegal to smoke, cannot smoke if they do, and we know that is when they get started.

We have heard the statistics. We know the statistics about the 3,000 children starting to smoke every day. We know the statistics that roughly a third of them will die premature deaths, some horrible deaths, because of smoking. So I think we all know what is at stake.

I think it is important as we complete this week to remind ourselves that, yes, it is tough. This is a tough bill. This is a tough world. This is contentious. But that is what we get paid to do. That is why people send us here—to make tough decisions. I think we need to remind ourselves that this really is a historic opportunity. It is a historic opportunity that has been presented the country, and has been presented this Senate, and has been literally put in our laps. We can either take up this opportunity and do what is right and do something very constructive, or we can pass it by. This is a historic opportunity. It was really given to us because of the settlement that was announced last June by tobacco companies and by the attorneys general, an unprecedented settlement, a settlement that cannot go into effect without a comprehensive bill passing the Senate, passing the House, and ultimately being signed into law by the President.

Let me commend Chairman JOHN MCCAIN for the work he has done in bringing this bill to the floor. Let me commend him for the work he has done this week, keeping this process moving forward. It is clear that, if we are going to reduce teenage smoking, there has to be a comprehensive approach. It is like most things in life, there are no simple answers. If there were simple answers, we would have found them a long, long time ago.

Raising the price of cigarettes, raising the price of tobacco, is an important element to reduce teenage smoking. There is an inverse relationship, clearly, between the cost and the use. But we also know, based on every study that we have seen, everything that we have looked at, I think most of us have come to the conclusion that raising the price of cigarettes alone will not do it, that we have to do other things. We have to stop the advertising for cigarettes that appeal directly to children—get rid of the Joe Camels, or those who will follow Joe Camel; get rid of the Marlboro Man; get rid of the cartoon figures; get rid of the advertising that any parent looks at for 1 second and knows this is clearly targeted at children or, if it is not targeted at children, at least has a tremendous appeal for children. That has to be stopped.

We have to have counteradvertising. We have to take all the ingenuity of Madison Avenue and use it, instead of killing people, use that ingenuity and use that talent to save kids. It is available, and it is out there, and we can do it.

We have to worry about law enforcement. Again, it is no different than dealing with drugs in that respect. You have to have education, you have to have advertising, but you also have to have law enforcement. We risk, as we increase the price of cigarettes and tobacco, expanding the black market that already does exist in this country. We have to worry about that. We have to worry about the enforcement of the laws that every State has about underage smoking. We have to figure out better ways to enforce that law.

So, we have to do all of these things. And as we proceed in the weeks ahead on this bill, and as we talk about it and we debate it and argue this point and argue that point, let's keep our eye on the ball. Let's keep our eye on the objective. For this Senator from Ohio, at least, there is only one objective, and that is to reduce the number of our kids who start smoking. If we can do that, if we can do it in significant numbers, we will have accomplished a great deal.

That is what this bill that Senator MCCAIN has brought to the floor is all about, and that is what we have to get accomplished. This is a historic opportunity. It is a unique opportunity.

Let me talk for a moment, if I could, about the amendment that Senator DURBIN and I have brought to the floor this evening. It is an amendment that we believe will make a difference. It is an amendment that will bring about more accountability, hold the tobacco companies responsible, make them liable for their actions, make them more accountable, and we think will make them do the right thing.

Our amendment deals with what we call look-back. I think we have to keep in mind—I have had the opportunity to listen to a portion of the debate from some of my colleagues who followed Senator DURBIN and myself, Senator WYDEN—who spoke in favor of the amendment. I have listened to what some of my colleagues who have raised some questions about the amendment have had to say.

In response, let me make a couple of comments. First of all, the people this is targeted at, the people we are targeting, are the tobacco companies. And the tobacco companies agreed to a look-back provision. They agreed to a very, very significant look-back provision. That was the provision which was included in the settlement that was announced last June. So they agreed to it. They are the ones who thought they could meet the 60-percent reduction target in 10 years, and that is a significant target. But they said, ''We can do it.'' So this isn't something that we dreamt up here in the Senate; this is something that the parties looked at, and all of them said, ''We can do it.'' And it is clear that they can.

It makes sense, I think, what we have done in the Durbin-DeWine amendment. That is, we have taken JOHN MCCAIN's very good look-back provision, and I think we have improved it. We have made it more company-specific. What do you mean, company-specific? The original look-back provision was an interesting provision, really, in the sense that it was socialism. I don't know any other word to describe it.

It basically said: Look, here are the targets. The tobacco companies agree on these targets. We are going to look back, after 3 years, and then after a few more, and ultimately after 10 years. And every few years, we are going to look back and see if the tobacco companies are hitting their targets in reducing teenage smoking. They said: We can get to 60 percent reduction in 10 years. And we phase that in—they phased it in, in their agreement, over that period of time.

Every so often, we are going to look to see how we are doing. And if we determine that the reduction is not taking place, or the targets are not being hit, then the tobacco companies agreed—let me emphasize again—agreed that they would pay a penalty.

The interesting thing is, when this was put together, however, how the

penalty was calculated. The agreement was that it would be calculated industry-wide. So you would look to see what the total reduction in teenage smoking was. And then, each company—you figure out what that total penalty was. It is the penalty the tobacco companies agreed to. You take that pot of money, that penalty pot, and you divide it up among the tobacco companies, based on their total market share. So if one tobacco company had 30 percent of the market, they would get 30 percent of the cost of the penalty, irrespective of whether or not they were a leader in the sale of cigarettes to young people or whether they didn't sell a cigarette to a young person; it didn't make any difference.

We looked at this and came to the conclusion that it really didn't make a lot of sense to base it entirely on that procedure. We came to the conclusion that the tobacco companies should be held accountable for what they did specifically. So we came up with this amendment with a variation of what Senator MCCAIN had done, where he blended the penalties, basically making part of the penalties being applied industry-wide—that form of socialism we talked about—part of the penalties being applied case by case, company by company.

We have kept a blend in the Durbin-DeWine amendment, but we put more emphasis on company-specific. We think it makes sense to hold the individual tobacco companies accountable for the reduction in their product that is being sold to kids. Now, some of my friends have come to the floor and said, ''Well, look, that's not really fair. Tobacco companies can't control what they sell to kids.''

With all due respect, that doesn't make any sense. They control it today. They control it by their advertising. They control it by whom they target. They control it by how they market the product. There is a reason that Marlboro has 62 percent of the market. There is a reason they beat everybody else out in getting the kids market, the illegal sales market, the kids-under-18 market. They have been darned good at it. So we have seen, decade after decade, these companies being very good at this and being able to figure out how they can target a niche market and how they can get into kids who are just starting to smoke.

To say that, now, if we give them an incentive not to do it, give them a disincentive and charge them not to do it and they agree not to do it, to say they can't control what they are doing makes absolutely no sense.

My colleague from Kentucky came to the floor and asked, I think, a very legitimate question—Senator FORD. He said—I will paraphrase what he said, but, basically: Look, you are holding the tobacco companies liable. But the Government is going to be the one who is going to be doing the counteradvertising. And the Government is going to be doing other things to reduce teenage smoking.

I think the answer to what Senator FORD said is, yes, that is correct, the Government is going to be involved in countermeasures. The Government is going to be involved in trying to reduce teenage smoking. But that doesn't mean the cigarette companies will still not be players and still will not have things that they can control.

Make no mistake about it, under this bill or any of the different versions of this McCain bill, tobacco companies still are going to be able to impact how teenagers smoke, and whether or not their product is marketed to teenagers, and whether their product is sold to teenagers, and whether they target teenagers. How can they do it? Well, they can do it in many ways. They can do it by advertising. The bill has restrictions on advertising.

Yet, advertising is still going to be permitted. So how they target that advertising and what kind of advertising they place and where they place it is going to clearly impact on whether or not young kids underage buy cigarettes.

Tobacco companies will control that. They will control advertising. They will control how they market the product as they do today. They will control how they target the product as they do today. They can run, if they want to—and this is clearly within their control—their own antismoking campaigns aimed at kids. They clearly can do that.

We hope the more money they spend on that, the more emphasis they will put on that, it will reduce the consumption of their own product. Clearly, how the tobacco companies market and advertise will impact youth smoking. They have some responsibility. We have to hold them accountable.

My friends, particularly on this side of the aisle, always talk about accountability. We are in an age of accountability, whether we are talking about welfare or whatever we are talking about. We are in an age of accountability where people need to be accountable for their own actions. What the Durbin-DeWine amendment says is the tobacco companies ought to be responsible for their own actions; the tobacco companies ought to be judged not by what they say but by what they do. The tobacco companies ought to be charged and looked at and judged by what the results are. That is all we are saying.

I find that to be a pretty conservative point of view, and a point of view that most of my colleagues on this side of the aisle always talk about and, I think, support. If we look at it in this way, this is, in effect, a very conservative amendment.

Mr. President, the Durbin-DeWine amendment changes the incentives. We get rid of the profit motive. We give the incentive to prevent kids from smoking. We give that incentive to the tobacco companies.

Another issue that was raised a few moments ago in regard to the general look-back provision which our amendment contains and the McCain bill does, of course, is whether or not these surveys are accurate. The statement was made or the assertion was made, ''How in the world can you hold tobacco companies liable for surveys?''

First of all, they agreed to it. They agreed to it. They agreed to the broad survey of looking at the industry and looking at how much teenage smoking was occurring. They agreed to that.

Second, these same tobacco companies rely on surveys to do advertising. They rely on surveys to do everything in regard to marketing. Mr. President, I don't think there is one of us in this Senate who has not come to the floor when we talk about illicit drugs in this country, not a one of us has not come to this floor and cited statistics based on surveys about whether the consumption of drugs among our young people is going up or going down. We take them at face value, we rely on them, we make policy based on them and we make decisions based on them.

We have had a debate ongoing for the last 6 to 9 months in this Senate in which I have been involved on several different occasions where we have lamented the fact that among the very youngest of our children who are starting to use drugs, the consumption is going up at the same time the fear factor is going down. And we picked that up from the national surveys being done. Drug-Free Youth Group, we rely on that in our decisions.

I think it is clear that surveys scientifically done, correctly done, clearly can tell us what percentage of the youth market is smoking and what percentage of the youth market is smoking Marlboros. There is no doubt about it. We can come within a very, very close percentage, a fraction of a percentage of getting that figure.

Mr. President, let me conclude by again congratulating Senator MCCAIN for bringing this bill to the floor. It is a comprehensive approach. At the end of the day, when all the days are over and this finally made its way through the Senate, if we are going to have something worthwhile, it has to be a comprehensive approach.

We have to be concerned about driving up the cost, the price, because we know that will have an impact. We have to counter advertising. We have to have some control of the advertising and the cigarette companies ultimately need to agree to that.

As this process goes through, it is sometimes not a pretty process, it is certainly not an easy process, but it is our process, a democratic process, and I remain optimistic that we will end up with a comprehensive bill that will reduce teenage smoking significantly, that will save lives and that will be a bill of which we can all be proud.

TRIBUTE TO FORMER SENATOR GEORGE MITCHELL

Mr. LEAHY. Mr. President, April 10, 1998 was not only Good Friday and

Passover for millions of people around the world. It was a day that marked a beginning for the people of Northern Ireland. A beginning on a path toward peace after thirty long years of civil conflict that claimed over 3000 lives. Although a great deal of work lies ahead to ensure that the peace agreement signed in Belfast is adopted by all parties and faithfully implemented, the agreement is an achievement of immense historic significance.

Over the years, like so many Americans who are proud of their Irish heritage, I have wondered if I would live to see this day. Some years ago, not long after the first cease-fire began, I traveled to Northern Ireland and met with both Catholics and Protestants. Both longed for peace. Both asked me to urge President Clinton, who had taken a chance for peace when he granted a visa to Gerry Adams, to stay the course. We all knew there would be setbacks. We knew more innocent blood would be lost. But while some longed for a past that was gone and others for a future that could never be, most knew that violence could not bring peace and that the only way to a better life was through compromise.

The April 10th agreement represents the culmination of a tremendous amount of effort, and a great deal of courage, by many people. As party leaders, John Hume, whom I consider it a great privilege to call a friend, Gerry Adams, and David Trimble brought their constituents' longing for peace to the negotiating table and understood the responsibility history had thrust upon them and the need to find the middle ground. British Prime Minister Tony Blair and his Irish counterpart, Bertie Ahern, deserve enormous praise for putting the full weight of their offices and their personal reputations behind the negotiations.

Several other people I want to pay tribute to are former Irish Prime Ministers Albert Reynolds and John Bruton, and former Foreign Minister Dick Spring, who put the peace process in motion and labored day and night to keep it moving forward despite setbacks. Throughout this period Former Irish Ambassador Dermot Gallagher and his successor Sean O'Huiginn played a critical role keeping us informed here in Washington as they worked to further the peace process.

But I want to make particular mention of our former Senate colleague, George Mitchell, whose wisdom, steady perseverance and total dedication to the cause of peace enabled the parties to find a way to put the years of hatred behind them and look to a new day.

Senator Mitchell came from humble beginnings. Born to Lebanese and Irish immigrants in rural Maine, he worked his way through Bowdoin College and Georgetown Law School. As a federal judge and from the time he joined the Senate in 1982, he demonstrated patience, even-handedness and commitment to the public good. As Majority Leader, he served as an articulate national spokesman, a trusted colleague and a good friend.

As the first serving U.S. President to visit Northern Ireland, President Clinton made a commitment to the peace process early on, courageously put his prestige on the line by granting a visa to Gerry Adams, and showed great foresight in his appointment of Senator Mitchell as chairman of the negotiations. As I said at that time, I could not have imagined a person better suited to bring the sides together and forge a common path to the future. George Mitchell managed to do what many in the foreign policy establishment said was impossible. As the crafter of the agreement, he has given hope to millions of Irish citizens, and in doing so he has shown the world that even the most seemingly intractable conflicts, even the most bitter hatred, can be overcome.

Mr. President, an April 18, 1998 article by Mark Shields in the Washington Post gives a good description of Senator George Mitchell and his latest achievement. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Apr. 18, 1998]

THE POLITICS OF PEACE

(By Mark Shields)

After hearing the happy news from Ireland that peace could actually break out there, I found my notes from a campaign speech given in 1993 by an American politician. This is what he said then about his earlier career as a federal judge:

''In that position, I had great power. The one I enjoyed exercising most was when I presided over what are called naturalization ceremonies.

''They're citizenship ceremonies. People who come from all over the world who had gone through the required procedures now gathered before me in a federal courtroom, and in that final act I administered to them the oath of allegiance to the United States. And then, by the power invested in me under the Constitution, I made them Americans.

''It was always a very emotional and moving ceremony for me because my mother was a Lebanese immigrant and my father was the orphan son of Irish immigrants.

''My parents had no education. My mother could not read or write English. And they worked—my mother in a textile mill, and my father as a janitor—all of their lives, to see that their children had the education and the opportunity they did not have. . . .

''And after every one of those ceremonies, I spoke personally with each of the new citizens. I asked them where they came from, how they came, why they came. Their answers were as different as their countries of origin. But through those answers ran a common theme best summarized by a young Asian man who, when I asked him why he came here, responded in slow and halting English.

'''I came here,' he said, 'because here in America everybody has a chance.' A young man who had been an American for five minutes summed up the meaning of our country in a single sentence.

''Many of us, most of us in this room, derive great benefits from our citizenship. And most of us are citizens by an accident of birth, not by an act of free will.

''With those benefits come responsibility, and foremost among those responsibilities is our obligation to see to it that those who follow us, the generations yet unborn, have opportunity, have hope, have the right to a good, decent life, a good job, a good-paying job, the opportunity to feed, clothe, house and educate one's children in the best way possible.''

Much, too much, has been written in recent years about the politics of values. That 1993 speech expressed straightforwardly the values of an American politician—George Mitchell, Democrat from Maine, former Senate majority leader—who, over the past 22 months, through a combination of heroic patience, consummate prudence and a near-unique ability to publicly submerge his own ego, has crafted the peace plan for Northern Ireland.

Politics is the peaceable resolution of conflict among legitimate competing interests. That is what Mitchell brought to Belfast from Waterville, Maine, after working his way through Bowdoin College and night law school at Georgetown University. A committed partisan, he helped run the two losing national campaigns of his mentor, Sen. Edmund Muskie of Maine.

Neither a plaster saint nor politically invincible, Mitchell himself ran in 1972 for the chairmanship of the Democratic National Committee and lost to Robert Strauss of Texas. In the Watergate election of 1974, when Democrats swept nearly everything, Mitchell still lost the governorship of Maine to an independent. When Muskie left the Senate in 1980 to become secretary of state, Mitchell was chosen to succeed him.

At the 1987 Iran-contra hearings, Mitchell gave a civics lesson to the nation, as he bluntly advised the grandstanding Marine Lt. Col. Oliver North to ''recognize that it is possible for an American to disagree with you on aid to the contras and still love God and still love this country as much as you do.

''Although He is regularly asked to do so, God does not take sides in American politics. And in America, disagreement with the policies of the government is not evidence of lack of patriotism.''

British Prime Minister Tony Blair was indispensable to the peace agreement. So, too, was Irish Prime Minister Bertie Ahern. And the courageous Protestant and Catholic leaders in the North. President Clinton, against the jaded opposition of the foreign policy establishment and over the objections of his own State and Justice Departments, took the bold risks for peace. He has been a leader.

But it was the son of George and Mary Saad Mitchell of Waterville who was to grow up and remind us in Easter week 1998 that politicians can also be peacemakers.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, May 20, 1998, the federal debt stood at $5,502,138,799,604.60 (Five trillion, five hundred two billion, one hundred thirty-eight million, seven hundred ninety-nine thousand, six hundred four dollars and sixty cents).

One year ago, May 20, 1997, the federal debt stood at $5,346,368,000,000 (Five trillion, three hundred forty-six billion, three hundred sixty-eight million).

Five years ago, May 20, 1993, the federal debt stood at $4,287,296,000,000 (Four trillion, two hundred eighty-seven billion, two hundred ninety-six million).

Ten years ago, May 20, 1988, the federal debt stood at $2,523,014,000,000 (Two trillion, five hundred twenty-three billion, fourteen million).

Fifteen years ago, May 20, 1983, the federal debt stood at $1,288,467,000,000 (One trillion, two hundred eighty-eight billion, four hundred sixty-seven million) which reflects a debt increase of more than $4 trillion—$4,213,671,799,604.60 (Four trillion, two hundred thirteen billion, six hundred seventy-one million, seven hundred ninety-nine thousand, six hundred four dollars and sixty cents) during the past 15 years.

U.S. FOREIGN OIL CONSUMPTION FOR WEEK ENDING MAY 15TH

Mr. HELMS. Mr. President, the American Petroleum Institute's report for the week ending May 15, that the U.S. imported 8,562,000 barrels of oil each day, an increase of 728,000 barrels over the 7,834,000 imported each day during the same week a year ago.

Americans relied on foreign oil for 57.3 percent of their needs last week. There are no signs that the upward spiral will abate. Before the Persian Gulf War, the United States obtained approximately 45 percent of its oil supply from foreign countries. During the Arab oil embargo in the 1970s, foreign oil accounted for only 35 percent of America's oil supply.

Politicians had better give consideration to the economic calamity sure to occur in America if and when foreign producers shut off supply—or double the already enormous cost of imported oil flowing into the U.S.—now 8,562,000 barrels a day.

RESPONSE TO VACANCY CLAIMS

Mr. HATCH. Mr. President, I rise today to respond to a floor speech my good friend and colleague Senator LEAHY recently delivered. In that address, Senator LEAHY once again brought attention to the so-called vacancy crisis that is facing our Federal Judiciary. Now, I don't blame Senator LEAHY for that. After all, that is his job. He needs to press us a bit to move judges for the Clinton Administration. And indeed, we had some disconnects in the past that prevented us from holding hearings on perhaps as many judges as we would have liked.

That having been said, I am pleased that Senator LEAHY and I have worked out some of the kinks in the process and have worked together to ensure that qualified nominees are confirmed. Similarly, I am happy to report that I have worked over the last few months with White House Counsel Chuck Ruff to ensure that the nomination and confirmation process is a collaborative one between the White House and members of the Senate. I think it's fair to say that after a few bumpy months in which the process suffered due to inadequate consultation between the White House and some Senators, the process is now working rather smoothly. I think the progress is due to the White House's renewed commitment to good faith consultation with Senators of both parties. I also want to compliment Senator LEAHY for his willingness to work with me to get hearings scheduled for nominees. Let me take a moment, however, to correct some of the pernicious myths that persist on the subject of the confirmation process.

Quite simply, contrary to what you may have read in the popular press, there is no general vacancy crisis. So far this year, the Senate has confirmed 26 of President Clinton's nominees. We have confirmed a total of 62 Judges this Congress, in addition to a number of Executive branch nominees. In fact, 266 active Federal Judges, or roughly 35% of all sitting Article III judges, were appointed by this Administration. As of today there are 768 active Federal Judges. What does that number mean? It means that there are currently more sitting federal judges hearing cases than in any previous administration. In fact, since becoming Chairman, I have yet to cast a vote against a single Clinton judicial nominee.

Just as a matter of comparison, at this point in the 101st and 102nd Congress when George Bush was president and Democrats controlled the Senate, there were only 711 and 716 active judges, respectively. Thus, we have 50 more sitting federal judges today than we did in 1992, yet some would have us believe that our federal courts are being overwhelmed by a tidal wave of cases.

Keep in mind that the Clinton administration is on record as having stated that 63 vacancies is virtual full employment of the federal judiciary. The Administrative Office of the U.S. Courts lists the current number of federal judicial vacancies as 76, a far cry from the ''nearly 100'' I have heard some claim. In fact, by the administration's own admission we are 13 judges away from a fully employed federal judiciary. Which begs the question: if we are only 13 judges away from full employment how can we be mired in a vacancy crisis? Only 13 judges out of 843 authorized—I think it is time to put the vacancy crisis argument to rest.

Moreover, let's compare today's vacancy level of 76, with those that existed during the early 1990's when the Democratic and Republican parties' fortunes were reversed. In May of 1991, there were 148 federal judicial vacancies. One year later, in May of 1992, there were 117 federal judicial vacancies. I remember those years. I don't, however, remember one comment about it in the media. I don't recall one television show mentioning it. I don't recall one writer writing about it. Nobody seemed to care. Nobody, that is, except the Chief Justice of the United States, William Rehnquist. Back then, in his year-end report, he called upon the Democratically controlled Senate to confirm more judges, much like he did this past year. Yet no one seemed too concerned about the Chief Justice's comments back then. Now, when we have a Democrat in the White House, all of a sudden it has become a crisis when we have virtually half the vacancies today that we had in 1991. And it becomes a crisis even though the Chief Justice's message is virtually the same now as it was back then.

I also think it important to note that at the end of the Bush Administration, there were 115 vacancies, for which 55 nominees were pending before the Judiciary committee. None of those 55 nominees even received the courtesy of a hearing, however. Compare this to the 65 vacancies remaining at the end of President Clinton's first term. I think there is quite a difference.

Some have mentioned a deliberate effort among Republican members of the Senate to unduly delay the confirmation of Judicial nominees. Nothing could be further from the truth. The judiciary committee has in fact processed nominees at a remarkably fast pace this session. Of the 25 nominees currently pending in the Judiciary committee without a hearing, 10 were received since April. Today, there are only 5 nominees pending on the Senate Floor, and I expect that we will vote on their confirmations before the session ends.

A good deal has been said by critics with regard to the vacancies on the Second and Ninth Circuits. It is true that these two circuits have had unusual difficulties. It should be mentioned, however, that nominations to the Ninth Circuit were held up to decide whether the Circuit should be split or not. Now that a commission is in place to study that issue, we have been able to move a number of Ninth Circuit nominations. In fact, we have confirmed more judges to the Ninth Circuit —three—than to any other circuit. Of the five Ninth Circuit judges still pending in the Senate, two have had hearings and one is pending on the floor. We received two of the other nominees only this session. And there are still vacancies remaining on that circuit—two vacancies of which have not even received a nominees. And one of those vacancies has been open since December of 1996.

This represents a failure not on the part of the Judiciary Committee but on the Clinton Administration. President Clinton's failure to nominate judges expeditiously has in fact slowed the process, as the committee is left with an increasingly smaller base of qualified nominees to hold hearings on. In fact, fewer than half of the current vacancies have nominees pending, with many of those having incomplete paperwork. Rather than succumbing to the petulance of finger pointing, we all would be better served by an administration committed to sending us qualified nominees as expeditiously as possible.

Now, we also acknowledge that there have been problems with confirming

nominees to the Second Circuit, but we have made a strong effort to ameliorate them. Unfortunately an unexpected illnesses have taken their toll on the Second Circuit, but we have done our part in committee. Two of the four nominees to that court are pending on the Senate floor, the other two recently had a hearing, and I expect will be voted out of Committee on Thursday.

Apparently, President Clinton has not shared this sense of urgency with regard to the Second Circuit. In fact, of the five current vacancies on that court, one sat without a nominee for almost two years, another did not receive a nominee for over ten months, and the other waited just over eight months to receive a nominee. Most disturbing of all is the seat vacated by Senior Judge Jon Newman, vacant since July 1, 1997, which is yet to receive a nominee. As I have stated so often before, I'm a pretty good chairman of the Judiciary Committee, but I can't get judges confirmed that have not been nominated.

Now, while the debate about vacancy rates on our federal courts is not unimportant, it remains more important that the Senate perform its advice and consent function thoroughly and responsibly. Federal judges serve for life and perform an important constitutional function, without direct political accountability to the people. Accordingly, the Senate should never move too quickly on nominations before it. Just this past year we saw two examples of what can happen when we try to move nominations along perhaps too quickly. In one instance, a nominee for a federal district court was reported out of the Judiciary Committee before all the details of her record as a state trial judge were known. As it happens, the District Attorney in the nominee's city, who happened to be of her party, and the district attorneys' association in her home state all publicly opposed the nomination, setting forth facts demonstrating a very serious anti-prosecution bias in her judicial record. It's cases like these that underscore the importance of proceeding very deliberately with nominations for these most important life-tenured positions.

Let me make an important point here: federal judges should not be confirmed simply as part of a numbers game to reduce the vacancy rate to a particular level. While I plan to continue to oversee a fair and principled confirmation process, as I always have, I want to emphasize that the primary criteria in this process is not how many vacancies need to be filled, but whether President Clinton's nominees are qualified to serve on the bench, and will not, upon receiving their judicial commission, spend a lifetime career rendering politically motivated, activist decisions. The Senate has an obligation to the American people thoroughly to review the records of the nominees it receives to ensure that they are capable and qualified to serve as federal judges, and as part of that assessment of qualification, to ensure that nominees properly understand the limitations of the judicial role.

Clearly, I believe the Committee has done its part. I hope to continue to work with the Administration and with Senator LEAHY to ensure that qualified individuals will serve on the federal bench.

MEMORIAL DAY 1998

Mr. HATCH. Mr. President, since the Civil War, more than 1.1 million American veterans have lost their lives in service to our Nation. I am humbled by their sacrifice.

I am grateful for the price they have paid for our liberty, the terrible price of individual lives, of men and women who were part of families. As we approach this Memorial Day, I want to pause a moment during this debate to remember their gift.

I am especially proud of Utah's proud tradition of honorable service. The story of the Mormon pioneers who made the grueling trek across the plains and over the Great Divide to escape persecution, in search of religious freedom is well known. Perhaps less well known is the story of the Mormon battalion.

Mr. President, in 1846, while there was an active order in effect in the state of Missouri for the extermination of Mormons, these Americans who had been driven from their homes in Nauvoo, Illinois, were asked to assemble a battalion of 500 men. With their ranks and strength already significantly depleted by disease, hardship, and persecution, most would have understood if the story had ended with an indignant refusal to respond to the request.

Instead, led by Brigham Young, these fathers, brothers, and sons who had seen their rights as Americans trampled, stepped forward to answer their country's call. I might mention that among them was a young man named Orrin Hatch.

This same, passionate willingness to serve one's country still thrives throughout my state. I remember today and honor the 147,000 veterans throughout the state of Utah who have honorably served. But, on Memorial Day, we especially remember those who left in service to our country but who did not return. They have preserved freedom for all generations who followed.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting one treaty and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING THE RATIFICATION OF THE PROTOCOLS TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF POLAND, HUNGARY, AND THE CZECH REPUBLIC—MESSAGE FROM THE PRESIDENT—PM 129

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Senate of the United States:

I am gratified that the United States Senate has given its advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic.

The Senate's decisive vote was a milestone on the road to an undivided, democratic and peaceful Europe. The message this vote sends is clear: American support for NATO is firm, our leadership on both sides of the Atlantic is strong, and there is a solid bipartisan foundation for an active U.S. role in transatlantic security.

I thank Majority Leader Lott, Minority Leader Daschle, Senators Helms and Biden, Senator Roth and the members of the NATO Observer Group, and the many others who have devoted so much time and energy to this historic effort. The continuous dialogue and consultation between the Administration and the Congress on this issue was a model of bipartisan partnership. I am committed to ensuring that this partnership continues and deepens as we proceed toward NATO'S 50th anniversary summit next year in Washington.

The resolution of ratification that the Senate has adopted contains provisions addressing a broad range of issues of interest and concern, and I will implement the conditions it contains. As I have indicated following approval of earlier treaties, I will of course do so without prejudice to my authorities as President under the Constitution, including my authorities with respect to the conduct of foreign policy. I note in this connection that conditions in a resolution of advice and consent cannot alter the allocations of authority and responsibility under the Constitution.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 21, 1998.*

REPORT CONCERNING THE RATIFICATION OF THE PROTOCOLS TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF POLAND, HUNGARY, AND THE CZECH REPUBLIC—MESSAGE FROM THE PRESIDENT—PM 130

The PRESIDING OFFICER laid before the Senate the following message

from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Senate of the United States:

In accordance with the resolution of advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic, adopted by the Senate of the United States on April 30, 1998, I hereby certify to the Senate that:

In connection with Condition (2), (i) the inclusion of Poland, Hungary, and the Czech Republic in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO; (ii) the United States is under no commitment to subsidize the national expenses necessary for Poland, Hungary, or the Czech Republic to meet its NATO commitments; and (iii) the inclusion of Poland, Hungary, and the Czech Republic in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area; and

In connection with Condition (3), (A) the NATO-Russia Founding Act and the Permanent Joint Council do not provide the Russian Federation with a veto over NATO policy; (B) the NATO-Russia Founding Act and the Permanent Joint Council do not provide the Russian Federation any role in the North Atlantic Council or NATO decision-making including (i) any decision NATO makes on an internal matter; or (ii) the manner in which NATO organizes itself, conducts its business, or plans, prepares for, or conducts any mission that affects one or more of its members, such as collective defense, as stated under Article V of the North Atlantic Treaty; and (C) in discussions in the Permanent Joint Council (i) the Permanent Joint Council will not be a forum in which NATO's basic strategy, doctrine, or readiness is negotiated with the Russian Federation, and NATO will not use the Permanent Joint Council as a substitute for formal arms control negotiations such as the adaptation of the Treaty on Conventional Armed Forces in Europe, done at Paris on November 19, 1990; (ii) any discussion with the Russian Federation of NATO doctrine will be for explanatory, not decision-making purposes; (iii) any explanation described in the preceding clause will not extend to a level of detail that could in any way compromise the effectiveness of NATO's military forces, and any such explanation will be offered only after NATO has first set its policies on issues affecting internal matters; (iv) NATO will not discuss any agenda item with the Russian Federation prior to agreeing to a NATO position within the North Atlantic Council on that agenda item; and (v) the Permanent Joint Council will not be used to make any decision on NATO doctrine, strategy, or readiness.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 21, 1998.*

REPORT CONCERNING THE RATIFICATION OF THE PROTOCOLS TO THE NORTH ATLANTIC TREATY OF 1949 ON THE ACCESSION OF POLAND, HUNGARY, AND THE CZECH REPUBLIC—MESSAGE FROM THE PRESIDENT—PM 131

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

In accordance with the resolution of advice and consent to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic, adopted by the Senate of the United States on April 30, 1998, I hereby certify to the Congress that, in connection with Condition (5), each of the governments of Poland, Hungary, and the Czech Republic are fully cooperating with United States efforts to obtain the fullest possible accounting of captured and missing U.S. personnel from past military conflicts or Cold War incidents, to include (A) facilitating full access to relevant archival material, and (B) identifying individuals who may possess knowledge relative to captured and missing U.S. personnel, and encouraging such individuals to speak with United States Government officials.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 21, 1998.*

REPORT OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR CALENDAR YEAR 1997—MESSAGE FROM THE PRESIDENT—PM 132

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

To the Congress of the United States:

I am pleased to present to you the 32nd annual report of the National Endowment for the Humanities (NEH), the Federal agency charged with advancing scholarship and knowledge in the humanities. The NEH supports an impressive range of humanities projects advancing American scholarship and reaching millions of Americans each year.

The public has been enriched by many innovative NEH projects. These included a traveling exhibit, companion book, and public programming examining the history and legacy of the California Gold Rush on the occasion of its Sesquicentennial. Other initiatives promoted humanities radio programming and major funding for the critically acclaimed PBS series, ''Liberty! The American Revolution.''

The NEH is also utilizing computer technologies in new and exciting ways. Answering the call for quality humanities content on the Internet, NEH partnered with MCI to provide EDSITEment, a website that offers scholars, teachers, students, and parents a link to the Internet's most promising humanities sites. The NEH's ''Teaching with Technology'' grants have made possible such innovations as a CD–ROM on art and life in Africa and a digital archive of community life during the Civil War. In its special report to the Congress, ''NEH and the Digital Age,'' the agency examined its past, present, and future use of technology as a tool to further the humanities and make them more accessible to the American public.

This past year saw a change in leadership at the Endowment. Dr. Sheldon Hackney completed his term as Chairman and I appointed Dr. William R. Ferris to succeed him. Dr. Ferris will continue the NEH's tradition of quality research and public programming.

The important projects funded by the NEH provide for us the knowledge and wisdom imparted by history, philosophy, literature, and other humanities disciplines, and cannot be underestimated as we meet the challenges of the new millennium.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 21, 1998.*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:07 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2472. An act to extend certain programs under the Energy Policy and Conservation Act.

H.R. 3301. An act to amend chapter 51 of title 31, United States Code, to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States Commemorative Coin Program.

The enrolled bills were signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bill, previously received from the House of Representative for the concurrence of the State, was read the first and second times by unanimous consent and referred as indicated:

H.R. 2807. An act to amend the Rhinoceros and Tiger Conservation Act of 1994 to prohibit the sale, importation, and exportation of products labeled as containing substances derived from rhinoceros or tiger; to the Committee on Environment and Public Works.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with

accompanying papers, reports, and documents, which were referred as indicated:

EC–4954. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Raytheon Aircraft Company 90, 100, 200, and 300 Series Airplanes'' (Docket 97–CE–05–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4955. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) (Eurocopter Deutschland) Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters'' (Docket 97–SW–45) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4956. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes'' (Docket 97–NM–199–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4957. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes'' (Docket 98–NM–131–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4958. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–215–1A10 and CL–215–6B11 Series Airplanes'' (Docket 98–NM–05–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4959. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Rolls-Royce, plc RB211 Trent 768 and 772 Series Turbofan Engines'' (Docket 98–ANE–09–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4960. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–400 Series Airplanes'' (Docket 97–NM–138–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4961. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–301 Series Airplanes'' (Docket 97–NM–300–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4962. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; General Electric Company Model GE90–76B Turbofan Engines'' (Docket 97–ANE–28–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4963. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Short Brothers Model SD3–30 and SD3–60 Series Airplanes Equipped with Fire Fighting Enterprises (U.K.) Ltd. Fire Extinguishers'' (Docket 96–NM–175–AD) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4964. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D Airspace, Twin Falls, ID'' (Docket 97–ANM–24) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4965. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Osceola, AR'' (Docket 92–ASW–35) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4966. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class D Airspace; Mountain View, CA'' (Docket 98–AWP–9) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4967. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Borrego Springs, CA'' (Docket 96–AWP–4) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4968. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Commercial Passenger-Carrying Operations in Single-Engine Aircraft under Instrument Flight Rules'' (Docket 28743) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4969. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: M/V KURE, Entrance to Humbolt Bay, CA (COTP San Francisco Bay; 98–007)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4970. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Southern Solano County and West Sacramento-San Joaquin Delta, CA (COTP San Francisco Bay; 98–006)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4971. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Sacramento-San Joaquin Delta, CA (COTP San Francisco Bay; 98–004)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4972. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Sacramento-San Joaquin Delta, CA (COTP San Francisco Bay; 98–003)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4973. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Sacramento-San Joaquin Delta, CA (COTP San Francisco Bay; 98–001)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4974. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Tampa Bay, Tampa, Florida'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4975. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Sunshine Skyway Bridge, Tampa Bay, Tampa, Florida'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4976. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: San Juan, Puerto Rico (COTP San Juan 98–011)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4977. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: San Juan, Puerto Rico (COTP San Juan 98–008)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4978. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: San Francisco Bay, San Francisco, CA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4979. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Moving Safety Zone: San Diego Bay and Adjacent Waters, San Diego, CA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4980. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Mission Bay, San Diego, CA; Oceanside Harbor, Oceanside, CA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4981. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: San Diego Harbor, San Diego, CA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4982. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulation: Training exercise: USNS BELLATRIX'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4983. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulation: M/V KAPITAN SOKOLOV, Neches River Closure'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4984. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulations; Mile 94.0 to Mile 95.0, Lower Mississippi River, Above Head of Passes (COTP New Orleans, LA 98–002)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4985. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulations; Mile 94.0 to Mile 96.0, Lower Mississippi River, Above Head of Passes (COTP New Orleans, LA 98–001)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4986. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Ohio River, Maysville, KY'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4987. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulations; Galveston Bay Entrance 'GB' Buoy, Galveston Ship Channel, Galveston, TX'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4988. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone Regulations; Galveston Ship Channel, Inner Bar Channel, Outer Bar Channel, Galveston Bay Entrance Lighted 'GB' Buoy, TX'' (RIN2115–AA98) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4989. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Houston Ship Channel, Houston, TX (COTP Houston-Galveston 98–004)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4990. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Houston Ship Channel, Houston, TX (COTP Houston-Galveston 98–003)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4991. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Upper Trinity Bay, Houston, TX'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4992. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Houston Ship Channel, Houston, TX (COTP Houston-Galveston 98–001)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4993. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Matagorda Bay, Intracoastal Waterway'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4994. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Security/Safety Zone Regulations; Hanford Site Emergency Incident on the Columbia River, Richland, WA'' received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4995. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Lake Erie; Toussaint River Channel, Ohio'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4996. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Calumet River'' received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4997. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; McDonalds All American Basketball Classic Mayor's Reception Fireworks Display, Elizabeth River, Norfolk, VA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4998. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Port Norfolk Reach, Norfolk, VA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–4999. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Hampton Roads, Willoughby Bay, VA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5000. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; Outer Banks, Duck, NC and Vicinity'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5001. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Security Zone; Albemarle Sound, Harvey Point, and Vicinity'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5002. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; James River, Newport News, VA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5003. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Security Zone; Vice Presidential Visit, Boston, MA'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5004. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Fore River Shipping Channel Closure, Portland, ME (CGD1–98–011)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5005. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Vessel Launching, Kennebec River, Bath, Maine'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5006. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulations; El Nuevo Dia Offshore Cup, Bahia De Mayaguez, Puerto Rico'' (RIN2115–AE46) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5007. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zones, Security Zones, and Special Local Regulations'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5008. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Security Zone: Presidential Visit, East River, New York (CGD01–98–001)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5009. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Security Zone: Presidential Visit, East River, New York (CGD01–98–003)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5010. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Explosive Load, Bath Iron Works, Bath, ME'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5011. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Fore River Shipping Channel Closure, Portland, ME (CGD1–98–010)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5012. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone: Fore River Shipping Channel Closure, Portland, ME (CGD1–98–004)'' (RIN2115–AA97) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5013. A communication from the General Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Determination of Functional Equivalency on Harmonization'' (RIN2127–AG62) received on May 11, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5014. A communication from the AMD-Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule regarding the relocation of digital electronic message service from the 18 GHz Band to the 24 GHz band and to allocate the 24GHz band for fixed service (Docket 97–99) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5015. A communication from the AMD-Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule regarding the redesignation of frequency bands and the establishment of rules and policies for local multipoint distribution service and for fixed satellite services (Docket 92–297) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5016. A communication from the AMD-Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of the Commission's Rules Concerning the Inspection of Radio Installations on Large Cargo and Small Passenger Ships'' (Docket 95–55) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5017. A communication from the AMD-Performance Evaluation and Records Management, Federal Communications Commission, transmitting, pursuant to law, the report of a rule regarding radiofrequency radiation, review of regulations, and cellular telecommunications (Docket 97–192, 93–62 and RM–8577) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5018. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law,

the report of a rule regarding regulations on Atlantic coast weakfish fishery (RIN0648–AJ15) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5019. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding management of West Coast salmon fisheries (RIN0648–AK25) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5020. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding the retention of undersized halibut in Pacific fisheries (RIN0648–AK58) received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5021. A communication from the Acting Director of the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule regarding shallow-water species fishery off Alaska (Docket 971208297–8054–02) received on May 7, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5022. A communication from the Assistant Administrator for Satellite and Information Services, National Environmental Satellite, Data, and Information Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Policies and Procedures Regarding Use of the NOAA Space-Based Data Collection Systems'' (RIN0648–AK04) received on May 7, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5023. A communication from the National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Tuna Fisheries; Fishery Closure'' received on May 13, 1998; to the Committee on Commerce, Science, and Transportation.

EC–5024. A communication from the Chairman of the Federal Communications Commission, transmitting, a report concerning the implementation of the federal universal service support mechanisms; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

H.R. 1151. A bill to amend the Federal Credit Union Act to clarify existing law and ratify the longstanding policy of the National Credit Union Administration Board with regard to field of membership of Federal credit unions (Rept. No. 105–193).

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

H.R. 824. A bill to redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the ''Howard T. Markey National Courts Building.''

S. 1298. A bill to designate a Federal building located in Florence, Alabama, as the ''Justice John McKinley Federal Building.''

S. 1355. A bill to designate the United States courthouse located in New Haven, Connecticut, as the ''Richard C. Lee United States Courthouse.''

S. 1800. A bill to designate the Federal building and United States courthouse located at 85 Marconi Boulevard in Columbus, Ohio, as the ''Joseph P. Kinneary United States Courthouse.''

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 1892. A bill to provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes.

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 1898. A bill to designate the Federal building located at 1301 Clay Street in Oakland, California, as the ''Ronald V. Dellums Federal Building.''

By Mr. HATCH, from the Committee on the Judiciary, with an amendment:

S. 2022. A bill to provide for the improvement of interstate criminal justice identification, information, communications, and forensics.

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 2032. A bill to designate the Federal building in Juneau, Alaska, as the ''Hurff A. Saunders Federal Building.''

By Mr. HATCH, from the Committee on the Judiciary, with an amendment:

S. 2073. A bill to authorize appropriations for the National Center for Missing and Exploited Children.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

William A. Fletcher, of California, to be United States Circuit Judge for the Ninth Circuit.

Ronnie L. White, of Missouri, to be United States District Judge for the Eastern District of Missouri.

Victoria A. Roberts, of Michigan, to be United States District Judge for the Eastern District of Michigan.

Rosemary S. Pooler, of New York, to be United States Circuit Judge for the Second Circuit.

Robert D. Sack, of New York, to be United States Circuit Judge for the Second Circuit.

Richard W. Roberts, of the District of Columbia, to be United States District Judge for the District of Columbia.

Q. Todd Dickinson, of Pennsylvania, to be Deputy Commissioner of Patents and Trademarks.

(The above nominations were reported with the recommendation that they be confirmed.)

By Mr. THURMOND, from the Committee on Armed Services:

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Robert F. Raggio, 7255

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., Section 601:

To be lieutenant general

Maj. Gen. Donald L. Peterson, 2830

The following Air National Guard of the United States officer for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Daniel James, III, 8248

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Lee P. Rodgers, 4461

The following Air National Guard of the United States officer for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Archie J. Berberian, II, 4968

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Roger C. Schultz, 5293

The following named officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Daniel C. Balough, 0228
Brig. Gen. Roger L. Brautigan, 1521
Brig. Gen. Thomas A. Wessels, 5197

To be brigadier general

Col. Bruce A. Adams, 4063
Col. Michael B. Barrett, 8071
Col. Lowell C. Detamore, Jr., 9811
Col. Kenneth D. Herbst, 3103
Col. Kenneth L. Penttila, 0067

The following named officer for appointment in the United States Marine Corps to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Frederick McCorkle, 7324

The following named officer for appointment in the United States Marine Corps to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Jack W. Klimp, 5723

The following named officer for appointment as Assistant Commandant of the Marine Corps and for appointment to the grade indicated under title 10, U.S.C., section 5044:

To be general

Lt. Gen. Terrence R. Dake, 6646

The following named officers for appointment in the Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) Martin E. Janczak, 9028
Rear Adm. (lh) Pierce J. Johnson, 1625
Rear Adm. (lh) Lary L. Poe, 6491
Rear Adm. (lh) Michael R. Scott, 2697

The following named officer for appointment in the Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) Robert F. Birtcil, 3384

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Michael W. Shelton, 2431

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be admiral

Vice Adm. Charles S. Abbot, 8270

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Jeffrey A. Cook, 2672

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

George P. Nanos, Jr., 1992

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND. Mr. President, for the Committee on Armed Services, I report favorably 11 nomination lists in the Air Force, Army, Marine Corps, and Navy which were printed in full in the RECORDs of April 21 and 29, 1998, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that these nominations lie at Secretary's desk for the information of Senators.

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORDs of April 21 and April 29, 1998, at the end of the Senate proceedings.)

In the Air Force nominations beginning Phillip M. Armstrong, and ending *Rex A. Williams, which nominations were received by the Senate and appeared in the RECORD of April 21, 1998.

In the Army nomination of Gary W. Krahn, which was received by the Senate and appeared in the RECORD of April 21, 1998.

In the Marine Corps nominations beginning Richard D. Coulter, and ending Karim Shihata, which nominations were received by the Senate and appeared in the RECORD of April 21, 1998.

In the Navy nominations beginning Michale D. Cobb, and ending Raymond B. Roll, which nominations were received by the Senate and appeared in the RECORD of April 21, 1998.

In the Navy nomination of Daniel D. Thompson, which was received by the Senate and appeared in the RECORD of April 21, 1998.

In the Army nominations beginning Eugene N. Acosta, and ending Curtis L. Yeager, which nominations were received by the Senate and appeared in the RECORD of April 29, 1998.

In the Marine Corps nomination of Gary F. Baumann, which was received by the Senate and appeared in the RECORD of April 29, 1998.

In the Marine Corps nominations beginning Michael L. Andrews, and ending Robert C. Wittenberg, which nominations were received by the Senate and appeared in the RECORD of April 29, 1998.

In the Marine Corps nominations beginning James N. Adams, and ending Thomas J. Zohlen, which nominations were received by the Senate and appeared in the RECORD of April 29, 1998.

In the Marine Corps nominations beginning Louis P. Abraham, and ending Mark G. Zimmerman, which nominations were received by the Senate and appeared in the RECORD of April 29, 1998.

In the Marine Corps nominations beginning Ruben Bernal, and ending James Werdann, which nominations were received by the Senate and appeared in the RECORD of April 29, 1998.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 2105. A bill to require the Secretary of the Army to conduct a study of the Niobrara River watershed and the operations of Fort Randall Dam and Gavins Point Dam on the Missouri River to determine the feasibility of alleviating certain bank erosion and sedimentation problems; to the Committee on Environment and Public Works.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2106. A bill to expand the boundaries of Arches National Park, Utah, to include portions of certain drainages that are under the jurisdiction of the Bureau of Land Management, and to include a portion of Fish Seep Draw owned by the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ABRAHAM (for himself, Mr. WYDEN, Mr. MCCAIN, and Mr. REED):

S. 2107. A bill to enhance electronic commerce by promoting the reliability and integrity of commercial transactions through establishing authentication standards for electronic communications, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SPECTER (by request):

S. 2108. A bill to amend chapter 19, of title 38, United States Code, to provide that Service-members' Group Life Insurance and Veterans' Group Life Insurance under such chapter may, upon application, be paid to an insured person who is terminally ill; to the Committee on Veterans Affairs.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2109. A bill to provide for an exchange of lands located near Gustavus, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BIDEN (for himself, Mr. SPECTER, Mrs. BOXER, Ms. SNOWE, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. WELLSTONE, Mr. DODD, Mr. KENNEDY, and Mr. DURBIN):

S. 2110. A bill to authorize the Federal programs to prevent violence against women, and for other purposes; to the Committee on the Judiciary.

By Mr. SMITH of Oregon:

S. 2111. A bill to establish the conditions under which the Bonneville Power Administration and certain Federal agencies may enter into a memorandum of agreement concerning management of the Columbia/Snake River Basin, to direct the Secretary of the Interior to appoint an advisory committee to make recommendations regarding activities under the memorandum of understanding, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 233. A resolution to authorize the testimony and document production and representation of Senate employees in People v. James Eugene Arenas; considered and agreed to.

By Mr. STEVENS (for himself, Mr. LOTT, Mr. DASCHLE, Mr. BYRD, and Mr. WARNER):

S. Res. 234. A resolution to honor Stuart Balderson; considered and agreed to.

By Mr. GREGG (for Mr. LOTT):

S. Con. Res. 98. A concurrent resolution providing for a conditional adjournment or recess of the Senate and the House of Representatives; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 2105. A bill to require the Secretary of the Army to conduct a study of the Niobrara River watershed and the operations of Fort Randall Dam and Gavins Point Dam on the Missouri River to determine the feasibility of alleviating certain bank erosion and sedimentation problems; to the Committee on Environment and Public Works.

NIOBRARA RIVER AND MISSOURI RIVER LEGISLATION

Mr. DASCHLE. Mr. President, earlier this year I introduced S. 1672, the Missouri River Erosion Control Act of 1998. It will create an important new program to provide homeowners on the Missouri River with the assistance they need to protect their homes from shoreline erosion.

Today, my colleague Senator JOHNSON and I are introducing a second bill that I hope will help to preserve the character of the Missouri River for generations to come. Up and down the Missouri River, South Dakotans can tell you that the river is slowly changing as a result of the dams built under the authority of the Pick-Sloan Act. While the dams undoubtedly have made positive contributions to South Dakota by controlling floodwaters and making affordable electricity available to promote rural development, they also ended the Big Muddy's ability to carry a full sediment load for long distances. Sediments are now being deposited into shallow areas of the river, causing the water table to rise, flooding shoreline lands and worsening erosion. In addition, the sediment build-up has made navigation nearly impossible in some areas.

These problems have grown particularly severe near the city of Springfield, where a delta is forming downstream from the confluence of the Missouri and Niobrara Rivers. In order to better understand the causes of the sediment build-up and to develop solutions to address it, I am introducing legislation today to direct the Corps of Engineers to conduct a study of the lower Missouri and Niobrara River watershed. It is my hope that this study will provide the blueprint necessary to alleviate the sediment build-up, reduce future sedimentation, and preserve the character of the rivers for years to come. I hope my colleagues will give this legislation their full support.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2105

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NIOBRARA RIVER AND MISSOURI RIVER SEDIMENTATION STUDY.

The Secretary of the Army shall conduct a study of the Niobrara River watershed and the operations of Fort Randall Dam and Gavins Point Dam on the Missouri River to determine the feasibility of alleviating the bank erosion, sedimentation, and related problems in the lower Niobrara River and the Missouri River below Fort Randall Dam.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2106. A bill to expand the boundaries of Arches National Park, Utah, to include portions of certain drainages that are under the jurisdiction of the Bureau of Land Management, and to include a portion of Fish Seep Draw owned by the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

THE ARCHES NATIONAL PARK EXPANSION ACT OF 1998

Mr. BENNETT. Mr. President, I am pleased to introduce legislation to expand the boundaries of Arches National Park. I appreciate my colleague Senator HATCH for joining me in this effort. The House version of this bill, H.R. 2283 sponsored by Mr. CANNON, was passed late last year.

Most Americans recognize the familiar landscape of Arches National Park. It encompasses some of the most unique lands in the Southwest. Delicate sandstone arches, stunning vistas, contrasting colors, sweeping desert valleys, maze-like rock formations, and rugged gorges characterize the panorama in the park. In 1929, when the park was created, knowledge of ecosystem management was almost nonexistent. Park designation preserved these unique geological treasures but also relied on fairly rigid park boundaries which has resulted in some fragmentation of ecological areas within the park. This bill authorizes a 3,140 acre expansion to include the beautiful and unique Lost Spring Canyon parcel contiguous with the eastern boundary of the Arches. This addition will enhance the ecological protection of Arches.

The Arches National Park Expansion includes portions of the following drainages: Salt Wash, Lost Spring Canyon, Fish Seep Draw, Clover Canyon, Cordova Canyon, Mine Draw, and Cottonwood Wash. These areas are currently under the jurisdiction of either the Bureau of Land Management or the State of Utah. Once the expansion is complete, the Park Service will continue to protect the wilderness values of these lands. No road or campground construction will occur in the new addition. Lost Spring Canyon will continue primarily to be used for backcountry hiking. It is not in danger of being overrun by thousands of park visitors simply by the nature of the rugged terrain and the distances involved. But it makes good management sense to bring these areas under park management.

Public lands debates are far too contentious in the West, particularly in Utah. While it is unfortunate that we have not been able to reach consensus on issues like wilderness, I am pleased that the expansion of Arches National Park is an issue which a diverse group of interests do agree. Local officials, the Grand Canyon Trust, the National Parks and Conservation Association, environmental groups, the State of Utah, the Utah Congressional delegation, and the Administration all support this bill.

This legislation is good for Arches National Park and is a great example of how it is possible to reach consensus among public lands interests. The expansion will enhance the visitor experience of Arches by expanding backcountry opportunities. It makes good management sense for both BLM and the Park Service. I hope my colleagues will join me in moving this legislation quickly.

Mr. HATCH. Mr. President, I am pleased to rise today along with my good friend and colleague, Senator BENNETT, as a cosponsor of the Arches National Park Expansion Act of 1998. This is an inexpensive, practical, common-sense proposal that has gathered widespread support.

Arches National Park is known world-wide for its spectacular canyons and rock formations. When Arches National Park was created 25 years ago, the park boundaries were set with little regard to naturally occurring borders. Specifically, Lost Springs Canyon, located in the northeast corner of the park, was divided in half by the park boundaries.

Mr. President, this worthwhile legislation would expand the boundaries of the park by approximately 3,140 acres, incorporating the Lost Spring Canyon. The new, expanded boundary would better follow the natural borders dictated by the position of the canyon rim rather than the section lines and manmade features. Adding Lost Spring Canyon to the 73,400 acres already included in Arches National Park would bring a variety of new arches, balanced rocks, spires, and other geologic features under park protection and management. The addition of Lost Spring Canyon would also include the option of a ''back-country'' experience in Arches National Park.

The widespread support this bill enjoys is the result of careful efforts to balance competing interests. The Utah School Trust, the Grand Canyon Trust, the National Parks and Conservation Association, and the National Park Services have voiced support for the proposed bill. Local officials, interest groups, and a majority of the residents of Grand County have been consulted for input and are also supportive of the boundary change.

Again, I am pleased to cosponsor the Arches National Park Expansion Act of 1998. I urge my colleagues to support this important legislation.

By Mr. ABRAHAM (for himself, Mr. WYDEN, Mr. MCCAIN, and Mr. REED):

S. 2107. A bill to enhance electronic commerce by promoting the reliability and integrity of commercial transactions through establishing authentication standards for electronic communications, and for other purposes; to the Committee on Commerce, Science, and Transportation.

ELECTRONIC COMMERCE ENHANCEMENT ACT

•Mr. ABRAHAM. Mr. President, today with Senators WYDEN, MCCAIN, and REED I introduce the Electronic Commerce Enhancement Act. This legislation will bring the federal government into the electronic age, in the process saving American individuals and companies millions of dollars and hundreds of hours currently wasted on government paperwork.

Mr. President, the Electronic Commerce Enhancement Act would require federal agencies to make versions of their forms available online and allow people to submit these forms with digital signatures instead of handwritten ones. It also sets up a process by which commercially developed digital signatures can be used in submitting forms to the government and permits the digital storage of federal documents.

Each and every year, Mr. President, Americans spend in excess of $600 billion simply filling out, documenting and handling government paperwork. This huge loss of time and money constitutes a significant drain on our economy and we must bring it under control. That is why we need this legislation.

By providing individuals and companies with the option of electronic filing and storage, this bill will reduce the paperwork burden imposed by government on the American people and the American economy. It will allow people to move from printed forms they must fill out using typewriters or handwriting to digitally-based forms that can be filled out using a word processor. The savings in time, storage and postage will be enormous. One company, computer maker Hewlett-Packard, estimates that the section of this bill permitting companies to download copies of regulatory forms to be filed and stored digitally rather than physically will, by itself, save that company $1–2 billion per year.

Other companies will experience similar savings, and the results for the overall economy will be enormous. Mr. President, the results for America's small businesses, which bear a disproportionate portion of the paperwork burden, will be enormous and may in some cases spell the difference between business success and failure.

Mr. President, the easier and more convenient we make it for American businesses to comply with paperwork

and reporting requirements, the better job they will do of meeting these requirements, and the better job they will do of creating jobs and wealth for our country. This legislation will help businesses and small businesses in particular as they struggle to satisfy Washington bureaucrats while retaining sufficient resources to satisfy their customers and meet their payrolls.

The most important benefit of this legislation, however, lies in the area of electronic innovation. Currently, digital encryption is in a relatively undeveloped state. One reason for that is the lack of opportunity for many individuals and companies to make use of the technology. Another is the lack of a set industry standard. By allowing use of this technology in the filling out of government paperwork, and by establishing a standard for digital encryption, the federal government can open the gates to quick, efficient development of this technology, as well as its more application throughout the economy. The benefits to American businesses as they struggle to establish paper-free workplaces that will lower administrative costs, will be significant, and will further spur our national economy.

Efficiency in the federal government itself will also be enhanced by this legislation. By forcing government bureaucracies to enter the digital information age we will force them to streamline their procedures and enhance their ability to maintain accurate, accessible records. This should result in significant cost savings for the federal government as well as increased efficiency and enhanced customer service.

The information age is no longer new, Mr. President. We are in the midst of a revolution in the way people do business and maintain records. This legislation will force Washington to catch up with these developments, and release our businesses from the drag of an obsolete bureaucracy as they pursue further innovations. The result will be a nation and a people that is more prosperous, more free and more able to spend time on more rewarding pursuits.

I urge my colleagues to support this important legislation.●

By Mr. SPECTER (by request):

S. 2108. A bill to amend chapter 19, of title 38, United States Code, to provide that Service-members' Group Life Insurance and Veterans' Group Life Insurance under such chapter may, upon application, be paid to an insured person who is terminally ill; to the Committee on Veterans' Affairs.

SERVICEMEMBERS AND VETERANS' GROUP LIFE INSURANCE ACCELERATED DEATH BENEFITS ACT

●Mr. SPECTER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I have today introduced, at the request of the Secretary of Veterans Affairs, S. 2108, the proposed ''Servicemembers' and Veterans' Group Life Insurance Accelerated Death Benefits Act.'' The Secretary of Veterans Affairs submitted this legislation to the President of the Senate by letter dated February 10, 1998.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all Administration-proposed draft legislation referred to the Committee on Veterans' Affairs. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD, together with the transmittal letter.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2108

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This act may be cited as the ''Servicemembers' and Veterans' Group Life Insurance Accelerated Death Benefits Act''.

SEC. 2. OPTION TO RECEIVE ACCELERATED DEATH BENEFITS.

(a) IN GENERAL.—Chapter 19 of title 38, United States Code, is amended by adding at the end of subchapter III the following new section:

''§ 1980. Option to receive accelerated death benefits

''(a) For the purpose of this section, a person shall be considered to be 'terminally ill' if such person has a medical prognosis that such person's life expectancy is less than a period prescribed by regulation by the Secretary of Veterans Affairs. The maximum time period prescribed in regulation shall not exceed 12 months.

''(b) The Department of Veterans Affairs shall prescribe regulations under which any terminally ill person insured under Servicemenbers' Group Life Insurance or Veterans' Group Life Insurance may elect to receive in a lump-sum payment a portion of the face value of the insurance as an accelerated death benefit reduced by an amount necessary to assure that there is no increase in the actuarial value of the benefit paid, as determined in regulations issued by the Secretary. The Secretary may prescribe by regulation the maximum amount of the accelerated death benefit available under this section that the Secretary finds to be administratively practicable and actuarially sound, but in no instance shall the benefit exceed 50 percent of the face value of the person's insurance in force on the date the election is approved. The insured may elect to receive an amount that is less than the maximum prescribed by the Secretary. The Secretary shall prescribe in regulation increments in which the partial benefit can be elected.

''(c) The portion of the face amount of the insurance which was not paid in a lump sum as accelerated death benefits shall remain payable in accordance with the provisions of this chapter.

''(d) Deductions under section 1969 and premiums under section 1977(c) shall be reduced, in a manner consistent with the percentage reduction in the face amount of the insurance as a result of payment of accelerated death benefits, effective with respect to any amounts which would otherwise become due on or after the date of payment under this subsection.

''(e) The regulations shall include provisions regarding the form and manner in which an application under this subsection shall be made and the procedures in accordance with which any such application shall be considered.

''(f) An election to receive benefits under this section shall be irrevocable, and not more than one such election may be made by any individual, even if the individual elects to receive less than the maximum amount of accelerated benefits prescribed by regulation.

''(g) If a person insured under Servicemembers' Group Life Insurance elects to receive accelerated death benefits under this section, and the insured's Servicemembers' Group Life Insurance is thereafter converted to Veterans' Group Life Insurance as provided in section 1968(b) of this title, the amount of accelerated benefits paid under this section shall reduce the amount of Veterans' Group Life Insurance available to the insured under section 1977(a) of this title.''.

(b) Section 1970(g) of title 38, United States Code, is amended by—

(1) striking ''of benefits'' in the first sentence and inserting ''Any'' at the beginning of that sentence;

(2) adding ''an insured or'' following ''or on account of,''; and

(3) adding the following at the end of the subsection: ''Neither the amount of any payments made under this subchapter nor the name and address of the recipient of such payments shall be reported under subpart B of chapter 61 of the Internal Revenue Code of 1986.''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 19, title 38, United States Code, is amended by adding the following new item after the item relating to section 1979:

''1980. Option to receive accelerated death benefits.''.

(d) EFFECTIVE DATE.—The amendments made by section 2 shall take effect 90 days after the date of the enactment of this Act.

(e) All regulations necessary to implement these amendments shall be promulgated through notice and comment rulemaking in accordance with 5 U.S.C. §553.

DEPARTMENT OF VETERANS AFFAIRS,
Washington, DC, February 10, 1998.

Hon. ALBERT GORE, Jr.,
President of the U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: There is transmitted herewith a draft bill entitled the ''Servicemembers' and Veterans Group Life Insurance Accelerated Death Benefits Act.'' I request that this bill be referred to the appropriate committee for prompt consideration and enactment.

This draft bill would amend title 38, United States Code, by adding a new section which would provide that group life insurance benefits may, upon application, be paid to a terminally ill person insured under Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI). Traditionally, individuals have purchased life insurance in order to protect their dependents against financial loss due to their death. The proceeds have served to replace the lost income of the insureds and to cover their final expense. However, commercial life insurance companies have more recently included accelerated-benefit provisions in policies, which permit policyholders to receive payment of all or part of their life insurance policy's face amount prior to their death to provide for their needs during their

final days. This draft bill would allow terminally ill SGLI and VGLI insureds to have access to a portion of the death benefits of the insurance proceeds provided under SGLI or VGLI coverage before they die in order to meet the financial burdens of medical and living expenses, but also would preserve a portion of the benefits for their dependents.

Section 2 of this draft bill would provide that benefits would be payable to insured persons with a medical prognosis of a life expectancy of less than a period prescribed by the Secretary of Veterans Affairs, but the maximum period prescribed by the Secretary would not exceed 12 months. The Secretary would be authorized to promulgate regulations prescribing the maximum amount of the accelerated death benefit available under section 2, but in no event would the maximum amount exceed 50 percent of the face value of the person's insurance in force on the date the election is approved. The insured would be able to choose to receive less than the maximum amount prescribed by the Secretary, as prescribed by regulation. Payment of benefits under this bill would be reduced by an amount necessary to assure that there is no increase in the actuarial value of the benefits paid. The benefits would be exempt from taxation, *see also* 26 U.S.C.A. §101(g)(1)(A), and creditors' claims, and would not be subject to attachment, levy, or seizure before or after receipt by the insured. In return for this election, the insured would sever all rights that any beneficiary might have had in the portion of the proceeds which are paid as accelerated death benefits. The accelerated death benefits election would be irrevocable and monthly deductions for SGLI and premiums for VGLI would be reduced in accordance with the percentage reduction in the face amount of the insured's policy as a result of the election. If a SGLI insured elects to receive accelerated death benefits under section 2 of this proposed legislation and the SGLI policy is then converted to VGLI as provided in 38 U.S.C. §1968(b), the amount of the accelerated benefits paid would be subtracted from the amount of the VGLI available under 38 U.S.C. §1977(a). The Department of Veterans Affairs would be required to issue regulations regarding the form and manner in which an application for accelerated death benefits must be made.

This legislative proposal would reduce receipts annually by a negligible amount; therefore, it is subject to the pay-as-you-go (paygo) requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). This proposal should be considered in conjunction with other proposals in the President's FY 1999 Budget that together meet the paygo requirement.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

TOGO D. WEST, Jr.,
Acting Secretary.●

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 2109. A bill to provide for an exchange of lands located near Gustavus, Alaska, and for other purposes; to the Committee on Energy and Natural Resources.

GLACIER BAY NATIONAL PARK BOUNDARY ADJUSTMENT ACT OF 1998

Mr. MURKOWSKI. Mr. President, I rise today for the purpose of introducing legislation, that when enacted, will provide for a cleaner electrical system for Glacier National Park and Preserve in Alaska.

Vice President Al Gore in his opening remarks to the President's Council on Sustainable Development on January 13, 1994 said ''Our objective is results that are cleaner for the environment and cheaper for the economy.'' My objective for Glacier Bay National Park and the nearby Gustavus community mirrors that of the Vice President—to produce electricity that will be cleaner for the environment and cheaper for the economy.

Glacier Bay National Park currently generates its own electrical power using diesel generators. The electrical generation equipment now in place is expensive to maintain and is unreliable. It is my understanding that over the years there have been at least two oil spills into the waters of Glacier Bay, the tank farm is leaking, and the current electrical system is in need of major repair. In short, the diesel system at Glacier Bay is unacceptable in environmental terms

Before we spend tax payers dollars to add band-aids to this antiquated system, we ought to consider an environmentally sound and cheaper option for the production of electrical power.

Fortunately, there is a viable option. Enactment of this legislation would allow the placement and installation of a small water powered electrical system in the Fall Creek area on the southeast corner of Glacier Bay National Park and Preserve.

Before park advocates take out their swords and start drawing lines in the sand, I want to make it very clear that I am not suggesting that we allow for the construction of a Hoover Dam in a National Park. I am suggesting that a ''run of stream'' small diversion weir be placed along Fall Creek within the boundaries of the Park.

Since the Fall Creek area of this proposed hydro power system is in a Wilderness area designated by Congress, any redrawing of boundaries of Glacier Bay National Park or other procedure to permit the system requires Congressional approval. As envisioned, the site required will amount to approximately 78 acres. If only the ''footprint'' is considered, as little as 5 acres would be utilized.

I believe there are considerable environmental benefits and economic advantages to be gained by eliminating dependence upon diesel fossil fuel and converting to a small water powered electrical system to provide power to the community of Gustavus and the National Park Service in Glacier Bay. In addition to providing clean, cheaper, stable priced, hydro electricity, substantial savings will occur to the State of Alaska, the National Park Service and to consumers. Significant economic savings from appropriations and increasing operational expenses for the existing systems, along with the environmental enhancements will have continuing long term benefits that more than compensate for a loss of some 5 acres for the Fall Creek System. These multiple benefits should be sufficient merit alone to justify a restructuring of Park boundaries to accommodate the new electrical generating system.

I realize that however meritorious the proposal may be, taking Wilderness out of a system or lands out of a park will be unacceptable to some. Under the provisions of this legislation lands removed from the boundaries of the Park will be replaced with State lands in another park. In other words, there will be no net loss of Wilderness.

We need to clean and protect the environment at Glacier Bay and Gustavus, this legislation is the beginning. The completed project will serve as a conservation model to other communities—an example of significant environmental advantages coupled with substantial economic savings to the public and government which could be realized elsewhere, particularly in the rural communities of Alaska.

I ask unanimous consent that the entire text of the bill be printed in the RECORD.

There being no objection, the bill was order to be printed in the RECORD, as follows:

S. 2109

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Glacier Bay National Park Boundary Adjustment Act of 1998.''

SEC. 2. LAND EXCHANGE AND WILDERNESS DESIGNATION.

(a) IN GENERAL.—(1) Subject to conditions set forth in subsection (c), if the State of Alaska, in a manner consistent with this Act, offers to transfer to the United States the lands identified in paragraph (2) in exchange for the lands identified in paragraph (3), selected from the area described in Section 3(b)(1), the Secretary of the Interior (in this Act referred to as the ''Secretary'') shall complete such exchange no later than 6 months after the issuance of a license to Gustavus Electric Company by the Federal Energy Regulatory Commission (FERC), in accordance with this Act. This land exchange shall be subject to the laws applicable to exchanges involving lands managed by the Secretary as part of the National Park System in Alaska and the appropriate process for the exchange of state lands required by state law.

(2) The lands to be conveyed to the United States by the State of Alaska shall be determined by mutual agreement of the Secretary and the State of Alaska. Lands which will be considered for conveyance to the United States pursuant to the process required by State law are: (1) lands owned by the State of Alaska in the Long Lake area within Wrangell-St. Elias National Park and Preserve; or (2) other lands owned by the State of Alaska.

(3) If the Secretary and the State of Alaska have not agreed on which lands the State of Alaska will convey by a date not later than six months after a license is issued pursuant to this Act, the State of Alaska shall convey (subject to the approval of the appropriate official of the State of Alaska), and the United States shall accept, within one year after a license is issued, title to land having a sufficiently equal value to satisfy state and federal law, subject to clear title and valid existing rights, and absence of environmental contamination, and as provided by

the laws applicable to exchanges involving lands managed by the Secretary as part of the National Park System in Alaska and the appropriate process for the exchange of state lands required by state law. Such land shall be conveyed to the United States from among the following State lands in the priority listed:

COPPER RIVER MERIDIAN

1. T.6., R. 11 E., partially surveyed,
Sec. 11, lots 1 and 2, NE¼, S½NW¼, SW¼, and N½SE¼;
Sec. 12, NW¼;
Sec. 14, lots 1 and 2, NW¼NW¼,
Containing 838.66 acres, as shown on the plat of survey accepted June 9, 1922.
2. T. 5 S., R. 11 E., partially surveyed,
T. 6 S., R. 11 E., partially surveyed,
Sec. 2, NW¼ NE¼ and NW¼,
Containing 200.00 acres, as shown on the plat of survey accepted June 9, 1922,
3. T. 6 S., R. 12 E., partially surveyed,
Sec. 6, lots 1 through 10, E½SW¼, and SE¼
Containing approximately 529.94 acres, as shown on the plat of survey accepted June 9, 1922.

(4) The lands to be conveyed to the State of Alaska by the United States under paragraph (1) are lands to be designated by the Secretary and the State of Alaska, consistent with sound land management principles, based on those lands determined by the FERC with the concurrence of the Secretary and the State of Alaska, in accordance with section 3(b), to be the minimum amount of land necessary for the construction and operation of a hydroelectric project.

(5) The time periods set forth for the completion of the land exchanged described in this Act may be extended as necessary by the Secretary should the processes of state law or federal law delay completion of an exchange.

(6) For purposes of this Act, ''land'' means lands, waters and interests therein.

(b) WILDERNESS.—(1) To ensure that this transaction maintains, within the National Wilderness Preservation System, approximately the same amount of area of designated wilderness as currently exists, the following lands in Alaska shall be designated as wilderness in the priority listed, upon consummation of the land exchange authorized by this Act and shall be administered according to the laws governing national wilderness areas in Alaska.

(A) An unnamed island in Glacier Bay National Park lying southeasterly of Blue Mouse Cove in sections 5, 6, 7, and 8, T. 36 S., R 54 E., CRM, and shown on United States Geological Survey quadrangle Mt. Fairweather (D–2), Alaska, containing approximately 789 acres.

(B) Cenotaph Island of Glacier Bay National Park lying within Lituya Bay in sections 23, 24, 25, and 26, T. 37 S., R. 47 E., CRM, and shown on United States Geological Survey quadrangle Mt. Fairweather (C–5), Alaska, containing approximately 280 acres.

(C) An area of Glacier Bay National Park lying in T. 31. S., R. 43 E and T.32 S., R, 43 E., CRM, that is not currently designated wilderness, containing approximately 2270 acres.

(2) The specific boundaries and acreage of these wilderness designations may be reasonably adjusted by the Secretary, consistent with sound land management principles, to approximately equal, in sum, the total wilderness acreage deleted from Glacier Bay National Park and Preserve pursuant to the land exchange authorized by this act.

(c) CONDITIONS.—Any exchange of lands under this Act may occur only if—

(1) following the submission of an acceptable license application, the FERC has conducted economic and environmental analyzes under the Federal Power Act (16 U.S.C. 791–828) (notwithstanding provisions of that Act and the Federal regulations that otherwise exempt this project from economic analyzes), the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370), and the Fish and Wildlife Coordination Act (16 U.S.C., 661–666), that conclude, with the concurrence of the Secretary of the Interior with respect to (A) and (B) below, that the construction and operation of a hydroelectric power project on the lands described in section 3(b)—

(A) will not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after the consummation of the land exchange authorized by this section);

(B) will comply with the requirements of the National Historic Preservation Act (16 U.S.C. 470–470w); and

(C) can be accomplished in an economically feasible manner;

(2) The FERC held at least one public meeting in Gustavus, Alaska, allowing the citizens of Gustavus to express their views on the proposed project;

(3) The FERC has determined, with the concurrence of the Secretary and the State of Alaska, the minimum amount of land necessary to construct and operate this hydroelectric power project;

(4) Gustavus Electric Company has been granted a license by FERC that requires Gustavus Electric Company to submit an acceptable financing plan to FERC before project construction may commence, and FERC has approved such plan.

SEC. 3. ROLE OF FEDERAL ENERGY REGULATORY COMMISSION.

(a) LICENSE APPLICATION.—(1) The FERC licensing process shall apply to any application submitted by Gustavus Electric Company to FERC for the right to construct and operate a hydro power project on the lands described in subsection (b).

(2) The FERC is authorized to accept and consider an application filed by Gustavus Electric Company for the construction and operation of a hydro power plant to be located on lands within the area described in subsection (b), notwithstanding section 3(2) of the Federal Power Act (16 U.S.C. 796(2)). Such application must be submitted within 3 years from the date of the enactment of this Act.

(3) The FERC will retain jurisdiction over any hydropower project constructed on this site.

(b) ANALYZES.—(1) The lands referred to in subsection (a) of this section are lands in the State of Alaska described as follows:

COPPER RIVER MERIDIAN

Township 39 South, Range 59 East, partially surveyed, Section 36 (unsurveyed) SE¼SW¼, S½SW¼SW¼, NE¼SW¼, W½W½NW¼SE¼, and S½SE¼NW¼. Containing approximately 130 acres.

Township 40 South Range 59 East, partially surveyed, Section 1 (unsurveyed). NW¼, SW¼, W½SE¼, and SW¼SW¼NE¼, excluding U.S. Survey 944 and Native allotment A–442; Section 2 (unsurveyed), fractional, that portion lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944 and U.S. Survey 945; Section 11 (unsurveyed), fractional, that portion lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944; Section 12 (unsurveyed), fractional, NW¼NE¼, W½NW¼SW¼NE¼, and those portions of NW¼ and SW¼ lying above the mean high tide line of Icy Passage, excluding U.S. Survey 944 and Native allotment A–442. Containing approximately 1015 acres.

(2) Additional lands and acreage will be included as needed in the study area described in paragraph (1) to account for accretion to these lands from natural forces;

(3) With the concurrence of the Secretary and the State of Alaska, the FERC shall determine the minimum amount of lands necessary for construction and operation of such project;

(4) The National Park Service shall participate as a joint land agency in the development of any environmental document under the National Environmental Policy Act of 1969 in the licensing of such project. Such environmental document shall consider both the impacts resulting from licensing and any land exchange necessary to authorize such project.

(c) ISSUANCE OF LICENSE.—(1) A condition of the license to construct and operate any portion of the hydroelectric power project shall be the FERC's approval, prior to any commencement of construction, of a finance plan submitted by Gustavus Electric Company.

(2) The National Park Service, as the existing supervisor of potential project lands ultimately to be deleted from the Federal reservation in accordance with this Act, waives its right to impose mandatory conditions on such project lands pursuant to section 4(e) of the Federal Power Act (16 U.S.C. 797(e)).

(3) The FERC shall not license, re-license the project, or amend the project license unless it determines, with the Secretary's concurrence, that the project will not adversely impact the purposes and values of Glacier Bay National Park and Preserve (as constituted after the consummation of the land exchange authorized by this Act). Additionally, a condition of the license, or any succeeding license, to construct and operate any portion of the hydroelectric power project shall require the license to mitigate any adverse effects of the project on the purposes and values of Glacier Bay National Park and Preserve identified by the Secretary after the initial licensing.

(4) A condition of the license to construct and operate any portion of the hydroelectric power project shall be the completion, prior to any commencement of construction, of the land exchange described in this Act.

SEC. 4. ROLE OF SECRETARY OF INTERIOR.

(a) SPECIAL USE PERMIT.—Notwithstanding the provisions of the Wilderness Act (16 U.S.C. 1133–1136), the Secretary shall issue a Special Use Permit to Gustavus Electric Company to ensure the completion of the analyzes referred to in Section 3. The Secretary shall impose conditions in the permit as needed to protect the purposes and values of Glacier Bay National Park and Preserve.

(b) PARK SYSTEM.—The lands acquired from the State of Alaska under this Act shall be added to and administered as part of the National Park System, subject to valid existing rights. Upon completion of the exchange of lands under this Act, the Secretary shall adjust, as necessary, the boundaries of the affected National Park System unit(s) to include the lands acquired from the State of Alaska; and adjust the boundary of Glacier Bay National Park and Preserve to exclude the lands transferred to the State of Alaska under this Act. Any such adjustments to the boundaries of National Park System units shall have no effect upon acreage determinations under section 103(b) of the Public Law 96–487.

(c) WILDERNESS AREA BOUNDARIES.—The Secretary shall make any necessary modifications or adjustments of boundaries of wilderness areas as a result of the additions and deletions caused by the land exchange referred in Section 2. Any such adjustments to the boundaries of wilderness area shall have no effect upon acreage determination under section 103(b) of Public Law 96–487.

(d) PAYMENTS.—Gustavus Electric Company shall not required to make Federal land

payments under section 10(e) of the Federal Power Act (16 U.S.C. 803(c)) with respect to the lands to be exchanged under this Act.

(e) CONCURRENCE OF THE SECRETARY.—Whenever in this Act the concurrence of the Secretary is required, it shall not be unlawfully withheld or unreasonably delayed.

By Mr. BIDEN (for himself, Mr. SPECTER, Mrs. BOXER, Ms. SNOWE, Mrs. MURRAY, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. WELLSTONE, Mr. DODD, Mr. KENNEDY, and Mr. DURBIN)

S. 2110. A bill to authorize the Federal program to prevent violence against women, and for other purposes; to the Committee on the Judiciary.

VIOLENCE AGAINST WOMEN ACT II

Mr. BIDEN. Mr. President, I rise to introduce the ''Violence Against Women Act—II.'' I am pleased to be joined by several Senators who are cosponsoring this legislation—including Senators SPECTER, BOXER, SNOWE, MURRAY, MOSELEY-BRAUN, MIKULSKI, DODD, LAUTENBURG, WELLSTONE, KENNEDY, and DURBIN.

Mr. President, when I introduced the Violence Against Women Act eight years ago—in June, 1990—it was not clear that the Senate would ever even consider this legislation. The fundamental reason—just eight years ago, few thought it either appropriate or necessary for national legislation to confront the problem of domestic violence.

From 1990 to 1993, as chairman of the Judiciary Committee, I convened six hearings on the bill, released six reports on the problems of violence against women, convinced the Judiciary Committee to favorably report the bill to the full Senate on three times and had to re-introduce the bill twice.

But, it was not until November, 1993—nearly 3 and ½ years after introduction—that the full Senate even considered the Violence Against Women Act. In September, 1994, the Violence Against Women Act became law.

But, even passage of the act into law did not end the significant debate on the issue of whether the problem of violence against women merited a national response. As my colleagues will recall, throughout the summer of 1995, the Congress debated whether or not we should actually fund the Violence Against Women Act.

Fortunately, by the fall of 1995, the Congress finally reached a consensus—the Federal Government can and should provide resources and leadership in a national effort to end the violence women suffer at the hands of men who profess to love them.

That consensus has held to this day.

And, at the most practical levels, that consensus has been rewarded:

The murder rate for wives, ex-wives and girlfriends at the hands of their ''intimates'' fell to an 19-year low in both 1995 and 1996.

Thousands of trained police officers are on the streets arresting abusers before they can victimize again; police officers are working as never before to guide victims toward help; prosecutors have been added to the front-lines to put these abusers where they belong—behind bars; tens of thousands of women have been provided the shelters necessary to protect themselves and their children; battered women are being provided a whole range of support services—counseling, legal help for such matters as getting a ''protection from abuse'' orders; and a new national domestic violence hotline has already answered nearly 200,000 calls for help.

Mr. President, our consensus in the Congress reflects a fundamental consensus in our Nation—the time when a woman has to suffer in silence because the criminal who is victimizing her happens to be her husband or boyfriend is over.

Today, we must build on this consensus and deliver on its promise—because for all the strides we have made, there remain far too many women who will go home this evening knowing in the nervous pit of their stomach that there is a better than even chance that they will get the hell beat out of them.

I don't know that any of us who have not been in this situation can truly understand what it must be like—an understanding which would, in turn, also help us recognize the tremendous need to take action.

Perhaps we can gain a glimmer of such an understanding if we recall our school-boy memory—and every man in this Chamber I know has at least one of these—a memory of sitting in class, dreading the time when the recess bell would ring, because the school bully told you that he was going to beat the daylights out of you on the playground. Imagine feeling that dread every day. Imagine feeling that twist in your guts as an adult.

That is what every man in this Senate, this Congress and this Nation must remember as we continue to debate what we can—and what we should—do to combat violence against women.

Mr. President, the legislation I am introducing today—the Violence Against Women Act II—has one simple goal: make more women safe.

This legislation seeks this goal by building on the original Violence Against Women Act—continuing what is working; seeking improvements to fix those efforts which could work better; and expanding the national fight into those areas where the need is clear, but our efforts have neglected.

Beyond describing some of the specifics of the legislation being introduced, I want to make it clear, there are many other ideas and proposals that should be considered before the full Senate debates this legislation. Also, I am sure there are several refinements to improve what is currently in this bill.

There are several Senators who are developing these other proposals and refinements—for there are many Senators who are deeply committed to combating violence against women. And, I hope that my colleagues will review this legislation, offer their insights and lend their names as co-sponsors and leaders in the fight against domestic violence.

Still, as my colleagues review this legislation, I believe they will find that it offers comprehensive and sensible responses to violence against women.

To highlight just some of the specific aspects of this legislation, let me start with what I believe to be the central component of the Violence Against Women Act II—the money, continuing the dollars for cops, prosecutors, judges, shelters, and all the elements which are working.

This requires one simple step—continue the violent crime reduction trust fund which the Biden crime bill set up several years ago. This trust fund is due to expire in the year 2000.

Let me remind everybody how it is funded. We agreed that we would reduce the number of Federal workers by over 200,000. We reduced them by 271,000. We agreed that the paychecks that were being paid to those Federal workers would be taken and put in the trust fund, and that trust fund would only be used to fight crime, a part of which is to fight domestic violence. That fund, that trust fund, that separate entity's authorization expires in the year 2000. This legislation first and foremost extends it, extends it to the year 2002. And it does not relitigate the balanced budget agreement upon which we agreed last year. It is accommodated within that balanced budget agreement.

Beyond this fundamental step, there are four key policy areas addressed in my new legislation.

1. Strengthening law enforcement's tools.

2. Improving services for the victims of violence.

3. Reducing violence against children, not only the frequent and horrible side effects of violence against women but also the wellspring of future generations of abusers because all of the data shows that those who witness abuse, ironically and tragically, tend to become abusers.

4. To bolster the antidomestic violence training and education programs to enlist many more professionals in our fight to deal with violence.

STRENGTHENING LAW ENFORCEMENT

On the law enforcement front, the bill introduced today, starts with needed improvements to bolster the interstate enforcement of ''stay-away'' or protection orders.

To give a practical example, let's say a woman from my home State of Delaware gets one of these protection orders against and old boyfriend who has been stalking and beating the heck out of her. Let's also say she works in Pennsylvania.

This is the scenario which led the original Violence Against Women Act to call on states to honor the protection orders of other states. We did so

because the cops recognize the simple reality—they know what will happen sooner or later if the old boyfriend keeps showing up at the woman's work. And, the cops in Pennsylvania don't want to wait for the worst to happen—they want to nail the guy for violating the protection order, stopping violence before it happens—in other words, community policing.

The problem—the cops in Pennsylvania may not know about that there is a valid protection order issued by the State of Delaware. We propose today a few simple fixes: Permitting state and local cops to use their ''pro-arrest'' grants for this information sharing; encouraging states to enter into the cooperative agreements necessary to help interstate enforcement; and calling on the Justice Department to help develop new protocols and disseminate the ''best practices'' of state and local cops.

Pretty simple, but all are extremely necessary—and I hope we can all support such common sense measures.

I won't go into nearly as much detail in describing the law enforcement initiatives proposed in this bill, but just to ''tick'' some of these off—we propose to: Bolster the resources available for courts to handle domestic violence and sexual assault cases; target the ''date-rape'' drug with the maximum federal penalties; continue funding for police, prosecutors, law enforcement efforts in rural communities, and for anti-stalking initiatives; extend the support of local police ''pro-arrest'' efforts—a program expiring this year; and provide new laws to protect our military support personnel stationed, as well as our female military personnel who may be assaulted off-base—where, too often, lax foreign laws give a ''free-pass'' to their victimizer.

ASSISTING THE VICTIMS OF VIOLENCE

Of course, a comprehensive effort to reduce violence against women and lessen its damages must do more than just arrest, convict and imprison abusers—we must also help the victims of violence. This legislation proposes to assist these crime victims in three fundamental ways:

Immediate protections from their abuser—such as battered women's shelters; help so that they can have access to the courts and legal assistance necessary to keep their abuser away from them; and removing the ''catch-22s'' that may literally often force women to stay with their abuser—such as the discriminatory insurance policies which could force a mother to choose: turn-in the man who is beating me or keep health insurance for her children.

Those are the three general policy goals, but to be more specific, let me outline just how our legislation proposes to boost the protections for the victims of violence:

First and foremost, we must build on our successful effort to provide more shelter space for battered women and their children. Senator specter and the appropriations committee has done tremendous work to boost annual funding for shelters to $78 million—enough for about 200,000 battered women and their children.

Unfortunately, the unmet need for shelter remains significant. For example, data from six states, which together have about 16% of the Nation's population had to turn away more than 45,000 battered women who were seeking shelter because they simply did not have the space. Extrapolating these figures to the entire nation suggests that about 300,000 battered women and their children are turned away from shelters every year.

As I said, the current appropriations for shelter space stands at about $78 million. This legislation boosts this amount to $175 million over the next four years. The additional $100 million over current services will close the ''shelter-gap''—of roughly 300,000 battered women and their children. This will bring us closer to the day when all battered women will have a safe, secure place when they need it most.

Of course, we phase in this increase—but, it is clear to us that we must take the basic, fundamental step if we are to protect these victims of violence.

As I said, we must also provide women with the assistance necessary so that they can get access to help from our justice system. We do so, in some clear and common sense ways, such as:

Re-authorizing the expiring program to provide about $1 million per year for victim/witness counselors in federal court; as Senators WELLSTONE and MOSELEY-BRAUN have recognized, women should not have to chose between showing up at court to make sure her abuser is punished and losing her job—so, this legislation includes their proposal to extend the protections of the Family & Medical Leave Act to the victims of domestic violence;

Continuing the national Domestic Violence Hotline (at a cost of about $2 million per year); and

Developing a national network of trained, volunteer attorneys who will help each of the nearly 100,000 women who, each year, call the national hotline for help.

The other component of our plan to aid the victims of domestic violence is to target what I refer to as the ''catch-22'' problems.

Senator MURRAY has identified one source of just such a ''Catch-22''—the fact that some insurance companies and plans deny women health, disability, property or life insurance protections because the woman is a victim of domestic violence.

In starkest terms, this forces a woman to chose between reporting—and trying to end—the violence she is suffering or her children's health care.

This must end—we must pass Senator MURRAY's proposal, included in this legislation, to protect the victims from abuse from insurance discrimination.

Let me also remind my colleagues that in the original Violence Against Women Act we took bi-partisan action to end another such insidious ''choice.'' In 1994, we worked out provisions so battered immigrant women—whose ability to stay in the country was dependent on their husbands—would not have to chose: stay in America and continue to get beaten or leave their husbands, end the abuse, but have to leave America (perhaps even without their children.)

While we had fixed some aspects of this problem in 1994, there remain other aspects of immigration law which leave a woman with just such a horrible, unfair and immoral choice. With Senator KENNEDY, we have worked to include in this legislation several of these corrections.

I urge my colleagues to support—and even build upon—our efforts to put an end to these real problems.

REDUCING VIOLENCE AGAINST CHILDREN

A third area where this legislation seeks action is on reducing violence against children. As my colleagues know, households where the wife is beaten are much more likely to also be home to child abuse and neglect. In addition, the research findings are clear—children who witness violence are much more likely to repeat the cycle when they are adults and they have a wife and children.

Here, our legislation proposes to continue two long-standing programs—

Resources to serve runaway and homeless youth who are victims of sexual abuse; and

The resources provided for Court-Appointed Special Advocates and special child abuse training for court personnel through the Victims of Child Abuse Act (originally co-sponsored by Senator THURMOND and myself in 1990.)

The current appropriations for all these programs total about $25 million—we propose to increase that annual amount by about $10 million.

IMPROVING RESEARCH AND TRAINING

The remaining area targeted by the Violence Against Women Act—two includes several efforts to help train and educate those already on the front-lines of the battle against violence against women.

Senator BOXER has recognized that one of the leading reasons why women enter hospital emergency rooms is because they were beaten at the hands of a man. So, this bill, includes her proposal to increase the number of health professionals who are trained in the identification, treatment and referral of victims of domestic violence and sexual assault.

Over the past few years, I have worked with several corporations (including, DuPont, Polaroid, Liz Claiborne, and The Body Shop) who have begun their own workplace initiatives—everything from 24-hour assistance hotlines for their employees, training to help managers better recognize domestic violence, and even comprehensive employee assistance efforts.

Helping other companies start or improve—again, on their own initiative—

such anti-violence efforts is the reason this legislation includes a national workplace clearinghouse on violence against women.

The clearinghouse will provide technical assistance and help circulate ''best practices'' to companies interested in combating violence against women.

Another practical problem out in the field relates to the complex nature of criminal investigations into sexual assault cases. To assist the cops in the field who face these investigations, this legislation calls on the Attorney General to evaluate and recommend standards of training and practice of forensic examinations following sexual assaults.

I want to make clear, this legislation does not allow any Federal dictates—but only some assistance to those in the field.

Finally, this legislation continues the authorization for rape prevention and education programs. These programs provide public awareness and education efforts to both teach young women how to protect themselves from rape and attack, as well as to help build their self-esteem.

Mr. President, I have just offered the most general outline of the contents of the Violence Against Women Act—Two. I urge my colleagues to review this legislation. I am confident they will find this bill a comprehensive and practical response which will help us meet a goal I believe is shared by every member of this Senate—making more women safer.

Mr. SPECTER. Mr. President, I am pleased to join my colleagues from both sides of the aisle in introducing the Biden-Specter ''Violence Against Women Act II'' (VAWA II), a bipartisan effort to continue and strengthen the many vital Federal programs which work to combat violence against women. I thank Senator BIDEN in particular for his leadership in crafting this important legislation.

Clearly, violence against women knows no social, economic, or geographic bounds. It affects rich and poor, young and old. Women are assaulted in their homes, on the streets, in the workplace, and on campuses. In 1992, I cosponsored the original ''Violence Against Women Act'' (VAWA), which amended other anti-violence legislation to include acts of violence against women as crimes. Although it did not pass that year, we worked hard to include this vital legislation in the 1994 omnibus anti-crime legislation. Since enactment of the Violence Against Women Act, as a member of the Appropriations Committee, I have worked to ensure that programs under this law are funded adequately.

Domestic violence in particular is an epidemic which VAWA programs seek to address. Within the last year, 3.9 million American women were victims of physical abuse and another 20.7 million were verbally or emotionally abused by their spouse or partner. A recent study found that the medical costs associated with these attacks amount to over $857.3 million. In my State of Pennsylvania, more than 500,000 citizens will be victims of domestic violence each year, and the estimated medical cost exceeds $326 million. In 1995 and 1996, I held hearings in Pennsylvania on the issue of domestic violence and violence against women in general, and have visited battered women's shelters in Pittsburgh and Harrisburg to see first-hand the kind of physical and emotional suffering so many women endure.

Within the Appropriations Subcommittee on Labor, Health and Human Services, and Education, which I chair, Violence Against Women Act programs received $128.7 million for fiscal year 1998. I have also supported Violence Against Women Act programs funded within the Department of Justice, which totaled $270.7 million for fiscal year 1998.

The Biden-Specter VAWA II legislation extends and expands the vital VAWA programs supported by my Subcommittee. Currently funded at $76.5 million, Shelters for Battered Women and Their Children would double its authorization in four years. The National Domestic Violence Hotline, which has received over 120,000 calls since February 1996, is another successful resource which would receive a substantial increase in its authorization. The VAWA II proposal would authorize an additional $15 million over four years for the Rape Prevention and Education Program, currently at $45 million, and would institute new coordination between the Attorney General and the Secretary of Health and Human Services to administer the CDC Prevention and Intervention Research to Combat Violence Against Women.

The Biden-Specter VAWA II legislation also includes provisions to address the issue of violence against women on college campuses across the country. Recognizing the grave importance of battling this problem in a targeted manner, I introduced the ''Campus Crime Disclosure Act of 1998'' (S. 2100) on May 20, 1998. Sexual assaults throughout the United States, including sexual assaults on campuses, are on the rise. Independent research and studies show that 20 percent of college-aged women will be victims of sexual crimes at some point in their post-secondary academic career. Studies also show that rape remains the most underreported violent crime in America, with approximately one in every six rapes reported to police. The Campus Crime Disclosure Act, tightens existing campus security law to discourage higher educational institutions from the underreporting of offenses covered by the 1990 Campus Security Act.

I have also continuously worked to ensure that women receive the benefit of the Federal investment into public health programs. I helped establish the Public Health Service's Office of Women's Health in 1991, which develops, coordinates, and stimulates women's health programs and activities across all Federal agencies. Funding for this program has increased from $450,000 in fiscal year 1991 to $12.5 million in fiscal year 1998. Even in an era of constrained spending, these expenditures are well worthwhile on this important subject.

I believe that by the passage of legislation such as the Biden-Specter Violence Against Women Act II, we are on the right track to helping women to combat the incidence of domestic violence, and victimization in general. I urge my colleagues to join in cosponsoring this important legislation, and I urge its swift adoption.

● Mrs. MURRAY. Mr. President, when I came to the Senate in 1993, violence against women had reached a crisis point. The epidemic had spread through every community, across every ethnic group, and did not discriminate based on income, or age.

In 1994, Congress responded to this crisis. The enactment of the Violence Against Women Act in 1994 established a national strategy for dealing with this crisis. No longer would this kind of violence be tolerated. Congress made violence against women a federal crime and threw the weight of the federal government behind efforts to end this violence.

Senator BIDEN was instrumental in drafting the original VAWA. I am grateful for his efforts in the past and have always appreciated his work on behalf of this issue. I also want to thank Senator SPECTER for his efforts to funding these important programs. I have worked with him on the Appropriations Committee and have experienced first hand the benefits of having him on my side on an important family violence issue in the 1998 Labor, HHS Appropriations bill.

Enactment of VAWA in 1994 for me is one of my top legislative accomplishments. I know that we made a difference. I know that providing the resources to help women who are victims of violence seek safety and justice has saved hundreds of lives. I have visited battered women's shelters and talked to many advocates who tell me how important VAWA is. Reauthorization of this historic act must be a priority of this Congress. We can build on the success of VAWA and work to end violence against women.

I want to thank Senator BIDEN for working with me to include a prohibition against insurance discrimination in this legislation. I find this practice of discriminating against victims of domestic violence offensive and outrageous. To victimize a woman twice is inexcusable. Insurance policies that deny women health insurance or homeowners insurance simply because they have been victims of domestic violence can no longer be tolerated. To say that a victim of domestic violence engages in high risk behavior similar to a sky

diver or race car driver is beyond comprehension. Enactment of VAWA reauthorization legislation will end this practice.

Believe me, insurance discrimination is a reality. I know of several cases, including one in my own state of Washington, where an insurance company refused to honor its obligation because the loss was the result of a domestic violence situation. There are many more documented cases of discrimination. Insurance companies should be ashamed of this kind of practice. Today we have a means to end it.

Enactment of this reauthorization legislation is an important step. But, it is only part of the solution. We must do more. We can help ensure that services are available to protect women and resources to local law enforcement to deal with the epidemic. However, the only real solution to ending domestic violence is economic security and stability for the woman. VAWA offers temporary solutions, but long term solutions require tearing down economic barriers for these women. Work place discrimination, lack of affordable child care, housing shortages, punitive welfare requirements, inability to change a Social Security number are all examples of these barriers.

Removing the economic barriers for victims of domestic violence is our next great challenge. I have been working with advocates in the State of Washington on legislation that would serve to end the economic sanctions many victims face.

But, first we do need to ensure the immediate safety of these women and their children. We need to provide resources to law enforcement to protect women and we need to guarantee that the courts treat offenders as violent criminals. The legislation that we will be introducing today accomplishes these goals.

This is one piece of legislation that will make a difference.●

● Mrs. BOXER. Mr. President, today I call upon my colleagues to support the Violence Against Women Act of 1998 which we introduce today.

Domestic violence is the number one cause of injury to women in the United States. Every 9 seconds, a woman is physically abused by her husband or boyfriend. 42 percent of all murdered women are killed by current or ex-partners. Approximately 95 percent of the victims of domestic violence are women. More than 3 million children witness acts of domestic violence every year.

In 1994, Congress passed the bipartisan Violence Against Women Act (VAWA). Under VAWA, the Department of Justice awarded over $483 million under to the states for domestic violence programs. The largest portion of the money goes toward ''STOP'' grants, which bring together police, prosecutors, counselors, shelter providers and other organizations to develop coordinated services for women dealing with domestic violence.

These funds make a difference in women's lives. My home State of California has received more than $46 million under VAWA, plus an additional $19 million for battered women's shelters and services.

With VAWA funds, Los Angeles County increased the number of shelters from 18 in 1994 to 25 shelters today, adding 200 additional shelter beds for women and children. One organization, the 1736 Family Crisis center, opened a new shelter in large part due to VAWA funds. The Valley Oasis shelter in the high dessert expanded its number of beds significantly, again due in large part to VAWA. Throughout California, VAWA helped fund more than 77 domestic violence shelters.

In California, in fiscal year 1998 alone, VAWA provided: $875,000 to fund domestic violence and children's services such as counseling, shelters, and safety planning; $1.8 million for specialized domestic violence units in local law enforcement agencies; $2.7 million to fund prosecution units that specifically handle domestic violence cases; and $1.2 million for its multi-disciplinary sexual assault response team victim advocate project, which brings together police officers, doctors, nurses, advocates, and counselors to respond to victim's needs within hours of a sexual assault.

VAWA funds sheriffs in San Diego, San Francisco and Los Angeles to conduct domestic violence training for thousands of law enforcement officers and for individuals involved in community-oriented policing (the COPS program) throughout the State. This legislation will help continue and expand these and other programs across the country.

VAWA II includes important improvements. It encourages training for health care providers to help them identify the signs of domestic violence and refer patients to appropriate services. It protects women from the horrors of ''date-rape'' drugs by placing the drug Rohypnol in Federal Schedule 1—the strictest level of federal drug penalties and controls. It improves protections for older women, women with disabilities, and women on college campuses.

With VAWA II, we are taking the next crucial steps to help keep American women and children safe. I commend NOW Legal Defense and Education Fund for its leadership on this issue, and the many organizations that have fought to protect and to provide services for battered women and their children. I urge my colleagues to support this important legislation.●

● Ms. MIKULSKI. Mr. President, I am honored to rise today as an original cosponsor of the Violence Against Women Act II. I commend Senator BIDEN for his hard work on this continuing effort to combat violence against women. I believe we are making great progress as a nation to make our streets and our world safer by cracking down on violent crime. This new law represents the continuing Federal effort to deal with these crucial issues. I am encouraged by the bipartisan support for this bill. Protecting the lives of women and children should not be a partisan issue. Both Democrat and Republican members of the United States Senate are taking a solid stand against the disgraceful and cowardly crime of domestic violence.

Mr. President, I strongly support this important legislation for three reasons. First, this bill continues the fight for a safer world by providing new and continuing grants to improve the criminal justice system's protections for women and children. Second, it provides important training for those involved in the response to citizens abused by domestic violence. Third it expands and strengthens the services available to victims of violence.

The Violence Against Women Act II is a big step forward in the effort to keep women, children and communities safe. One of the most critical components of this bill is the reauthorization of the STOP Grant funds for vital programs in our states. This allows the states to obtain the money they need to create and mobilize effective strategies against violence. In my state of Maryland, the Lieutenant Governor and Attorney General of Maryland created the Family Violence Council to find ways to reduce and prevent family violence. With the STOP Grant funds Maryland received through the 1994 Violence Against Crime Act, the Council has been able to effectively assist a statewide initiative against crime. This money has been used to help Maryland develop policies and procedures against domestic violence. It has been used to ensure the development of the best possible laws to protect victims and hold abusers accountable. We have coordinated community programs that protect victims. We have made efforts to break the cycle of violence between generations. And we have stood together as citizens of Maryland and said that violence against women is something we cannot and will not tolerate.

Second, this legislation provides the authorization for money to train people to respond to domestic abuse. It amends the STOP and Pro-Arrest grants and makes states and local courts specifically eligible for funding. These are the same programs that brought police and prosecutors into the loop of personnel who combat violence toward women. The bill we are introducing today takes the next vital step. It expressly targets funds to the courts and helps engage them in the fight against domestic violence. By educating judicial staff and officers of the court about the special issues raised by violence against women, we completed the circle of people who must work in partnerships to end these crimes. Judges and officers are often the first people a victim will meet in the criminal system when seeking legal intervention. The judicial staff are the ones

who can set the stage for whether or not a victim will proceed with her claim. This legislation ensures that all personnel in the criminal justice system are educated and trained to handle cases of domestic violence. This ensures that the proper support, services and protection are available to those who need it most.

Finally, I support this bill because of the services it provides for the victims of these destructive crimes. In 1992, we witnessed a national travesty. In 1992 the National Domestic Violence Hotline went out of business. Not because there was no domestic violence. At that time, the hotline averaged 7.5 calls an hour, 180 calls a day and 65,520 calls a year. The hotline went out of business because it had no funding. That means lives were lost because our citizens had an emergency hotline number that no longer worked. That means more children were beaten and murdered every day who might have been able to get the help they needed. That means the federal government was not meeting its duty to stop the deadly cycle of violent crime.

We cannot and must not allow this to happen again. That is why in 1994 we included a new provision in the law to authorize grants to revive the national hotline. That is why today we are now increasing and extending authorizations to meet the growing demands on the Hotline. Today any woman or child with access to a telephone can dial 1–800–799–SAFE and get the help they urgently need from a qualified and informed professional.

Domestic violence in this country was ignored for far too long before we passed the first Violence Against Women Act. Annually, at least 2 million children and 2 to 4 million women are abused by the people closest to them. These statistics truly send home a very strong message: The most vulnerable members of our society have historically not been served by our government. These alarming crime rates resound loudly and should be heard by every legislator elected to Congress.

We must remain keenly aware of the fact that four women a day are killed at the hands of their batterer. That fifty-seven percent of children under 12 who are murdered are killed by a parent. That every fifteen seconds a woman is beaten by her husband or boyfriend. The Violence Against Women Act II will continue the effort to combat this violence toward women. The time is now to act and to continue our fight. No woman should live in fear that any person will get away with hurting her or her children. I have stated in the past that if you intend to harm a woman that you better stay out of my state of Maryland. I strongly encourage every single member of the Senate to not only vote for, but to actively support this crucial legislation.●

● Mr. WELLSTONE. Mr. President, I rise today as a proud co-sponsor of this Violence Against Women Act. I was a co-sponsor of the original Violence Against Women Act of 1994 and will work hard to see this Violence Against Women Act pass as well. As you well know my wife Sheila and I do a lot of work trying to reduce violence in homes. That is a big priority for us. And the passage of the 1994 Violence Against Women Act was a first big step and an historical occasion.

It was the culmination of over twenty-five years of hard work by local and national organizations. It was an acknowledgment that this kind of violence within families is everybody's business. It was the public recognition that for all too many women the home, rather than being a safe place is a very dangerous place. And finally it sent a clear message that violence against women was a crime that would not be tolerated. It sent a clear message that we as a nation were committed to ending violence against women. At that time we thought we were introducing a comprehensive bill to end violence against women. We have learned a great deal since the passage of the first Act and with that knowledge we know we can and must do better. We have also learned that violence against women is multi-faceted problem that must be addressed in many ways. While the first Act provided important funding to improve services to abused women and improve the criminal justice system, the statistics show we must do more. In my own state of Minnesota, at least 17 women were killed in 1997 by their intimate partners. In that same year, over 4,000 women and over 5,000 children used domestic violence shelters in my state. I am sure that the provisions provided in VAWA allowed so many women to be served. I am sure that the provision in WAVA allowed law enforcement, in my state and across the country, to better address cases of domestic abuse. But now we must broaden our approach to this critical problem.

And so today we introduce the Violence Against Women Act II. This legislation not only reauthorizes and improves the initial commitment set forth in VAWA, but also addresses the impact of violence against women in areas of child visitation, sexual assault prevention, insurance discrimination, as well as violence in the workplace and on campuses. The initiatives in this bill, as I'm sure my colleague JOE BIDEN will attest, were developed as part of a collaborative effort with researchers, advocates and service providers alike. Seeing the problems that victims face on a daily basis, they have helped us to develop legislation that will assist women who have been victims of violence.

I have worked hard at addressing the severe economic consequences of domestic abuse on working women and am proud to say that VAWA II includes provisions to ensure access to family and medical leave coverage. With the passage of this Act women will be allowed to be absent from work so that they can deal with the domestic violence in their lives. Under this legislation victims of abuse could use family and medical leave to attend court hearings and go to appointments with health care providers. In addition this legislation specifies that unemployment compensation should be provided if employment is terminated due to domestic abuse. If a woman loses her job because of the abuse she is experiencing in her home then she will be assured access to unemployment compensation. In other words, this legislation addresses the fact that the cycle of violence will not be interrupted unless victims of abuse are assured of economic security and independence.

Another facet of domestic violence that has been recognized since the passage of the 1994 Violence Against Women Act is the discrimination that victims of abuse face. I have worked hard at ending discrimination by insurance companies against victims of abuse and am proud to be able to say that this issue is well addressed in VAWA II. After years of work by advocates, encouraging women to come forward and report their abuse, we now find that they are being discriminated against based on their status as victims of that abuse. We all know that denying women access to insurance they need to foster their mobility out of an abusive situation must be stopped. Under this legislation insurance companies could no longer discriminate against victims of abuse in any line of insurance.

And finally, I would just like to mention the provision to provide safe havens for children. It is time we address the danger that children and victims of abuse are subjected to during visitation sessions with former partners. Let us stop further violence from occurring by providing safe centers for children who are members of families in which violence is a problem. These centers will provide a safe environment in which children can visit with their parents without risk of being exposed to violence in the context of their family relationships. These centers will also save the lives of mothers by providing secure and supervised environments where they can drop off their children to visit with their abusers. Stopping the cycle of violence means providing safe places for women and children inside and outside the home.

While we worked hard in the first Violence Against Women Act to make streets and homes safer for women by investing in law enforcement initiatives, we have learned that a woman's safety is dependent on her ability to achieve economic as well as physical security. The measures that I have mentioned are only some of the pieces that show the comprehensive nature of this bill. It is a reflection of what we have learned and the acknowledgment that we can and must do better. The Violence Against Women Act II is an impressive piece of legislation that deserves serious attention in this Congress. I look forward to the hearings

and debates on this bill and look forward to working on and seeing it pass.●

By Mr. SMITH of Oregon:

S. 2111. A bill to establish the conditions under which the Bonneville Power Administration and certain Federal agencies may enter into a memorandum of agreement concerning management of the Columbia/Snake River Basin, to direct the Secretary of the Interior to appoint an advisory committee to make recommendations regarding activities under memorandum of understanding, and for other purposes; to the Committee on Energy and Natural Resources.

COLUMBIA RIVER AND SNAKE RIVER LEGISLATION

● Mr. SMITH of Oregon. Mr. President, today I am introducing legislation to establish the conditions under which certain Federal agencies may enter into a memorandum of agreement with non-federal entities concerning management of the Columbia River and Snake River Basin in the States of Idaho, Montana, Oregon, and Washington.

This bill is not an endorsement of the draft Three Sovereigns agreement, but arises from ongoing concerns I have about the proposal. The livelihoods of many Northwest residents are at stake in upcoming decisions about Columbia River operations, and they deserve a voice in this process.

The bill formalizes public input to federal agencies involved in the proposed ''Three Sovereigns'' agreement, or any similar agreement, by creating an advisory committee representing: local governments; customers of the Bonneville Power Administration; upstream ports; fishing interests; shippers; irrigators; environmentalists; forest land owners and grazers. This committee will advise the federal agencies on matters to be addressed under the agreement, including the economic and social impacts of any proposed recommendations.

Currently, two significantly different drafts of a ''Memorandum of Agreement for Three Sovereigns' Governance of the Columbia River Basin Ecosystem'' are out for public comment. However, the public comment process was so ill-defined initially that I had to write one of the chief proponents of the agreement to request that this process be better defined. Further, it has been reported to me that at the public meeting held in Pendleton, Oregon, on the draft agreement, there was no clerk reporter to record people's comments in detail. This has not given those who depend on the river system much confidence in their ability to provide input into any forum established under a Three Sovereigns' agreement.

Developing a successful regional solution to management of the Columbia/Snake River system will involve a broad range of stakeholders. While not a perfect model, the 1994 Bay-Delta Accord in California has been successful, in large part, because the water users and environmental groups were parties to the Accord. The bill would not, however, require changes in the draft memorandum of agreement itself, or impose conditions on the states or the tribes. But it is appropriate for the Congress to establish certain conditions for federal participation in any such agreement.

In addition to establishing this advisory committee, the bill requires each federal agency that is a signatory to the Three Sovereigns' agreement to publish and make available to the public, including over the Internet, all scientific data used to formulate recommendations and all methodologies used to prepare cost-benefit analyses.

The bill also provides a mechanism to resolve disputes among federal agencies involved in the Three Sovereigns' agreement. The Director of the Office of Management and Budget will designate an official who, at the request of a non-federal party to the agreement, will have the authority to reconcile differences between the federal agencies on any issue before the Three Sovereigns. In this manner, the non-federal signatories are not caught between differing federal agencies.

The Three Sovereigns' agreement, if signed, would establish a process that is very similar to the statutory obligations of the Northwest Power Planning Council with respect to fish and wildlife recommendations. Therefore, the bill requires the Council to report to the Congress annually on how the recommendations on fish and wildlife activities under any agreement would be coordinated and reconciled with the Council's statutory responsibilities.

Finally, to enhance budget coordination among federal agencies regardless of whether an agreement is entered into, the bill requires that the President's annual budget proposal include a cross-cut budget showing proposed spending for activities in the basin by the federal agencies.

I urge my colleagues to support this legislation, and to support stakeholder involvement in the development of a regional solution to Columbia and Snake River issues.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS.

In this Act:

(1) ADVISORY COMMITTEE.—The term ''advisory committee'' means the advisory committee established by the Secretary under section 2(b).

(2) COLUMBIA/SNAKE RIVER BASIN.—The term ''Columbia/Snake River Basin'' means the basin of the Columbia River and Snake River in the States of Idaho, Montana, Oregon, and Washington.

(3) COUNCIL.—The term ''Council'' means the Pacific Northwest Electric Power and Conservation Planning Council established under the Pacific Northwest Electric Power and Conservation Planning Act (16 U.S.C. 839 et seq.).

(4) FEDERAL AGENCY.—The term ''Federal agency'' means—

(A) the Bonneville Power Administration in the Department of Energy;

(B) the Bureau of Land Management, Bureau of Reclamation, United States Fish and Wildlife Service, and the Bureau of Indian Affairs in the Department of the Interior;

(C) the National Marine Fisheries Service in the Department of Commerce;

(D) the Army Corps of Engineers in the department of the Army;

(E) the Forest Service and the Natural Resource Conservation Service in the Department of Agriculture; and

(F) the Environmental Protection Agency.

(5) MEMORANDUM OF UNDERSTANDING.—The term ''memorandum of understanding'' means any written or unwritten agreement between or among 1 or more of the Federal agencies and 1 or more State or local government agencies, 1 or more Indian tribes, or 1 or more private persons or entities—

(A) concerning the manner in which any authority of a Federal agency under any law is to be exercised within the Columbia/Snake River Basin; or

(B) for the purpose of formulating recommendations concerning the manner in which any such authority should be exercised.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 2. CONDITIONS ON MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—The Bonneville Power Administration or any other Federal agency, acting individually or with 1 or more of the other Federal agencies, shall not enter into or implement a memorandum of understanding unless all of the conditions stated in this section are met.

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.) to advise the Federal agencies with respect to matters to be addressed under any memorandum of understanding, including the economic and social impacts of proposed activities or recommendations.

(2) MEMBERSHIP.—The advisory committee shall be composed of—

(A) 1 representative of the large industrial customers served directly by the Bonneville Power Administration;

(B) 1 representative of the preference power customers that purchase power from the Bonneville Power Administration;

(C) 1 representative of non-Federal utilities that have hydropower generation on the Columbia River or Snake River;

(D) 1 irrigator that receives water diverted from a Federal water project on the Snake River;

(E) 1 irrigator that receives water diverted from a Federal water project on the Columbia River or a tributary of the Columbia River (other than a tributary that is also a tributary of the Snake River);

(F) 1 private forest land owner;

(G) 1 representative of the commercial fishing industry;

(H) 1 representative of the sport fishing industry;

(I) 1 representative of the environmental community;

(J) 1 representative of a river port upstream of Bonneville Dam;

(K) 1 representative of shippers that ship from places upstream of any lock on the Columbia River;

(L) 1 representative of persons that hold Federal grazing permits; and

(M) 1 representative of county governments from each of the States of Oregon, Washington, Idaho, and Montana.

(3) MANNER OF APPOINTMENT.—The members of the advisory committee shall be appointed by the Secretary of the Interior from among persons nominated by the Governors of the States of Idaho, Montana, Oregon, and Washington.

(4) CHAIRPERSON.—At the first meeting of the advisory committee, the members shall select 1 of the members to serve as chairperson, on a simple majority vote.

(5) COMPENSATION.—A member of the advisory committee shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties of the advisory committee.

(6) SUPPORT.—The Secretary shall—

(A) provide such office space, furnishings and equipment as may be required to enable the advisory committee to perform its functions; and

(B) furnish the advisory committee with such staff, including clerical support, as the advisory committee may require.

(7) OPPORTUNITY TO FORMULATE AND PRESENT VIEWS.—The advisory committee shall be afforded a reasonable opportunity to—

(A) attend each meeting convened under the memorandum of understanding; and

(B) formulate and present its views on each matter addressed at the meeting.

(8) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the activities of the advisory committee a total of $1,000,000 during the period in which the advisory committee is in existence.

(9) TERMINATION.—The advisory committee shall terminate on termination of the memorandum of understanding.

(c) RECONCILIATION OF DIFFERENCES.—The Director of the Office of Management and Budget shall designate an official who, at the request of a non-Federal party to any memorandum of understanding, shall have authority to reconcile differences between the Federal agencies on any issue relating to activities addressed under the memorandum of understanding.

(d) PUBLIC AVAILABILITY OF DATA AND METHODOLOGIES.—Each Federal agency shall publish and make available to the public, through use of the Internet and by other means—

(1) all scientific data that are prepared by or made available to the Federal agency for use for the purpose of formulating recommendations regarding any matter addressed under any memorandum of understanding; and

(2) all methodologies that are prepared by or made available to the Federal agency for the purpose of assessing the cost or benefit of any activity addressed under any memorandum of understanding.

(e) REPORTING BY THE COUNCIL.—

(1) IN GENERAL.—Not later than 30 days before the beginning of each fiscal year, the Council shall submit to Congress a report that describes how the recommendations on fish and wildlife activities under any memorandum of understanding during the fiscal year will be reconciled and coordinated with activities of the Council under the Pacific Northwest Electric Power and Conservation Planning Act (16 U.S.C. 839 et seq.).

(2) COOPERATION.—Each Federal agency that is a party to a memorandum of understanding shall provide the Council such information and cooperation as the Council may request to enable the Council to make determinations necessary to prepare a report under paragraph (1).

SEC. 3. BUDGET INFORMATION.

(a) IN GENERAL.—The President shall include in each budget of the United States Government for a fiscal year submitted under section 1105 of title 31, United States Code, a separate section that states for each Federal agency the amount of budget authority and outlays proposed to be expended in the Columbia/Snake River Basin (including a pro rata share of overhead expenses) for the fiscal year.

(b) ITEMIZATION.—The statement of budget authority and outlays for the Columbia/Snake River Basin under subsection (a) for each Federal agency shall be stated in the same degree of specificity for each category of expense as in the statement of budget authority and outlays for the entire Federal agency elsewhere in the budget.●

ADDITIONAL COSPONSORS

S. 249

At the request of Mr. D'AMATO, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 249, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.

S. 442

At the request of Mr. WYDEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 442, a bill to establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

S. 766

At the request of Ms. SNOWE, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 766, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 831

At the request of Mr. SHELBY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 971

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 971, a bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes.

S. 1037

At the request of Mr. DODD, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1037, a bill to amend the Internal Revenue Code of 1986 to establish incentives to increase the demand for and supply of quality child care, to provide incentives to States that improve the quality of child care, to expand clearinghouse and electronic networks for the distribution of child care information, to improve the quality of child care provided through Federal facilities and programs, and for other purposes.

S. 1334

At the request of Mr. BOND, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1351

At the request of Mr. BURNS, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 1351, a bill to amend the Sikes Act to establish a mechanism by which outdoor recreation programs on military installations will be accessible to disabled veterans, military dependents with disabilities, and other persons with disabilities.

S. 1529

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1529, a bill to enhance Federal enforcement of hate crimes, and for other purposes.

S. 1645

At the request of Mr. ABRAHAM, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 1645, a bill to amend title 18, United States Code, to prohibit taking minors across State lines to avoid laws requiring the involvement of parents in abortion decisions.

S. 1727

At the request of Mr. LEAHY, the name of the Senator from Missouri (Mr. ASHCROFT) was added as a cosponsor of S. 1727, a bill authorize the comprehensive independent study of the effects on trademark and intellectual property rights holders of adding new a generic top-level domains and related dispute resolution procedures.

S. 1759

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1759, a bill to grant a Federal charter to the American GI Forum of the United States.

S. 1862

At the request of Mr. DEWINE, the name of the Senator from New Hampshire (Mr. GREGG) was added as a cosponsor of S. 1862, a bill to provide assistance for poison prevention and to stabilize the funding of regional poison control centers.

S. 2001

At the request of Mr. MURKOWSKI, the name of the Senator from Oklahoma

(Mr. INHOFE) was added as a cosponsor of S. 2001, a bill to amend the Indian Health Care Improvement Act to make permanent the demonstration program that allows for direct billing of medicare, medicaid, and other third party payors, and to expand the eligibility under such program to other tribes and tribal organizations.

S. 2007

At the request of Mr. COCHRAN, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2007, a bill to amend the false claims provisions of chapter 37 of title 31, United States Code.

S. 2022

At the request of Mr. DEWINE, the names of the Senator from Ohio (Mr. GLENN), and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 2022, a bill to provide for the improvement of interstate criminal justice identification, information, communications, and forensics.

S. 2044

At the request of Mr. KENNEDY, the name of the Senator from Minnesota (Mr. WELLSTONE) was added as a cosponsor of S. 2044, a bill to assist urban and rural local education agencies in raising the academic achievement of all of their students.

S. 2070

At the request of Mr. DEWINE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2070, a bill to provide for an Underground Railroad Educational and Cultural Program.

S. 2077

At the request of Mr. FORD, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 2077, a bill to maximize the national security of the United States and minimize the cost by providing for increased use of the capabilities of the National Guard and other reserve components of the United States; to improve the readiness of the reserve components; to ensure that adequate resources are provided for the reserve components; and for other purposes.

SENATE CONCURRENT RESOLUTION 80

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from North Dakota (Mr. CONRAD) was added as a cosponsor of Senate Concurrent Resolution 80, a concurrent resolution urging that the railroad industry, including rail labor, management and retiree organization, open discussions for adequately funding an amendment to the Railroad Retirement Act of 1974 to modify the guaranteed minimum benefit for widows and widowers whose annuities are converted from a spouse to a widow or widower annuity.

SENATE CONCURRENT RESOLUTION 82

At the request of Mrs. MURRAY, her name was added as a cosponsor of Senate Concurrent Resolution 82, a concurrent resolution expressing the sense of Congress concerning the worldwide trafficking of persons, that has a disproportionate impact on women and girls, and is condemned by the international community as a violation of fundamental human rights.

SENATE CONCURRENT RESOLUTION 97

At the request of Mrs. MURRAY, her name was added as a cosponsor of Senate Concurrent Resolution 97, a concurrent resolution expressing the sense of Congress concerning the human rights and humanitarian situation facing the women and girls of Afghanistan.

SENATE RESOLUTION 188

At the request of Mr. MOYNIHAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of Senate Resolution 188, a resolution expressing the sense of the Senate regarding Israeli membership in a United Nations regional group.

SENATE RESOLUTION 192

At the request of Mr. BIDEN, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of Senate Resolution 192, a resolution expressing the sense of the Senate that institutions of higher education should carry out activities to change the culture of alcohol consumption on college campuses.

SENATE CONCURRENT RESOLUTION 98—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE AND HOUSE OF REPRESENTATIVES

Mr. GREGG (for Mr. LOTT) submitted the following concurrent resolution; which was considered and agreed to:

S. CON RES. 98

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, May 21, 1998, Friday, May 22, 1998, Saturday, May 23, 1998, or Sunday, May 24, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Monday, June 1, 1998, or until such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, May 22, 1998, or Saturday, May 23, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, June 3, 1998, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

SENATE RESOLUTION 233—TO AUTHORIZE TESTIMONY AND DOCUMENT PRODUCTION AND REPRESENTATION OF SENATE EMPLOYEES

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. Res. 233

Whereas, in the case of *People* v. *James Eugene Arenas*, Case No. 98F2403, pending in the Municipal Court for Fresno, California, testimony and document production have been requested from Kelly Gill, an employee on the staff of Senator Barbara Boxer;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony or the production of documents relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United Stats and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Revolved, That Kelly Gill, and any other employee from whom testimony or document production may be required, are authorized to testify and produce documents in the case of *People* v. *James Eugene Arenas*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is authorized to represent Kelly Gill, and any other employee from whom testimony or document production may be required, in connection with *People* v. *James Eugene Arenas*

SENATE RESOLUTION 234—TO HONOR STUART BALDERSON

Mr. STEVENS (for himself, Mr. LOTT, Mr. DASCHLE, Mr. BYRD, and Mr. WARNER): submitted the following resolution; which was considered and agreed to:

S. RES. 234

Resolved, That Stuart Balderson is named Financial Clerk Emeritus of the United States Senate.

SEC. 2. That Rule XXIII is amended by adding after ''Parliamentarian Emeritus;; the following ''and the Financial Clerk Emeritus.''

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

SMITH AMENDMENT NO. 2435

(Ordered to lie on the table.)

Mr. SMITH of Oregon submitted an amendment intended to be proposed by him to the bill (S. 1415) to reform and

restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

On page 182, strike lines 11 through 23, and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

Beginning on page 192, strike line 6 and all that follows through line 23 on page 199, and insert the following:

SEC. 451. ALLOCATION ACCOUNTS.

(a) STATE LITIGATION SETTLEMENT ACCOUNT.—

(1) IN GENERAL.—There is established within the Trust Fund a separate account, to be known as the State Litigation Settlement Account. Of the net revenues credited to the Trust Fund under section 401(b)(1) for each fiscal year, 10 percent of the amounts designated for allocation under the settlement payments shall be allocated to this account. Such amounts shall be reduced by the additional estimated Federal expenditures that will be incurred as a result of State expenditures under section 452, which amounts shall be transferred to the miscellaneous receipts of the Treasury.

(2) APPROPRIATION.—Amounts so calculated are hereby appropriated and available until expended and shall be available to States for grants authorized under this Act.

(3) DISTRIBUTION FORMULA.—The Secretary of the Treasury shall consult with the National Governors Association, the National Association of Attorneys General, and the National Conference of State Legislators on a formula for the distribution of amounts in the State Litigation Settlement Account and report to the Congress within 90 days after the date of enactment of this Act with recommendations for implementing a distribution formula.

(4) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate, consistent with the other provisions of this Act including smoking cessation and related public health programs.

(5) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(b) HEALTH AND HEALTH-RELATED RESEARCH ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Health and Health-Related Research Account. Of the net revenues credited to the trust fund under section 401(b)(1), 10 percent shall be allocated to this account.

(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts in the Health and Health-Related Research Account shall be available to the extent and in the amounts provided in advance in appropriations acts, to remain available until expended, only for the following purposes:

(A) For the Centers for Disease Control under section 1991C of the Public Health Service Act, as added by this Act, of the total amounts allocated to this account, not more than 5 percent shall be used for this purpose.

(B) For the National Institutes of Health under section 1991D of the Public Health Service Act, as added by this Act. Of the total amounts allocated to this account, not more than 5 percent shall be used for this purpose.

(c) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

(1) IN GENERAL.— There is established within the trust fund a separate account, to be known as the Farmers Assistance Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year 10 percent shall be allocated to this account for the first 10 years after the date of enactment of this Act.

(2) APPROPRIATION.—Amounts allocated to this account are hereby appropriated and shall be available until expended for the purposes of section 1012.

(d) MEDICARE PRESERVATION ACCOUNT.—There is established within the trust fund a separate account, to be known as the Medicare Preservation Account. Of the net revenues credited to the trust fund under section 401(b)(1) in each fiscal year 70 percent, and all of the revenues credited to the trust fund under section 401(b)(3), shall be allocated to this account for the first 10 years after the date of enactment of this Act. Funds credited to this account shall be transferred to the Medicare Hospital Insurance Trust Fund.

GRAMM (AND OTHERS) AMENDMENT NO. 2436

Mr. GRAMM (for himself, Mr. DOMENICI, and Mr. FAIRCLOTH) proposed an amendment to the motion to recommit proposed by Mr. GRAMM to the bill, S. 1415, supra; as follows:

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later that 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

At the appropriate place, insert:

SEC. ___. ELIMINATION OF MARRIAGE PENALTY.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

''SEC. 222. DEDUCTION FOR MARRIED COUPLES TO ELIMINATE THE MARRIAGE PENALTY.

''(a) IN GENERAL.—In the case of a joint return under section 6013 for the taxable year, there shall be allowed as a deduction an amount equal to the excess (if any) of—

''(1) the sum of the amounts determined under subparagraphs (B) and (C) of section 63(c)(2) for such taxable year (relating to the basic standard deduction for a head of a household and a single individual, respectively), over

''(2) the amount determined under section 63(c)(2)(A) for such taxable year (relating to the basic standard deduction for a joint return).

''(b) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—No deduction shall be allowed under subsection (a) if the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000.

''(2) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this subsection, the term 'modified adjusted gross income' means adjusted gross income determined—

''(A) after application of sections 86, 219, and 469, and

''(B) without regard to sections 135, 137, and 911 or the deduction allowable under this section.

''(3) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 1999, the $50,000 amount under paragraph (1) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, except that subparagraph (B) thereof shall be applied by substituting 'calendar year 1998' for 'calendar year 1992'. If any amount as adjusted under this paragraph is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.''

(b) DEDUCTION TO BE ABOVE-THE-LINE.—Section 62(a) of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding after paragraph (17) the following new paragraph:

''(18) DEDUCTION FOR MARRIED COUPLES.—The deduction allowed by section 222.''

(c) EARNED INCOME CREDIT PHASEOUT TO REFLECT DEDUCTION.—Section 32(c)(2) of the Internal Revenue Code of 1986 (defining earned income) is amended by adding at the end the following new subparagraph:

''(C) MARRIAGE PENALTY REDUCTION.—Solely for purposes of applying subsection (a)(2)(B), earned income for any taxable year shall be reduced by an amount equal to the amount of the deduction allowed to the taxpayer for such taxable year under section 222.''

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Deduction for married couples to eliminate the marriage penalty.

''Sec. 223. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

DURBIN (AND OTHERS) AMENDMENT NO. 2437

Mr. DASCHLE (for Mr. DURBIN, for himself, Mr. DEWINE, Mr. WYDEN, Mr. CHAFEE, Mr. HARKIN, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. DASCHLE, Mr. CONRAD, and Mr. REED) proposed an amendment to amendment No. 2436 proposed by Mr. GRAMM to the bill, S. 1415, supra; as follows:

In the amendment strike pages 10 through 13 and insert the following:

Subtitle A—Performance Objectives to Reduce Underage Use

SEC. 201. FINDINGS.

Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and insure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSES AND GOALS.

(a) PURPOSE.—It is the purpose of this subtitle to create incentives to achieve reductions in the percentage of children who use tobacco products and to ensure that, in the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways, including by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and by providing support for further reduction efforts.

(b) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required performance objectives for percentage reductions in underage use of tobacco products set forth in this title are achieved.

SEC. 203. ANNUAL PERFORMANCE SURVEYS.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning not later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (e)(1), to determine for each type of tobacco product—

(1) the percentage of all children who used such type of tobacco product within the past 30 days; and

(2) the percentage of children who identify each brand of each type of tobacco product as the usual brand of the type smoked or used within the past 30 days.

(b) USE OF PRODUCT.—A child shall be considered to have used a manufacturer's tobacco product if the child identifies the manufacturer's tobacco product as the usual brand of tobacco product smoked or used by the child within the past 30 days.

(c) SEPARATE TYPES OF PRODUCTS.—For purposes of this subtitle (except as provided in subsection 205(h)), cigarettes and smokeless tobacco shall be considered separate types of tobacco products.

(d) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information, or described in the information, being identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purposes. The information may not be published or released in any other form if the individual supplying the information, or described in the information, is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(e) METHODOLOGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) measure use of each type of tobacco product within the past 30 days;

(C) identify the usual brand of each type of tobacco product used within the past 30 days; and

(D) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(D) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of children reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) is such that the 95 percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(f) ADDITIONAL MEASURES.—In order to increase the understanding of youth tobacco product use, the Secretary may, for informational purposes only, add additional measures to the survey under subsection (a), conduct periodic or occasional surveys at other times, and conduct surveys of other populations such as young adults. The results of such surveys shall be made available to manufacturers and the public to assist in efforts to reduce youth tobacco use.

(g) TECHNICAL ADJUSTMENTS.—The Secretary may make technical changes in the manner in which surveys are conducted under this section so long as adjustments are made to ensure that the results of such surveys are comparable from year to year.

SEC. 204. PERFORMANCE OBJECTIVES.

(a) BASELINE LEVEL.—The baseline level for each type of tobacco product, and for each manufacturer with respect to each type of tobacco product, is the percentage of children determined to have used such tobacco product in the first annual performance survey (in 1999).

(b) INDUSTRY-WIDE NON-ATTAINMENT ASSESSMENTS.—For the purpose of determining industry-wide non-attainment assessments, the performance objective for the reduction of the percentage of children determined to have used each type of tobacco product is the percentage in subsection (d) as measured from the baseline level for such type of tobacco product.

(c) PERFORMANCE OBJECTIVES FOR EXISTING MANUFACTURERS.—Each existing manufacturer shall have as a performance objective the reduction of the percentage of children determined to have used each type of such manufacturer's tobacco products by at least the percentage specified in subsection (d) as measured from the baseline level for such manufacturer for such product.

(d) REQUIRED PERCENTAGE REDUCTIONS.—The reductions required in this subsection are as follows:

(1) In the case of cigarettes—

(A) with respect to the third and fourth annual performance surveys, 20 percent;

(B) with respect to the fifth and sixth annual performance surveys, 40 percent;

(C) with respect to the seventh, eighth, and ninth annual performance surveys, 55 percent; and

(D) with respect to the 10th annual performance survey and each annual performance survey thereafter, 67 percent.

(2) In the case of smokeless tobacco—

(A) with respect to the third and fourth annual performance surveys, 12.5 percent;

(B) with respect to the fifth and sixth annual performance surveys, 25 percent;

(C) with respect to the seventh, eighth, and ninth annual performance surveys, 35 percent; and

(D) with respect to the 10th annual performance survey and each annual performance survey thereafter, 45 percent.

(e) REPORT ON FURTHER REDUCTIONS.—The Secretary shall report to Congress by the end of 2006 on the feasibility of further reduction in underage tobacco use.

(f) PERFORMANCE OBJECTIVE RELATIVE TO THE DE MINIMIS LEVEL.—If the percentage of children determined to have used a type of the tobacco products of an existing manufacturer in an annual performance survey is equal to or less than the de minimis level, the manufacturer shall be considered to have achieved the applicable performance objective.

(g) PERFORMANCE OBJECTIVES FOR NEW MANUFACTURERS.—Each new manufacturer shall have as its performance objective maintaining the percentage of children determined to have used each type of such manufacturer's tobacco products in each annual performance survey at a level equal to or less than the de minimis level for that year.

(h) DE MINIMIS LEVEL.—The de minimis level shall be 1 percent of children for the applicable year.

SEC. 205. MEASURES TO HELP ACHIEVE THE PERFORMANCE OBJECTIVES.

(a) ANNUAL DETERMINATION.—Beginning in 2001, and annually thereafter, the Secretary shall, based on the annual performance surveys conducted under section 203, determine if the performance objectives for each type of tobacco product under section 204 has been achieved and if each manufacturer has achieved the applicable performance objective under section 204. The Secretary shall publish in the Federal Register such determinations and any appropriate additional information regarding actions taken under this section.

(b) INDUSTRY-WIDE NON-ATTAINMENT ASSESSMENTS.—

(1) INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage, if any, for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT ASSESSMENT FOR CIGARETTES.—For each calendar year in which the performance objective under section 204(b) is not attained for cigarettes, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$40,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$200,000,000, plus $120,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$2,000,000,000

(3) NON-ATTAINMENT ASSESSMENT FOR SMOKELESS TOBACCO.—For each year in which the performance objective under section 204(b) is not attained for smokeless tobacco, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$4,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$20,000,000, plus $12,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$200,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under this subsection shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under paragraph (2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under paragraph (3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall allocate the assessments under this subsection according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco

product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(c) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by a manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(2) CIGARETTES.—For each calendar year in which a cigarette manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for cigarettes multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$80,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$400,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$5,000,000,000

(3) SMOKELESS TOBACCO.—For each calendar year in which a smokeless tobacco product manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for smokeless tobacco products multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$8,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$40,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$500,000,000

(4) MANUFACTURER'S SHARE OF YOUTH INCIDENCE.—For purposes of this subsection, the them ''manufacturer's share of youth incidence'' means—

(A) for cigarettes, the percentage of all youth smokers determined to have used that manufacturer's cigarettes; and

(B) for smokeless tobacco products, the percentage of all youth users of smokeless tobacco products determined to have used that manufacturer's smokeless tobacco products.

(5) DE MINIMIS LEVELS.—If a manufacturer is a new manufacturer or the manufacturer's baseline level for a type of tobacco product is less than the de minimis level, the non-attainment percentage (for purposes of paragraph (2) or (3)) shall be equal to the number of percentage points by which the percentage of children who used the manufacturer's tobacco products of the applicable type exceeds the de minimis level.

(d) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (b)(2), (b)(3), (c)(2), and (c)(3) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year; exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(e) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(f) BUSINESS EXPENSE DEDUCTION.—In order to maximize the financial deterrent effect of the assessments and surcharges established in this section, any such payment shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(g) PROCEDURES.—In assessing price increase assessments and enforcing other measures under this section, the Secretary shall have in place procedures to take into account the effect that the margin of error of the annual performance survey may have on the amounts assessed to or measures required of such manufacturers.

(h) OTHER PRODUCTS.—The Secretary shall promulgate regulations establishing performance objectives for the reduction of the use by children of other products made or derived from tobacco and intended for human consumption if significant percentages of children use or begin to use such products and the inclusion of such products as types of tobacco products under this subtitle would help protect the public health. Such regulations shall contain provisions, consistent with the provisions in this subtitle applicable to cigarettes and smokeless tobacco, for the application of assessments and surcharges to achieve reductions in the percentage of children who use such products.

(i) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(j) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 206. DEFINITIONS.

In this subtitle:

(1) CHILDREN.—The term ''children'' means individuals who are 12 years of age or older and under the age of 18.

(2) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(3) EXISTING MANUFACTURER.—The term ''existing manufacturer'' means a manufacturer which manufactured a tobacco product on or before the date of the enactment of this title.

(4) NEW MANUFACTURER.—The term ''new manufacturer'' means a manufacturer which begins to manufacture a type of tobacco product after the date of the enactment of this title.

(5) NON-ATTAINMENT PERCENTAGE.—The term ''non-attainment percentage'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is less than the baseline level, by subtracting—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is less than the baseline level, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is greater than the baseline level, adding—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is greater than the baseline level; and

(ii) the required percentage reduction applicable in that year.

(6) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

DURBIN (AND OTHERS) AMENDMENT NO. 2438

Mr. DASCHLE (for Mr. DURBIN, for himself, Mr. DEWINE, Mr. WYDEN, Mr. CHAFEE, Mr. HARKIN, Ms. COLLINS, Mr. KENNEDY, Ms. SNOWE, Mr. DASCHLE, Mr. CONRAD, and Mr. REED) proposed an amendment to amendment No. 2437 proposed by Mr. DURBIN to the bill, S. 1415, supra; as follows:

In the Amendment strike all after ''Subtitle'' and insert the following:

In title II, strike subtitle A and insert the following:

Subtitle A—Performance Objectives to Reduce Underage Use

SEC. 201. FINDINGS.

Congress finds the following:

(1) Reductions in the underage use of tobacco products are critically important to the public health.

(2) Achieving this critical public health goal can be substantially furthered by increasing the price of tobacco products to discourage underage use if reduction targets are not achieved and by creating financial incentives for manufacturers to discourage youth from using their tobacco products.

(3) When reduction targets in underage use are not achieved on an industry-wide basis, the price increases that will result from an industry-wide assessment will provide an additional deterrence to youth tobacco use.

(4) Manufacturer-specific incentives that will be imposed if reduction targets are not met by a manufacturer provide a strong incentive for each manufacturer to make all efforts to discourage youth use of its brands and insure the effectiveness of the industry-wide assessments.

SEC. 202. PURPOSES AND GOALS.

(a) PURPOSE.—It is the purpose of this subtitle to create incentives to achieve reductions in the percentage of children who use tobacco products and to ensure that, in

the event that other measures contained in this Act prove to be inadequate to produce substantial reductions in tobacco use by minors, tobacco companies will pay additional assessments. These additional assessments are designed to lower youth tobacco consumption in a variety of ways, including by triggering further increases in the price of tobacco products, by encouraging tobacco companies to work to meet statutory targets for reductions in youth tobacco consumption, and by providing support for further reduction efforts.

(b) GOALS.—As part of a comprehensive national tobacco control policy, the Secretary, working in cooperation with State, Tribal, and local governments and the private sector, shall take all actions under this Act necessary to ensure that the required performance objectives for percentage reductions in underage use of tobacco products set forth in this title are achieved.

SEC. 203. ANNUAL PERFORMANCE SURVEYS.

(a) ANNUAL PERFORMANCE SURVEY.—Beginning not later than 1999 and annually thereafter the Secretary shall conduct a survey, in accordance with the methodology in subsection (e)(1), to determine for each type of tobacco product—

(1) the percentage of all children who used such type of tobacco product within the past 30 days; and

(2) the percentage of children who identify each brand of each type of tobacco product as the usual brand of the type smoked or used within the past 30 days.

(b) USE OF PRODUCT.—A child shall be considered to have used a manufacturer's tobacco product if the child identifies the manufacturer's tobacco product as the usual brand of tobacco product smoked or used by the child within the past 30 days.

(c) SEPARATE TYPES OF PRODUCTS.—For purposes of this subtitle (except as provided in subsection 205(h)), cigarettes and smokeless tobacco shall be considered separate types of tobacco products.

(d) CONFIDENTIALITY OF DATA.—The Secretary may conduct a survey relating to tobacco use involving minors. If the information collected in the course of conducting the annual performance survey results in the individual supplying the information, or described in the information, being identifiable, the information may not be used for any purpose other than the purpose for which it was supplied unless that individual (or that individual's guardian) consents to its use for such other purposes. The information may not be published or released in any other form if the individual supplying the information, or described in the information, is identifiable unless that individual (or that individual's guardian) consents to its publication or release in other form.

(e) METHODOLOGY.—

(1) IN GENERAL.—The survey required by subsection (a) shall—

(A) be based on a nationally representative sample of young individuals;

(B) measure use of each type of tobacco product within the past 30 days;

(C) identify the usual brand of each type of tobacco product used within the past 30 days; and

(D) permit the calculation of the actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) based on the point estimates of the percentage of young individuals reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) from the annual performance survey.

(2) CRITERIA FOR DEEMING POINT ESTIMATES CORRECT.—Point estimates under paragraph (1)(D) are deemed conclusively to be correct and accurate for calculating actual percentage reductions in underage use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) for the purpose of measuring compliance with percent reduction targets and calculating surcharges provided that the precision of estimates (based on sampling error) of the percentage of children reporting use of a type of tobacco product (or, in the case of the manufacturer-specific surcharge, the use of a type of the tobacco products of a manufacturer) is such that the 95 percent confidence interval around such point estimates is no more than plus or minus 1 percent.

(3) SURVEY DEEMED CORRECT, PROPER, AND ACCURATE.—A survey using the methodology required by this subsection is deemed conclusively to be proper, correct, and accurate for purposes of this Act.

(4) SECRETARY MAY ADOPT DIFFERENT METHODOLOGY.—The Secretary by notice and comment rulemaking may adopt a survey methodology that is different than the methodology described in paragraph (1) if the different methodology is at least as statistically precise as that methodology.

(f) ADDITIONAL MEASURES.—In order to increase the understanding of youth tobacco product use, the Secretary may, for informational purposes only, add additional measures to the survey under subsection (a), conduct periodic or occasional surveys at other times, and conduct surveys of other populations such as young adults. The results of such surveys shall be made available to manufacturers and the public to assist in efforts to reduce youth tobacco use.

(g) TECHNICAL ADJUSTMENTS.—The Secretary may make technical changes in the manner in which surveys are conducted under this section so long as adjustments are made to ensure that the results of such surveys are comparable from year to year.

SEC. 204. PERFORMANCE OBJECTIVES.

(a) BASELINE LEVEL.—The baseline level for each type of tobacco product, and for each manufacturer with respect to each type of tobacco product, is the percentage of children determined to have used such tobacco product in the first annual performance survey (in 1999).

(b) INDUSTRY-WIDE NON-ATTAINMENT ASSESSMENTS.—For the purpose of determining industry-wide non-attainment assessments, the performance objective for the reduction of the percentage of children determined to have used each type of tobacco product is the percentage in subsection (d) as measured from the baseline level for such type of tobacco product.

(c) PERFORMANCE OBJECTIVES FOR EXISTING MANUFACTURERS.—Each existing manufacturer shall have as a performance objective the reduction of the percentage of children determined to have used each type of such manufacturer's tobacco products by at least the percentage specified in subsection (d) as measured from the baseline level for such manufacturer for such product.

(d) REQUIRED PERCENTAGE REDUCTIONS.—The reductions required in this subsection are as follows:

(1) In the case of cigarettes—

(A) with respect to the third and fourth annual performance surveys, 20 percent;

(B) with respect to the fifth and sixth annual performance surveys, 40 percent;

(C) with respect to the seventh, eighth, and ninth annual performance surveys, 55 percent; and

(D) with respect to the 10th annual performance survey and each annual performance survey thereafter, 67 percent.

(2) In the case of smokeless tobacco—

(A) with respect to the third and fourth annual performance surveys, 12.5 percent;

(B) with respect to the fifth and sixth annual performance surveys, 25 percent;

(C) with respect to the seventh, eighth, and ninth annual performance surveys, 35 percent; and

(D) with respect to the 10th annual performance survey and each annual performance survey thereafter, 45 percent.

(e) REPORT ON FURTHER REDUCTIONS.—The Secretary shall report to Congress by the end of 2006 on the feasibility of further reduction in underage tobacco use.

(f) PERFORMANCE OBJECTIVE RELATIVE TO THE DE MINIMIS LEVEL.—If the percentage of children determined to have used a type of the tobacco products of an existing manufacturer in an annual performance survey is equal to or less than the de minimis level, the manufacturer shall be considered to have achieved the applicable performance objective.

(g) PERFORMANCE OBJECTIVES FOR NEW MANUFACTURERS.—Each new manufacturer shall have as its performance objective maintaining the percentage of children determined to have used each type of such manufacturer's tobacco products in each annual performance survey at a level equal to or less than the de minimis level for that year.

(h) DE MINIMIS LEVEL.—The de minimis level shall be 1 percent of children for the applicable year.

SEC. 205. MEASURES TO HELP ACHIEVE THE PERFORMANCE OBJECTIVES.

(a) ANNUAL DETERMINATION.—Beginning in 2001, and annually thereafter, the Secretary shall, based on the annual performance surveys conducted under section 203, determine if the performance objectives for each type of tobacco product under section 204 has been achieved and if each manufacturer has achieved the applicable performance objective under section 204. The Secretary shall publish in the Federal Register such determinations and any appropriate additional information regarding actions taken under this section.

(b) INDUSTRY-WIDE NON-ATTAINMENT ASSESSMENTS.—

(1) INDUSTRY-WIDE NON-ATTAINMENT PERCENTAGE.—The Secretary shall determine the industry-wide non-attainment percentage, if any, for cigarettes and for smokeless tobacco for each calendar year.

(2) NON-ATTAINMENT ASSESSMENT FOR CIGARETTES.—For each calendar year in which the performance objective under section 204(b) is not attained for cigarettes, the Secretary shall assess a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$40,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$200,000,000, plus $120,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$2,000,000,000

(3) NON-ATTAINMENT ASSESSMENT FOR SMOKELESS TOBACCO.—For each year in which the performance objective under section 204(b) is not attained for smokeless tobacco, the Secretary shall assess a surcharge on smokeless tobacco product manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percentage points	$4,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 20 percentage points	$20,000,000, plus $12,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 20 percentage points
More than 20 percentage points	$200,000,000

(4) STRICT LIABILITY; JOINT AND SEVERAL LIABILITY.—Liability for any surcharge imposed under this subsection shall be—

(A) strict liability; and

(B) joint and several liability—

(i) among all cigarette manufacturers for surcharges imposed under paragraph (2); and

(ii) among all smokeless tobacco manufacturers for surcharges imposed under paragraph (3).

(5) SURCHARGE LIABILITY AMONG MANUFACTURERS.—A tobacco product manufacturer shall be liable under this subsection to one or more other manufacturers if the plaintiff tobacco product manufacturer establishes by a preponderance of the evidence that the defendant tobacco product manufacturer, through its acts or omissions, was responsible for a disproportionate share of the non-attainment surcharge as compared to the responsibility of the plaintiff manufacturer.

(6) EXEMPTIONS FOR SMALL MANUFACTURERS.—

(A) ALLOCATION BY MARKET SHARE.—The Secretary shall allocate the assessments under this subsection according to each manufacturer's share of the domestic cigarette or domestic smokeless tobacco market, as appropriate, in the year for which the surcharge is being assessed, based on actual Federal excise tax payments.

(B) EXEMPTION.—In any year in which a surcharge is being assessed, the Secretary shall exempt from payment any tobacco product manufacturer with less than 1 percent of the domestic market share for a specific category of tobacco product unless the Secretary finds that the manufacturer's products are used by underage individuals at a rate equal to or greater than the manufacturer's total market share for the type of tobacco product.

(c) MANUFACTURER-SPECIFIC SURCHARGES.—

(1) IN GENERAL.—If the Secretary determines that the required percentage reduction in use of a type of tobacco product has not been achieved by a manufacturer for a year, the Secretary shall impose a surcharge on such manufacturer under this paragraph.

(2) CIGARETTES.—For each calendar year in which a cigarette manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for cigarettes multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$80,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$400,000,000, plus $240,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$5,000,000,000

(3) SMOKELESS TOBACCO.—For each calendar year in which a smokeless tobacco product manufacturer fails to achieve the performance objective under section 204(c), the Secretary shall assess a surcharge on that manufacturer in an amount equal to the manufacturer's share of youth incidence for smokeless tobacco products multiplied by the following surcharge level:

If the non-attainment percentage for the manufacturer is:	The surcharge level is:
Not more than 5 percentage points	$8,000,000 multiplied by the non-attainment percentage
More than 5 but not more than 24.1 percentage points	$40,000,000, plus $24,000,000 multiplied by the non-attainment percentage in excess of 5 but not in excess of 24.1 percentage points
More than 24.1 percentage points	$500,000,000

(4) MANUFACTURER'S SHARE OF YOUTH INCIDENCE.—For purposes of this subsection, the them ''manufacturer's share of youth incidence'' means—

(A) for cigarettes, the percentage of all youth smokers determined to have used that manufacturer's cigarettes; and

(B) for smokeless tobacco products, the percentage of all youth users of smokeless tobacco products determined to have used that manufacturer's smokeless tobacco products.

(5) DE MINIMIS LEVELS.—If a manufacturer is a new manufacturer or the manufacturer's baseline level for a type of tobacco product is less than the de minimis level, the non-attainment percentage (for purposes of paragraph (2) or (3)) shall be equal to the number of percentage points by which the percentage of children who used the manufacturer's tobacco products of the applicable type exceeds the de minimis level.

(d) SURCHARGES TO BE ADJUSTED FOR INFLATION.—

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, each dollar amount in the tables in subsections (b)(2), (b)(3), (c)(2), and (c)(3) shall be increased by the inflation adjustment.

(2) INFLATION ADJUSTMENT.—For purposes of paragraph (1), the inflation adjustment for any calendar year is the percentage (if any) by which—

(A) the CPI for the preceding calendar year; exceeds

(B) the CPI for the calendar year 1998.

(3) CPI.—For purposes of paragraph (2), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

(e) METHOD OF SURCHARGE ASSESSMENT.—The Secretary shall assess a surcharge for a specific calendar year on or before May 1 of the subsequent calendar year. Surcharge payments shall be paid on or before July 1 of the year in which they are assessed. The Secretary may establish, by regulation, interest at a rate up to 3 times the prevailing prime rate at the time the surcharge is assessed, and additional charges in an amount up to 3 times the surcharge, for late payment of the surcharge.

(f) BUSINESS EXPENSE DEDUCTION.—In order to maximize the financial deterrent effect of the assessments and surcharges established in this section, any such payment shall not be deductible as an ordinary and necessary business expense or otherwise under the Internal Revenue Code of 1986.

(g) PROCEDURES.—In assessing price increase assessments and enforcing other measures under this section, the Secretary shall have in place procedures to take into account the effect that the margin of error of the annual performance survey may have on the amounts assessed to or measures required of such manufacturers.

(h) OTHER PRODUCTS.—The Secretary shall promulgate regulations establishing performance objectives for the reduction of the use by children of other products made or derived from tobacco and intended for human consumption if significant percentages of children use or begin to use such products and the inclusion of such products as types of tobacco products under this subtitle would help protect the public health. Such regulations shall contain provisions, consistent with the provisions in this subtitle applicable to cigarettes and smokeless tobacco, for the application of assessments and surcharges to achieve reductions in the percentage of children who use such products.

(i) APPEAL RIGHTS.—The amount of any surcharge is committed to the sound discretion of the Secretary and shall be subject to judicial review by the United States Court of Appeals for the District of Columbia Circuit, based on the arbitrary and capricious standard of section 706(2)(A) of title 5, United States Code. Notwithstanding any other provisions of law, no court shall have authority to stay any surcharge payments due the Secretary under this Act pending judicial review.

(j) RESPONSIBILITY FOR AGENTS.—In any action brought under this subsection, a tobacco product manufacturer shall be held responsible for any act or omission of its attorneys, advertising agencies, or other agents that contributed to that manufacturer's responsibility for the surcharge assessed under this section.

SEC. 206. DEFINITIONS.

In this subtitle:

(1) CHILDREN.—The term ''children'' means individuals who are 12 years of age or older and under the age of 18.

(2) CIGARETTE MANUFACTURERS.—The term ''cigarette manufacturers'' means manufacturers of cigarettes sold in the United States.

(3) EXISTING MANUFACTURER.—The term ''existing manufacturer'' means a manufacturer which manufactured a tobacco product on or before the date of the enactment of this title.

(4) NEW MANUFACTURER.—The term ''new manufacturer'' means a manufacturer which begins to manufacture a type of tobacco product after the date of the enactment of this title.

(5) NON-ATTAINMENT PERCENTAGE.—The term ''non-attainment percentage'' means the number of percentage points yielded—

(A) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is less than the baseline level, by subtracting—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is less than the baseline level, from

(ii) the required percentage reduction applicable in that year; and

(B) for a calendar year in which the percent incidence of underage use of the applicable type of tobacco product is greater than the baseline level, adding—

(i) the percentage by which the percent incidence of underage use of the applicable type of tobacco product in that year is greater than the baseline level; and

(ii) the required percentage reduction applicable in that year.

(6) SMOKELESS TOBACCO PRODUCT MANUFACTURERS.—The term ''smokeless tobacco product manufacturers'' means manufacturers of smokeless tobacco products sold in the United States.

This section takes effect one day after date of enactment.

CHAFEE AMENDMENT NO. 2439

(Ordered to lie on the table.)

Mr. CHAFEE submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

On page 216, between lines 18 and 19, insert the following:

SEC. 508. PROHIBITIONS AGAINST SMOKING ON SCHEDULED FLIGHTS.

(a) IN GENERAL.—Section 41706 of title 49, United States Code, is amended to read as follows:

"§ 41706. Prohibitions against smoking on scheduled flights

''(a) SMOKING PROHIBITION IN INTRASTATE AND INTERSTATE AIR TRANSPORTATION.—An individual may not smoke in an aircraft on a scheduled airline flight segment in interstate air transportation or intrastate air transportation.

''(b) SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit, on and after the 120th day following the date of the enactment of this section, smoking in any aircraft on a scheduled airline flight segment within the United States or between a place in the United States and a place outside the United States.

''(c) LIMITATION ON APPLICABILITY.—With respect to an aircraft operated by a foreign air carrier, the smoking prohibitions contained in subsections (a) and (b) shall apply only to the passenger cabin and lavatory of the aircraft.

''(d) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 60th day following the date of the enactment of this Act.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

THOMAS (AND ENZI) AMENDMENT NO. 2440

(Ordered to lie on the table.)

Mr. THOMAS (for himself and Mr. ENZI) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

On page 268, between lines 8 and 9, insert the following:

SEC. 1064. PROHIBITION ON RETURN OF VETERANS MEMORIAL OBJECTS WITHOUT SPECIFIC AUTHORIZATION IN LAW.

(a) PROHIBITION.—Notwithstanding any other provision of law, the President may not transfer a veterans memorial object to a foreign country or entity controlled by a foreign government, or otherwise transfer or convey such object to a person or entity for purposes of the ultimate transfer or conveyance of such object to a foreign country or entity controlled by a foreign government, unless specifically authorized by law.

(b) DEFINITIONS.—In this section:

(1) ENTITY CONTROLLED BY A FOREIGN GOVERNMENT.—The term ''entity controlled by a foreign government'' has the meaning given that term in section 2536(c)(1) of title 10, United States Code.

(2) VETERANS MEMORIAL OBJECT.—The term ''veterans memorial object'' means any object, including a physical structure or portion thereof, that—

(A) is located at a cemetery of the National Cemetery System, war memorial, or military installation in the United States;

(B) is dedicated to, or otherwise memorializes, the death in combat or combat-related duties of members of the United States Armed Forces; and

(C) was brought to the United States from abroad as a memorial of combat abroad.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

CRAIG AMENDMENT NO. 2441

(Ordered to lie on the table.)

Mr. CRAIG submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

On page 210, line 19, insert the following:

SEC. 456—Black Lung Allocation Account.—There is hereby established within the trust fund a separate account, to be known as the Black Lung Allocation Account, which shall be eligible to receive funds made available under Sec. 401(a) to make transfers to the Black Lung Disability Trust Fund.

KERREY AMENDMENT NO. 2442

(Ordered to lie on the table.)

Mr. KERREY submitted an amendment intended to be proposed by him to the bill, S. 1415, supra; as follows:

Title IV is amended by adding at the end the following:

SEC. 4___. SMOKING CESSATION AND PREVENTION BLOCK GRANT.

(a) APPLICATION OF PROVISIONS.—Notwithstanding any other provision of this Act—

(1) paragraphs (3) and (4) of section 451(a) and part D of title XIX of the Public Health Service Act, as added by title II of this Act, shall be null and void and shall not be given any effect; and

(2) section 451(b)(2)(A) shall be applied as if ''a smoking cessation block grant made under section 4___'' were substituted for ''part D of title XIX of the Public Health Service Act, as added by title II of this Act''.

(b) FUNDING OF GRANTS.—The sum of the amounts made available under paragraphs (1) and (2) of section 451(a) and subsection (b)(2)(A) of that section (after application of subsection (a)(2) of this section) for a fiscal year shall be used to make grants under this section.

(c) STATE PLAN.—

(1) IN GENERAL.—In order to receive a grant under this section for a fiscal year, a State shall submit, in such form and such manner as the Secretary shall require, a plan that sets forth how the State intends to use the funds provided under the grant for smoking cessation and prevention.

(2) COMMUNITY INVOLVEMENT.—The State shall consult with appropriate representatives of local communities in the development of the plan submitted under paragraph (1).

(d) DISTRIBUTION OF FUNDS.—

(1) IN GENERAL.—Subject to paragraphs (3) and (4), each State with an approved plan under subsection (c) shall receive a payment for a fiscal year equal to the amount determined under paragraph (2).

(2) AMOUNT DETERMINED.—

(A) IN GENERAL.—The amount determined under this paragraph for a State for a fiscal year is the amount equal to average of the following 2 ratios:

(i) The ratio of—

(I) the total expenditures by the State under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for the fiscal years 1992 through 1996 that are attributable to the treatment of individuals with tobacco-related illnesses or conditions for the fiscal year involved; to

(II) the total of such expenditures for all States for such fiscal years.

(ii) The ratio of—

(I) the total expenditures incurred in the State for such fiscal years in providing directly, or reimbursing others for the provision of, treatment of individuals with tobacco-related illnesses or conditions that are not taken into account under clause (i); to

(II) the total of such expenditures for all States for such fiscal years.

(B) DETERMINATION OF EXPENDITURES.—The method used to determine the expenditures attributable to the treatment of individuals with tobacco-related illnesses or conditions for purposes of subparagraph (A) shall be the method used by the Attorneys General Allocation Subcommittee in its report dated September 16, 1997.

(3) MINIMUM PAYMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in no case shall a State receive a payment under this subsection that is less than—

(i) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.1 percent of such total amount but does not exceed 0.2 percent of such amount, 0.2 percent;

(ii) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.2 percent of such total amount but does not exceed 0.3 percent of such amount, 0.3 percent;

(iii) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.3 percent of such total amount but does not exceed 0.4 percent of such amount, 0.4 percent; and

(iv) in the case of a State that would otherwise receive under paragraph (2) an amount that is equal to or exceeds 0.4 percent of such total amount but does not exceed 0.5 percent of such amount, 0.5 percent.

(B) NONAPPLICATION TO TERRITORIES.—Subparagraph (A) shall not apply to Puerto Rico, Guam, the United States Virgin Islands, American Samoa, or the Northern Mariana Islands.

(4) MINIMUM PAYMENTS TO SETTLEMENT STATES.—In no case shall the States of Florida, Minnesota, Mississippi, and Texas, receive payments under this subsection for a fiscal year that are less than the following:

(A) In the case of Florida, 5.5 percent of the total amount made available under subsection (b) for payments to States under this section.

(B) In the case of Minnesota, 2.55 percent of such amount.

(C) In the case of Mississippi, 1.7 percent of such amount.

(D) In the case of Texas, 7.25 percent of such amount.

(5) REALLOCATION OF AMOUNTS FOR OTHER STATES.—If the amount determined under paragraphs (3) and (4) exceeds the amount otherwise determined under paragraph (2) for 1 or more States for any fiscal year, the amount of the payments under paragraph (2) to all States to which paragraphs (3) and (4) do not apply shall be ratably reduced by the aggregate amount of such excess.

(e) USE OF FUNDS.—A State may use funds received under a grant made under this section for any purpose, including any purpose described in section 452(b)(2), so long as the State demonstrates in the State plan required under subsection (c) that the use of funds for such purpose is consistent with promoting and achieving smoking cessation and prevention.

(f) ANNUAL REPORTS.—Each State that receives funds under this section shall report

annually to the Secretary, in such manner and such form as the Secretary shall require, on the use of the funds received under this section and overall smoking trends within their State.

FEINSTEIN (AND OTHERS) AMENDMENT NO. 2443

(Ordered to lie on the table.)

Mrs. FEINSTEIN (for herself, Mrs. BOXER, Mr. DURBIN, Mr. D'AMATO, and Ms. MOSELEY-BRAUN) submitted an amendment intended to be proposed by them to the bill, S. 1415, supra; as follows:

On page 193, between lines 16 and 17, insert the following:

(4) ELIGIBILITY.—

(A) IN GENERAL.—To be eligible to receive amounts under this subsection, a State shall, through agreements entered into with local government entities described in subparagraph (B), provide such entities with a portion of the amounts received by the State under this subsection as consideration for the resolution or termination of civil actions under title XIV.

(B) LOCAL GOVERNMENT ENTITIES.—A local government entity described in this subparagraph is a city or county that commenced a health or smoking-related civil action against one or more participating tobacco product manufacturers, distributors, or retailers on or before June 20, 1997 (including actions by the City and County of San Francisco and related cities and counties, Los Angeles County, New York City, Erie County, Cook County, and the City of Birmingham).

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the full Committee on Energy and Natural Resources.

The hearing will take place on Thursday, June 4, 1998, at 9:30 A.M. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of this hearing is to receive GAO's preliminary comments on its review of the Administration's Climate Change Proposal and to hear the Administration's response to GAO's comments.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Kristine Svinicki at (202) 224–7933.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. GRAIG. Mr. President, I would like to announce for the public that a field hearing has been scheduled before the Subcommittee on Forests and Public Land Management of the Senate Committee on Energy and Natural Resources.

The hearing will be held in Grand Junction, Colorado at the Avalon Theater on Saturday, June 6, 1998, at 8:30 a.m. The Avalon Theater is located at 645 Main Street, Grand Junction, Colorado.

The purpose of this hearing is to receive testimony on the Bureau of Land Management's ongoing wilderness review efforts within the State of Colorado.

The Subcommittee will invite witnesses representing a cross-section of views and organizations to testify at the hearing. Others who wish to testify may, as time permits, make a brief statement of no more than 2 minutes. Those wishing to testify should contact Senator ALLARD's office (202) 224–5941 or Kevin Studer of Senator CAMPBELL's office (202) 224–5852 or the Committee on Energy and Natural Resources in Washington, DC at (202) 224–6170. The deadline for signing up to testify is Friday, May 29, 1998. Every attempt will be made to accommodate as many witnesses as possible, while ensuring that all views are represented.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Mike Menge at (202) 224–6170.

SUBCOMMITTEE ON ENERGY RESEARCH, DEVELOPMENT, PRODUCTION AND REGULATION

Mr. NICKLES. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Subcommittee on Energy Research, Development, Production and Regulation of the Committee on Energy and Natural Resources.

The hearing will take place Thursday, June 11, 1998 at 10 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of this hearing is to conduct oversight on the federal oil valuation regulations of the Minerals Management Service.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Michael A. Poling at (202) 224–8276.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that an oversight hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, June 11, 1998 at 2 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this oversight hearing is to receive testimony on the Recreational Fee Demonstration Program.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Kelly Johnson at (202) 224–3329.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet in Executive session during the session of the Senate on Thursday, May 21, 1998 at 2:30 p.m. to consider possible amendments relating to Bosnia.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Committee on Foreign Relations be granted permission to meet during the session of the Senate on Thursday, May 21, for purposes of conducting a joint committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this oversight hearing is to receive testimony on the subject of Iraq: Are Sanctions Collapsing?

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

COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS

Mr. GREGG. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a business meeting to consider pending business Thursday, May 21, 9:30 a.m., Hearing Room (SD–406).

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

COMMITTEE ON FOREIGN RELATIONS AND THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations and the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, May 21, 1998, at 10 a.m. to hold a hearing.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, May 21, 1998 at 2 p.m. to hold a hearing.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Thursday, May 21, 1998 at 1 p.m. to conduct an oversight hearing on the Unmet Health Care Needs in Indian Country. The Committee will meet in room 106 the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Thursday, May 21, 1998, at 10 a.m., in room 226, of the Senate Dirksen Office Building.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GREGG. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on ''Genetic Information and Health Care'' during the session of the Senate on Thursday, May 21, 1998, at 10 a.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GREGG. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, May 21, 1998, at 11 a.m. to hold a hearing on the nomination of Joan A. Dempsey to be Deputy Director of Central Intelligence for Community Management.

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

SUBCOMMITTEE ON ENERGY RESEARCH, DEVELOPMENT PRODUCTION, AND REGULATION

Mr. GREGG. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research, Development, Production, and Regulation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, May 21, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2 p.m. The purpose of this hearing is to receive testimony on S. 1141, the Biodiesel Energy Development Act of 1997 and S. 1418, the Methane Hydrate Research and Development Act of 1997.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mr. GREGG. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Thursday, May 21, 1998, at 10 a.m. for a hearing on ''Benefits of Commercial Space Launch for Foreign Satellite and ICBM Programs''.

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

ADDITIONAL STATEMENTS

HONORING VETERANS ON MEMORIAL DAY

● Mr. BINGAMAN. Mr. President, this weekend, Americans from all walks of life turn their thoughts to those men and women who died in the service of our nation. From the early heroes of the Revolutionary War through those who fought and died in the Persian Gulf, about 1.1 million Americans have sacrificed their lives to preserve our precious freedom and to meet our commitments to allies around the globe. We are privileged to enjoy the benefits of the ultimate sacrifice that those men and women in our Armed Forces made on our behalf. We take this day to honor their memory and offer our deepest gratitude.

I remember when I was a young man, hearing those stirring words of President John Kennedy when he said, ''Ask not what your country can do for you, but what you can do for your country.'' Those words rang loud and clear in the hearts and minds of my generation. They captured our spirit and renewed our commitment to serve America.

Perhaps the noblest heroes of my generation were those who, in the midst of the great debate over Vietnam, stepped forward to serve their country and paid the ultimate sacrifice. Those sacrifices were borne from the same spirit that John Kennedy urged upon all of us in 1961. Regardless of political persuasions, none could argue that those who died in Southeast Asia were not among America's finest men and women. We salute them today, and will always remember and be grateful for their patriotism and sacrifice.

Those brave men and women who died in Vietnam, however, were not unique in American history. The legacy of courage, sacrifice, and patriotism has a long history in this country. During this century some 33,651 Americans lost their lives in Korea, 417,316 died during World War II, and 117,708 perished during the First World War. Almost 500,000 Americans—both North and South—lost their lives fighting for the America they believed in during the Civil War. We owe each and every one of those veterans and their families a debt of gratitude.

I hope that every New Mexican and every American will take time this Memorial Day to find a quiet moment to consider the enormity of what our fallen friends and families have bequeathed us. This nation is blessed beyond all others—-providing us with a political system that guarantees each of us life, liberty, and the pursuit of happiness. We are free to speak our minds. We are free to practice our faiths. We are free to travel this great land and be with whomever we choose. These precious gifts of freedom have not come free. They have endured through the blood of American heroes and heroines. We pause this day to say ''thank you.'' We won't forget.●

TRIBUTE TO MISSOURI BROADCASTERS

● Mr. BOND. Mr. President, I rise to pay tribute to the Missouri radio and television stations for their contributions to public service. This year, in a survey conducted for the Missouri Broadcasting Association by Public Opinion Strategies, it was determined that Missouri Broadcasters aired $44 million worth of public service announcements (PSA) in 1997. This amount was fourth best among the thirty-eight states who participated.

The survey reported that Missouri television stations air an average of 175 PSAs each week and radio stations air an average of seventy-five per week. That comes to a total of 18,775 PSAs weekly. Every television station and 94 percent of radio stations in Missouri participated in fundraising efforts for charitable organizations last year. Those organizations received a total of $17.3 million in charitable donations because of the on-air PSAs made by Missouri's broadcasters.

The most frequent PSAs dealt with drug and alcohol prevention and abuse. Other common PSAs covered anti-crime efforts, hunger, poverty, the homeless, anti-violence and AIDS prevention. No other industry can make the impact that broadcasters can make. I am proud to say that the Missouri broadcasters are some of the best.

I commend the Missouri broadcasters for their untiring dedication in helping charitable causes in Missouri. It does make a difference and people are benefitting from these broadcasters' efforts. I join the many who thank the Missouri broadcasters for their support throughout the year. Whether it be charities, weather warnings or public health announcements, I know the Missouri broadcasters will be on-air to lead the cause.●

HONORING THE CONNECTICUT EDUCATION ASSOCIATION ON ITS 150TH ANNIVERSARY

● Mr. DODD. Mr. President, there are many things about my home state of Connecticut that are a source of great pride to its people, but few are greater than the overall quality of our state's public schools. Connecticut students are performing at the highest levels in the nation on federally sponsored standardized tests. Three out of four Connecticut public school students go on to pursue higher education. And our public school students have outperformed students from private and parochial schools in our state.

Many people have contributed to the quality of our public schools, in particular our parents and students. But the backbone of Connecticut's public schools is its teachers. In my view, they are the finest in the country, and there are numbers that back me up. More than 80 percent of Connecticut's public school teachers have advanced degrees, the highest percentage in the country. They are among the nation's most experienced teachers, with the average teacher having taught for more than 15 years. And the greatest testament to the quality of their teaching is the accomplishments of Connecticut's students.

One organization, more than any other, has worked to ensure that Connecticut's children are taught by the finest teachers in the country, and that organization is the Connecticut Education Association (CEA).

The CEA is a membership organization that represents nearly 30,000 elementary and secondary public school teachers in our state. Through the years, the CEA has consistently promoted the value of public education, encouraged public awareness of the resources needed to provide quality education, and emphasized the importance of the teacher in the education process.

This is a significant year for the CEA: it celebrates its 150th anniversary. Over the past century and a half, the Association has been a consistent champion of children, teachers, and public education, and today, its voice on education issues is as strong as ever. There is no job more important than teaching our children, and I would like to thank and congratulate the Connecticut Education Association for a job well done. I wish them all the best as they celebrate this anniversary and continued success in the future.●

FINANCIAL SERVICES ACT OF 1998

● Mr. D'AMATO. Mr. President, today Senator SARBANES, the distinguished Ranking Member on the Senate Banking Committee, and I have announced that we will hold hearings on June 17th to begin the process of Senate consideration of the Financial Services Act of 1998, recently passed by the House of Representatives.

America is the financial leader of the world, and New York is the capital. But we cannot remain complacent. We must recognize that the world is changing and global competition is tougher than ever. We must meet this change head on. If we are to remain competitive and maintain our preeminent position in the marketplace, we must provide a climate that allows our financial system to be as efficient, and competitive as possible.

Mr. President, simply put, financial modernization will provide consumers with more choices. Financial institutions will be able to provide even more diverse services. Insurance companies, securities firms, brokerage houses, local banks and other institutions will be allowed to compete fairly with one another. But we must remember that while expanding the freedom of every American to make their financial choices, we must not sacrifice the safety and soundness or place the taxpayers at risk.

The issues surrounding financial modernization have in the past proven to contentious. Our hearing next month will allow an open and frank dialogue with the Administration, industry groups and consumers.●

TRIBUTE TO WILLA CATHER

● Mr. KERREY. Mr. President, writer Willa Cather fashioned from her experiences uncommon stories of the character of Nebraska's people and landscapes. It is my pleasure to pay tribute to Cather because, like many Nebraskans, her writing continues to inspire me.

This year, we celebrate three major anniversaries in Cather's life. Seventy-five years ago, Cather won the Pulitzer Prize for ''One of Ours.'' One of her best known novels, ''My Antonia,'' will have its 80th anniversary on September 21st. Finally, December 7th marks the 125th anniversary of her birth.

Cather's writings illustrate a Nebraska of stark landscapes, epic frontiers, and mysterious grandeur. Her characters are often placed in a Nebraska panorama to which Cather gave breathtaking expression. Shortly after moving from the east to Nebraska at the age of nine, Cather realized that that shaggy grass country had gripped me with a passion I have never been able to shake. It has been the happiness and the curse of my life.''

For Cather in ''My Antonia,'' Nebraska is raw and vast, the material out of which countries are made. . . naked as the back of your hand.'' Out of the passion she felt for Nebraska's materials, Cather wrote with unparalleled sensitivity about the soil, trees, and wildflowers of the landscape. In The ''Song of the Lark,'' the cottonwoods are the light-reflecting, wind-loving trees of the desert, whose roots are always seeking water and whose leaves are always talking about it, making the sound of rain.''

The inhabitants of the land are connected to and determined by this landscape. Thus, in many of Cather's novels, the character is a pioneer, whether literally or as artist, one breaking new ground, finding his or her own path, creating his or her own landscape. In the hands of Cather's sparse and evocative prose, questions of the pioneering self shaped by experience and tested by difficulty indicate Cather's commitment through her characters to integrity.

Readers continue to feel the special relationship between the wonder of Nebraska and the dignity of its people through Cather's well known novels ''O Pioneers, My Antonia, One Of Ours,'' and ''Death Comes for the Archbishop,'' as well as her poetry and other stories. I invite you to join me in honoring Willa Cather on the 75th anniversary of her Pulitzer Prize, the 80th anniversary of ''My Antonia,'' and in memory of her 125th birthday.

In ''The Wild Land,'' Cather writes, The history of every country begins in the heart of a man or a woman.'' Thanks to Cather's artistry, we continue to be moved by the written recordings of Nebraska's history.●

SPACE DAY

● Mr. FRIST. Mr. President, I rise today in honor of ''Space Day'' to recognize the accomplishments and achievements we have made in the United States over the last quarter of the century in space-related activities.

The space industry has rapidly evolved from public sector dominance to private sector innovation. Throughout the industry's infancy, the Department of Defense's military operations and the National Aeronautics and Space Administration's activities dominated the emerging space frontier. These DOD and NASA initiatives served as catalysts in the commercialization of space. Many advances in technology have resulted, leading to new jobs, industries, and exciting new opportunities for uses of space that we cannot yet imagine.

The growth within the space industry, and the opportunities created have been dramatic. The space industry is a major contributor to our economy, and has spurred technological advances over the past 20 plus years. In 1996, total industry revenues from the commercial sector exceeded those from the government sector for the first time ever. Revenues from the space industry are currently running at approximately $85 billion annually, and are projected to increase to approximately $121 billion by the year 2000.

Although participation in space initiatives has been and continues to be capital intensive, this arena is fertile ground for smaller entrepreneurs and innovative startups. One of the key factors has been the huge market for satellite launches. The demand for telecommunications services and the distribution of television and cable programming caused the satellite capacity to expand. This industry is continuously evolving to include a host of new satellite-based services including worldwide mobile telephony, and infrastructure for the television industry. Through continued Federal investment in space ventures, we can also see other emerging applications such as distance learning, telemedicine, and the exploration of microgravity conditions of materials in a clean space environment on the International Space Station.

Transferrable technologies—''spin-offs''—from government space initiatives are now being used in various commercial applications. For example, as a result of tests aimed at improving the performance of NASA's Space Shuttle, the Boeing Company was able to hone its design of the Boeing 777 aircraft at NASA's facilities. Several NASA innovations were instrumental in the development of that aircraft, including wind tunnel tests to confirm the structural integrity, use of lightweight composite structures for increased fuel efficiency and range, and the use of computer modeling to conduct advanced computer-based aerodynamic analysis. The is the largest twin engine jet manufactured today. Other such spinoffs include fire retardant materials used in space flight suits now being used for fire fighters and automotive insulation for race car drivers, and various sensors that monitor radioactive materials and environmental control, to cite just a few.

The benefits to the taxpayer through the development of new industries, new products, new services, and improved quality of life represents a substantial return on the national investment in space-related initiatives.

Today, on Space Day, we recognize and honor those visionaries, entrepreneurs, and leaders who have made great accomplishments in the advancement of technology through space-related endeavors.●

TRIBUTE TO THE UNIVERSITY OF GEORGIA SCHOOL OF LAW AND GEORGIA GOV. CARL SANDERS

Mr. CLELAND. Mr. President, I rise today to recognize The University of Georgia School of Law's many years of accomplishments and achievements, and to honor former Governor of Georgia Carl Sanders, who graduated from UGA's Law School 50 years ago.

I would like to applaud the commitment and hard work of the entire law school community: the faculty, staff, students, and alumni. The reputation of the school continues to grow and prosper each year.

Over the years UGA has produced thousands of successful lawyers, including many leaders and policy makers. Since opening its doors in 1785, the law school has graduated five U.S. Senators, 30 Members of Congress, nine governors, including Gov. Carl Sanders, eight Speakers of the Georgia House of Representatives and 54 Appellate Judges.

I recently had the opportunity to deliver the commencement speech to the 1998 graduating class of The University of Georgia School of Law and was reminded of the impact and value of the law.

In order for the law to be respected, and for us to be respected as authorities on the law—whether as lawyers, law enforcement or lawmakers—there must be a sense of morality behind the law. It is a basic historical fact that people will not obey unjust law.

As I look around Washington I see many reminders of the importance of the law. The inscription on the Supreme Court building is: ''Equal justice under law.'' There is an inscription over the 10th Street entrance of the U.S. Department of Justice Building in Washington which reads: ''Justice in the life and conduct of the State is possible only as first it resides in the hearts and souls of its citizens.'' Justice comes before the law. All of us who touch the law are bound by this justice and honor.

With justice and morality behind the law, we strengthen it. Without it, the law is weakened. If all of us who touch the law do not abide by these terms, the law loses its credibility. Ultimately, those of us who touch the law have a responsibility to lead others to respect it.

The men and women who have graduated from The University of Georgia with law degrees over the past two hundred years have and will continue to strengthen and uphold the law of this nation. I ask my colleagues in the Senate today to join me in saluting and congratulating The University of Georgia School of Law for instructing and graduating men and women who have shaped our nation's history during the last two centuries, including Gov. Carl Sanders and other Georgia lawmakers.

PROVIDING FOR THE CONTINUATION OF SERVICE AND EXTENSION OF TERM OF SERVICE OF MEMBERS OF THE DISTRICT OF COLUMBIA FINANCE CONTROL AUTHORITY

● Mr. FAIRCLOTH. Mr. President, I ask that a bill that I intend to introduce be printed in the RECORD. I wish to alert my colleagues that I hope the Senate will be able to act on this legislation prior to the Memorial Day recess.

The text of the bill follows:

S. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTINUATION OF SERVICE AND EXTENSION OF THE TERM OF SERVICE OF MEMBERS OF THE DISTRICT OF COLUMBIA FINANCIAL CONTROL AUTHORITY.

Section 101(b)(5) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (Public Law 104–8; 109 Stat. 100) is amended by—

(1) striking subparagraph (A) and inserting the following:

''(A) IN GENERAL.—The term of each member of the Authority appointed initially under this Act shall expire on September 1, 1998. Except as provided in subparagraph (B), each Member of the Authority appointed after the initial appointments shall serve for 3 years.''; and

(2) adding at the end the following:

''(D) CONTINUATION OF SERVICE UNTIL SUCCESSOR APPOINTED.—Upon the expiration of a term of office, a member of the Authority may continue to serve until a successor has been appointed.''.●

TRIBUTE TO THOMAS P. MONDANI

● Mr. DODD. Mr. President, I rise today to pay tribute to one of the greatest leaders and supporters of public education that the State of Connecticut has ever known: Thomas P. Mondani. This past March, the State of Connecticut was saddened by his passing at the age of 63.

Tom Mondani served as executive director of the Connecticut Education Association (CEA), the State's largest teacher organization, for longer than any individual in the organization's 150-year history.

Mr. Mondani began his career in public education as a social studies and English teacher in Moodus, CT in 1959. He joined the CEA staff in 1963 as a research consultant and was promoted to director of research 2 years later. As director of research, he compiled and published numerous studies of statistical data related to educational expenditures in Connecticut.

When Tom Mondani was appointed executive director in 1971, his work in school finance made him a recognized authority on research and education legislation in the State.

Mr. Mondani also served in Connecticut's State legislature. In 1965, he was elected to the first of his two terms as a State representative, and in 1970, he moved from the House to the State Senate. As a State legislator, Tom Mondani worked diligently on education issues, and he authored legislation that provided maintenance of all accumulated tenure and sick leave rights for teachers who had been incorporated into recently formed regional school districts.

Tom Mondani left public office in 1971 when he accepted his appointment as CEA executive director, and he often utilized the political skills that he developed in the General Assembly during his 22-year tenure. He worked with teachers as well as political leaders to secure the passage of many laws to help Connecticut's teachers, including improvements in teacher freedom of residency and the establishment of binding arbitration for teacher-board of education negotiations. During his tenure from 1972 to 1994, he helped develop major advancements for students and teachers in the areas of teacher standards, public school finance, and collective bargaining.

Most recently, Tom Mondani served as vice chair of the State Board of Governors for Higher Education.

In 1994, the CEA Board of Directors voted unanimously to recognize Tom Mondani's contributions by bestowing him with the organization's most prestigious award: the CEA Friend of Education Award. And not only did CEA present him with the award, but they also renamed the award in his honor.

Upon his passing, countless people, including teachers, parents, and former Governors spoke out in praise of this remarkable man. They spoke of his commitment to the children of Connecticut. They remembered his leadership, wisdom, integrity, intellect and fairness. They said that he elevated the thinking in the State about children, teachers, and public education.

I would like to join the chorus of voices singing the praises of this honorable man. I knew Tom Mondani, and I saw first-hand his commitment and dedication to helping others and improving the quality of our public schools. The people of Connecticut will miss him dearly.●

TRIBUTE TO GENE E. HUCKSTEP

● Mr. BOND. Mr. President, a very popular Sunday night television show, entitled, ''Touched by an Angel'' focuses on stories where people's lives have been affected in a positive way by angels who are sent from Heaven to serve among us.

I rise today to pay tribute and honor a very dear friend who might just qualify as one of those angels that serves to minister to his fellow man.

This past week, a former Presiding Commissioner of Cape Girardeau County, Gene Huckstep, completed his successful service on Earth just before reaching his 70th birthday.

Gene Huckstep was widely loved and universally respected, but he was at first appearance not one you would figure to be an angel. Gene was a powerfully-built man who could be as rough as he needed to be. He laughingly told stories about his educational career, which at times bordered on juvenile delinquency. He was sent in the military to shape up.

Then, in a career fueled with brushes with death, by his calculation he used up about 39 lives. In the Army as a tank driver he once was badly burned when the tank caught fire when it was being refueled, and another time when his tank went into water 25 feet deep he barely escaped drowning.

After his service career he returned to his native Cape Girardeau and saw death and destruction first-hand when the May 21, 1949 tornado struck. After taking a baby from the hands of a dying man impaled on a two-by-four, he searched for other survivors and fell into a cellar fracturing three vertebrae and leaving him in a body cast from hip to neck.

His outstanding service to his fellow man began in 1965 when his family-owned body shop bought a gas-powered saw which led law enforcement agencies to begin to call on Gene to rescue victims in serious car accidents.

He faced many life and death situations cutting people out of burning automobiles to save their lives; in some cases losing the battle to flames before he could extricate them.

One time he was trying to retrieve a drowning victim when friends on the bank saw swarms of cottonmouth water moccasins coming toward him. They pulled him out with a grappling hook that saved him from potentially fatal snake bites.

Over his career in 22 years he personally extricated victims from 1,976 serious car accidents. For these victims and their families, Gene Huckstep truly was an angel.

His service to mankind continued well beyond his extrication business. In 1978 he was elected Presiding Commissioner of Cape Girardeau County with strong bipartisan support and led the way on many improvements in the county including a new jail, a veterans home, and many other worthwhile benefits.

In the private sector he led the drive for a new emergency room at St. Francis Hospital, and he served as Chairman of the Board of Cameron Mutual Insurance Company.

His specific charitable contributions are far too many to recount, but it is safe to say he left his community a far better place because he touched so many things for the good of the community and his fellow man.

As one who was blessed by his friendship as well as his political support, I shall always remember his generosity, his good humor, and his genuine concern for others. Our thoughts and prayers are with his lovely wife Betty, his family, and his many close friends. I shall always treasure his memory and the fact that he was spared from dangerous situations so many times to carry on his work among the people of southeast Missouri.●

TULARE, SOUTH DAKOTA HIGH SCHOOL BAND TRAVELS TO CANADA

● Mr. JOHNSON. Mr. President, I want to take this opportunity today to recognize the Tulare, South Dakota High School concert band for their up-coming trip to Canada. The Tulare band will travel to Winkler, Manitoba, Canada on June 2, 1998 to perform concerts with the Canadian Garden Valley Collegiate School.

I want to express my appreciation to Paul Moen, band director and Karl Redekop, principal from Garden Valley Collegiate School. These two individuals have worked very hard to plan and organize this exciting trip. I also want to thank Tulare's band director, Sam Glantzow, for his countless hours of dedicated work to see that this great learning experience for the band members from Tulare High School is a success.

Mr. President, the band members from both schools will gain valuable knowledge about new cultures and will form international friendships. I am sure this will be an experience everyone will remember for a lifetime.●

RECOGNIZING THE 351st MP COMPANY FOR ITS ROLE IN BOSNIA-HEREZOGOVENIA

● Mr. MACK. Mr. President, I would like to take a few minutes to welcome home the 351st MP Company who recently returned from Bosnia on April 3, 1998. The President sent our service men and women to Bosnia in an effort to bring peace to the region. I think it is appropriate to recognize the important and extensive contributions of our Reserve Forces without whom this extended mission probably would not have been possible.

The 351st, consisting of 182 personnel, primarily from the City of Ocala, FL, was mobilized on August 19, 1997 and ordered to Bosnia under the command of Captain Keith Holmes. Prior to their departure, the unit underwent extensive training at both Ft. Benning, GA and Ft. Polk, LA, before being sent to Bosnia-Herzogovina. In Bosnia, the unit was split between two base camps, Eagle Base and Bedrock, located in Tuzia valley.

While in Bosnia, the 351st participated in operation Joint Guard. The operation's major focus was to provide a stable environment for implementation of the General Framework Agreement for Peace (GFAP). The 351st conducted numerous peacekeeping missions, which included: area presence patrols, weapons storage site inspections, quick Reaction Force duties on Eagle Base, and protective services for numerous senior U.S. Army officers, culminating with the President of the United States during his visit to Bosnia.

In leaving their families and their jobs, the men and women of the 351st have endured personal sacrifice and demonstrated their deep sense of duty to their country. It is only through the recognition and use of reservists as an integral part of our total force structure that the United States has been able to demonstrate its commitment to peace and security in Bosnia. And, through this commitment, the United States has made possible the promise of safety and hope of reconciliation to the people of this troubled region.

In its role, the 351st has served as a shining example of the indispensable role of Reservists in our Armed Forces. Reservists who answered the call of duty when their country asked them to serve have my deepest respect and gratitude. Accordingly, it gives me great pleasure to welcome home the 351st MP Company and thank them for a job well done.●

TRIBUTE TO DOUGLAS C. HOLBROOK

● Mr. LEVIN. Mr. President, I rise today to pay tribute to Douglas C. Holbrook, who will be retiring from his position as Secretary-Treasurer of the American Postal Workers Union in November, 1998. Mr. Holbrook is being recognized for his service to the men and women of the American Postal Workers Union at their 14th Biennial National Convention, which will take place in my home town of Detroit, Michigan, from July 20–24, 1998.

Douglas Holbrook was born and attended high school in Virginia, and moved to Michigan to study labor relations and administration at Wayne State University in Detroit. While in Detroit, Mr. Holbrook began his career with the U.S. Postal Service as a part-time clerk. His abilities were quickly recognized by his fellow employees, and he began his distinguished career in labor relations with the Detroit District Area Local. After serving as Trustee, Editor of the Detroit Postal Worker and Vice President, he was elected President of the District Local in 1966. Mr. Holbrook served in this position until being chosen to fill the unexpired term of his predecessor as Secretary-Treasurer of the American Postal Workers Union.

The American Postal Workers Union is the largest union of postal workers in the world. Under the steady and determined leadership of Mr. Holbrook, APWU has truly been a powerful force for workers rights, fair pay and a safe

workplace. I know that he will be missed by his colleagues and by postal workers from every corner of the country.

Mr. President, I know my colleagues join me in expressing appreciation to Douglas Holbrook for his distinguished service to our nation's postal workers, and in wishing him well in his upcoming retirement.●

CATHERINE KALINOWSKI, COLORADO STATE CHAMPION, THE CITIZENS FLAG ALLIANCE ESSAY CONTEST

● Mr. ALLARD. Mr. President, I rise today to pay tribute to Catherine Kalinowski who has been named the Colorado State champion in The Citizens Flag Alliance Essay Contest. This young lady was charged with the task of writing an essay on the theme, ''The American Flag Protection Amendment: A Right of the People . . . the Right Thing to Do,'' and did a fine job of making the case for protecting the greatest of our national symbols.

As many in this Chamber know, I am a strong supporter of a constitutional amendment to prohibit the desecration of our flag. The American flag is a great symbol of our Nation, and it should be regarded with the highest of honors. It is a part of our national identity, representing the hopes, dreams, and honor of our country.

As I read this essay, one passage struck me as particularly insightful. I believe that Catherine sums up our beliefs best when she writes,

> The visage of the nation's flag has altered as it has aged, with modifications in the dimensions, design, and number of stars; yet changing appearance has not impeded the flag from becoming the principal image of American ideals.

I would like to submit the full text of Ms. Kalinowski's essay for inclusion in the CONGRESSIONAL RECORD at this time.

Mr. President, Catherine Kalinowski represents the best and brightest that America has to offer. Young people like her are our future, a future that is brighter because of her commitment and resolve. On behalf of all Coloradans, I would like to congratulate Catherine and wish her the best of luck in the upcoming national competition.

The essay follows:

THE AMERICAN FLAG PROTECTION AMENDMENT: A RIGHT OF THE PEOPLE . . . THE RIGHT THING TO DO

(By Catherine M. Kalinowski)

''Stars and Stripes Forever,'' a song by John Philip Sousa proclaims the American flag as ''the flag of the free'' and ''the Banner of the Right.'' Sousa declares ''May it wave as our standard forever,'' but may it? The flag of the United States of America is so loosely protected by state and federal laws that the molestation of the flag has become acceptable. America's flag has gone from being a symbol of freedom and righteousness to one of commercialism and insurrection.

As the Colonists fought for the rule of the land they considered their own, creation of a separate identity from England became important. Before a fleet of the Continental Congress set out to intercept British supply boats coming into Boston, Col. Joseph Reed wrote to his commander, General George Washington. ''Please to fix upon Some particular Colour for a Flag—& a Signal, by which our vessels may know one another.'' Col. Reed's letter of request was lamentably late, forcing the ships to sail under their old flags. The flag issue was settled when on June 14, 1777, Congress, ''Resolved, That the flag of the thirteen United States be thirteen stripes alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation.'' And by November 1, 1777, Stars and Stripes were seen flying from a US ship under the command of Continental Navy Captain John Paul Jones. The flag on Jones' vessel was the first to represent the United States in a foreign port and to receive recognition as representing America as a nation, being given a nine-gun salute by the French at Quiberon Bay. Though originally needed for the practical objective of identification at sea, the creation of Old Glory became significant to the establishment of the nation.

The visage of the nation's flag has altered as it has aged, with modifications in the dimensions, design, and number of stars; yet changing appearance has not impeded the flag from becoming the principal image of American ideals. Life, liberty, and the pursuit of happiness is embodied in every stitch of the US flag. As United States Senator Paul Fannin wrote, ''Those who tear down the flag reveal their hatred for everything good and great in our country, because the flag is a symbol of what we want America to be—a land of justice, opportunity, equality and compassion.'' New York Mayor John V. Lindsay viewed the flag as having individual stars and stripes to represent the individuality of the country's citizens; however, because the same flag flies over all Americans, the flag ''binds us together in the common enterprise we call America.'' A representation of so much positive in American society, a representation of the United States itself, it is unfortunate that the flag is becoming insignificant.

During the beginning of this century, most states enacted laws to discourage flag desecration, outlawing placing any marks or pictures of the flag, forbade any flag usage for commercial purposes, and banned any physical destruction of flags or any'' act or words' that publicly cast ''contempt'' on the flag. These standards have been obscured to the point of oblivion. The flag is pictured on everything from apparel and political paraphernalia to automobiles and boxes of cereal. Depicted on every corner, the flag no longer receives the veneration due to it. Penalization for defiling the flag through acts such as flag burning was practiced until what has been called the 1989–1990 Flag Burning Controversy. Gregory Lee Johnson was arrested in 1984 for burning a flag in Dallas, Texas. Under Texas' Venerated Objects law, Johnson had committed a crime and was sentenced to the maximum penalty of one year in prison and a fine of $2,000. An appeals court reversed Johnson's conviction by a 5–4 vote on April 20, 1988. Dallas County, in response to the Texas Court of Criminal Appeals, requested the ruling of the U.S. Supreme Court. The decision of the Supreme Court upheld through another 5–4 vote the conclusion of the Texas court, agreeing that flag burning is protected by the First Amendment. In response to the Johnson decision, there have been votes for an amendment protecting the flag, but none with enough majority to adopt the amendment.

Constitutionality of flag burning has been supported by the guarantee of free speech, including symbolic speech, in the First Amendment. However, the Supreme Court has ruled that freedom of speech has limits; restricted areas of speech include obscenity, defamation, speech that leads to illegal action, fighting words, and speech in public schools. Because obscenity is generally defined as anything that violates society's standards of decency, desecration of Old Glory could be considered indecent, thus unprotected by the Constitution. The consideration of actions protected as speech also allows for destruction of the flag to be viewed as fighting words, exceeding another limit of the First Amendment. In *Chaplinsky* v. *New Hampshire* (1942), the Supreme Court defined ''fighting words'' as words that, ''have a direct tendency to cause acts of violence.'' Flag burning seems a fighting word as it often leads to acts of violence. When considering obscenity and fighting words, the flag does not appear to be protected by free speech. Therefore, it seems in order to go ahead and proceed with the next step, creating an American Flag Protection Amendment.

To propose such a protection amendment, two-thirds of the members of both houses of Congress or the same percentage of members of a national convention must vote for the proposal of the amendment. Once proposed, three-fourths of the states must ratify the amendment by a vote in each state's legislature or state convention. If enough citizens gave their support of an American Flag Protection Amendment, the representatives of the people would surely follow their will and obtain protection for the banner of the nation.

American's flag needs and deserves to be treated with dignity, and it is the right of the public to rally for Constitutional protection of the magnificent symbol of the United States. So much time as already elapsed—now is the time to act justly on the behalf of Old Glory. With swift action, Stars and Stripes will be able to, ''wave as our standard forever.''●

MORDECHAI STRIGLER

● Mr. MOYNIHAN. Mr. President, today is a bittersweet day at the Jewish Theological Seminary in New York City where the annual commencement ceremony will include an unprecedented presentation of a posthumous honorary doctorate to Mordechai Strigler, the talented editor of the Yiddish Forward who died last week at the age of 76.

I rose almost a year ago today to share with the Senate the news of the Forward's centenary. This remarkable newspaper, which once helped hundreds of thousands of new immigrants learn about their new homeland, now prints Yiddish, Russian and English weekly editions. The Yiddish edition has gone from a daily press run of 250,000 copies to a weekly run of 10,000, but has retained much of the literary excellence and social conscience that has so characterized the Forward during its storied history.

Mordechai Strigler was born in 1921 in Zamosc, Poland, and was sent to study in a yeshiva at age 11. In 1937 he began work as a rabbi and teacher in Warsaw.

When the Germans occupied Poland in 1939, he tried to escape to Russia, but was caught at the border. He spent

a few months at the Zamosc ghetto with his parents and then five years in several concentration camps. In Buchenwald, he was a member of the Resistance and served as a covert teacher for the children incarcerated there. He was liberated on April 11, 1945.

After the war, he began writing furiously and prolifically for the next 53 years until his death. He chronicled the slave-labor camps and death factories in a six-volume Yiddish series called ''Oysgebrente Likht'', which means ''Extinguished Candles''.

In 1955, Strigler published two volumes called ''Arm in Arm with the Wind,'' a historical novel about Jewish life in Poland in the 17th and 18th centuries.

His newspaper career began in Warsaw just before the war and flourished in Paris after the war. In France, he served as editor of Unzer Vort (Our world), a Yiddish daily.

While in New York, he was offered the editorship of the Kemfer, a position he held until 1995. He published such classic Yiddish writers as Abraham Reizen, H. Leivik, Chaim Grade, and Jacob Glatstein.

In 1978, Strigler was awarded the Itzak Manger Prize in Jewish Literature, one of the most distinguished prizes in the field.

He became editor of the Yiddish Forward in 1987, following the retirement of Simon Weber, and he remained at its helm until last month.

''The death of Strigler marks not only a sad transition for his colleagues in the Yiddish, Russian, and English editions of the Forward but also a milestone in the area of Yiddish-language journalism and the literature of the Holocaust,'' the English-language Forward said in an obituary.

I ask to have printed in the RECORD the English edition of the Forward's moving editorial tribute to this talented journalist.

MORDECHAI STRIGLER

Mordechai Strigler, the editor of the Yiddish Forward who died Sunday at the age of 76, was one of the giants. Born at Zamosc, Poland, he became famous at a young age as a genius of Talmud. He was apprenticed to the greatest sages of his time. He was at the barricades in Warsaw when the Germans invaded. He fled toward Russia, but was captured by the Nazis, who cast him into concentration camps. His parents and three of his seven sisters perished. He himself was in, among other camps, Maidenek, Skarhisko and Buchenwald, where he was a member of the Resistance and where on liberation he was spotted by Meyer Levin, who wrote about his heroism in his memoir ''In Search''. Levin told of Strigler gathering children secretly in the barracks and teaching them Yiddish and Hebrew. He had lost his pre-war manuscripts during the war. It is said that upon liberation he began writing furiously. He continued until weeks before he died. He turned out cycles of poetry and novels, as well as biblical commentaries and analysis of rabbinic responsa and thousands of items of journalism—editorials, dispatches, criticism and feuilletons. Moving to Paris immediately after the war, he became editor of Unzer Vort and joined the Labor Zionist movement. As editor of the Yiddisher Kemfer and, later, the Yiddish Forward as well, he maintained a courteous and gentle exterior, but it belied an extraordinary toughness. No matter how others around him might fume, he would go on doing what he thought was right. His achievements are well known. He touched Jews the world over, inspired his colleagues and set a standard to which all the editors of the Forward, in Yiddish, Russian, and English, look up.

Yet for all these achievements, there was a dimension to Mordechai Strigler that remained a mystery, even to many of us who worked in the same editorial rooms with him for years. It had to do with his spiritual journey. Had history taken a different turn, it is as a Torah sage that he might be remembered today. But the Holocaust shook his faith and led him to quarrel with God. He emerged to write poetry and fiction. He entered the political fray for the labor faction. Hope came to him from the establishment of the Jewish state, which became, along with Jewish unity, his abiding passion. After he reached America, he began corresponding with a young woman in Jerusalem, Esther Bonni, a scientist. When they finally met in Israel, a romance developed and marriage followed. After the birth of their daughter, Leah, the glimmer of Strigler's spiritual life began to shine again. Leah talked at his funeral of Strigler's enduring attachment to text and of his powers as a teacher. He was obsessed with the accuracy of citations of Torah and Talmud, so that whenever she asked a question, he would insist on checking sources, even though he almost always knew the references by heart. In recent years, his intimates relate, he had occasion to lay tefillin. Even then it was said that he had not again become a believer but was merely observing a mitzvah. Yet as he lay dying at Roosevelt Hospital, his daughter read to him for days from the Bible, holding the text in one hand and here father's hand in the other. His daughter and wife sang prayers in Yiddish and Hebrew, which for precious moments brought him out of his coma. This is how this editor who had lived and chronicled and tragedies and triumphs of our century spent his last days—called back to consciousness, however fleetingly, by the languages of the Jews.●

THE SPALLATION NEUTRON SOURCE: A CRITICAL ELEMENT OF OUR VISION OF THE FUTURE

● Mr. FRIST. Mr. President, the Spallation Neutron Source currently being developed at Oak Ridge, Tennessee will be the most powerful spallation source of neutrons in the world. It will enable scientists to ''see'' and thus understand the physical, chemical, and biological properties of materials at the atomic level.

In nuclear physics, Mr. President, the study of neutrons led to the development of nuclear weapons, nuclear energy, medical isotopes, and our understanding of the energy and evolution of the stars and the origins of the solar system.

In condensed matter physics, neutrons are used—among other things—to study magnetic materials, magnetic resistance, and the dynamic aspects of glasses, liquids, amorphous solids, and phase behavior.

In materials science, neutrons are used to study diffusion, crystal structures, the spatial distribution of impurities, and the stress capacities of forgings, castings, and welds.

In chemistry, neutrons are used to determine molecular, crystal, and large-scale structure.

In biology, neutrons are used to determine the structure of protein and protein complexes in lipids and biological membranes, and to determine the molecular arrangements on biological surfaces to help us better understand the function of cell surface receptors.

The one common requirement in all of these research fields is an intense source of neutrons. And the only such source other than a large nuclear reactor is an energetic particle accelerator such as the Spallation Neutron Source.

Mr. President, as I've just pointed out with this by-no-means-complete list of examples, neutron scattering has now become an indispensable tool within a broad range of scientific disciplines: physics, chemistry, materials science, nuclear physics, biology, earth science, engineering and medicine—which is why the Spallation Neutron Source is a critical element of our vision of the future.

Far from a jobs program or a pie-in-the-sky experiment, Mr. President, spallation is the newest anchor of our national research effort. And it will contribute to America's economic and technological growth in thousands of ways.

By helping us understand the properties of materials at the atomic level, U.S. chemical companies will produce better fibers, plastics, and catalysts; U.S. pharmaceutical companies will produce better drugs—with higher potencies and fewer side effects; U.S. automobile manufacturers will build cars that run better and are safer to operate; and U.S. aircraft manufacturers will build planes that are stronger, lighter, faster, and safer—with fewer defects, lower stress levels, and greater fuel efficiency.

We'll create stronger magnets and magnetic materials—that will result in more efficient electric motors and generators, better magnetic recording tapes, computer hard drives, and medical magnetic resonance systems.

And all across America, U.S. industries will produce everything from better low-fat foods, credit cards, and cosmetics, to clothes that don't wrinkle and bags that don't break, to better airport detection equipment and bulletproof vests.

In the next century, the achievements will be even greater—especially in the field of medicine. We'll see drug delivery systems that release medicine precisely when and where the body needs it—without side effects; artificial blood that will eliminate the need to screen for viruses or procure exact blood types in times of emergency; corrosion-resistant medical implants that will last a lifetime and never have to be replaced; and smaller, faster electronic chips that will lower energy costs and increase convenience in hundreds of products.

In other words, Mr. President, spallation is not only essential to the advancement of important scientific research, it's absolutely critical to retaining our competitive edge in the global economy and the quality of life we have come to enjoy.

Completion of the Spallation Neutron Source—on time and on budget—must be a priority for another reason as well. Over the last 20 years, America has fallen alarmingly behind Europe in the availability of up-to-date neutron sources and instrumentation. The major research reactors in our inventory—the HFIR at Oak Ridge, Tennessee, and the High Flux Beam Reactor—were built more than 30 years ago. With the demise of the ANS (Advanced Neutron Source), and all it represented in terms of maintaining America's strength is neutron science, we cannot reasonably expect those aging facilities to sustain our entire neutron scattering effort.

Fortunately, unlike ANS—whose pricetag [$3B] and lack of public support caused the Administration to abandon the effort—Spallation is both affordable [$2B] and strongly endorsed by both the White House and the Congress.

Mr. President, the Spallation Neutron Source is a big part of that vision of our vision for the future. As with all of America's truly imaginative ventures—the space program, the Human Genome Project, the Hubble telescope—its benefits will be felt for years to come.

But there is another reason Spallation must be supported, Mr. President. It is, in my view, exactly the kind of project the federal effort was designed to produce and support: It's good science—that is both knowledge-driven and mission-driven; it will be fiscally accountable—if we in Congress do it right; it has a consistent approach; it will have measurable results; it will create a flow of technology, from research through commercialization; it will promote excellence throughout the American research infrastructure, and across a broad range of initiatives; and it will create partnerships among industry, academia, and the national labs.

And because of the way it was set-up as a cooperative partnership among the national labs—Lawrence Berkeley will be responsible for the ion source; Los Alamos, for the linear accelerator; Brookhaven, for the accumulator ring; Argonne, for the instrumentation and experiment facilities; and Oak Ridge for the conventional facilities, target apparatus, and overall project management—it will increase Congress' ability to focus on the importance of science and technology; decrease the likelihood that it will get side-tracked by politics; and ensure that spallation is consistent and effective.

In other words, Mr. President, the real effects of this project don't end with Spallation, they begin with it—and with us and our commitment to science and technology future.●

TRIBUTE TO PRESIDENT JIMMY CARTER ON THE NAMING OF THE U.S.S. JIMMY CARTER SUBMARINE

● Mr. CLELAND. Mr. President, I rise today to congratulate former President Jimmy Carter on the naming of the Navy's third and final *Seawolf*-class submarine, the U.S.S. *Jimmy Carter.*

After graduating from the U.S. Naval Academy in 1946, President Carter fulfilled a dream from his childhood in southwest Georgia by serving in both the Atlantic and Pacific fleets. As a submariner, he was selected by the late Adm. Hyman Rickover to help in the development of the fledgling U.S. nuclear submarine program, a program which has realized its full potential in the *Seawolf*-class attack submarines.

I had the privilege of attending the naming ceremony at the Pentagon on April 27 with President and Mrs. Rosalynn Carter. Navy Secretary John H. Dalton praised the U.S.S. *Jimmy Carter* as a bridge to the next generation of attack submarines. The newest *Seawolf* vessel, named after the only President to serve on a submarine, is currently being built and is due to join the U.S. fleet in December 2001.

I ask my colleagues in the Senate today to join me in saluting and congratulating President Carter on his years of service in this Nation's Navy, and later as Governor of my home State of Georgia and President of the United States. President Carter is respected by all Americans for his efforts on behalf of our country both during and after he held office. The naming of the U.S.S. *Jimmy Carter* is a wonderful tribute to honor a great American in a manner befitting his outstanding service to this nation.●

PAU-WA-LU MIDDLE SCHOOL

● Mr. BRYAN. Mr. President, I rise today to recognize the achievements of the Pau-Wa-Lu Middle School in Gardnerville, Nevada. Each year for the last four years, Pau-Wa-Lu Middle School has been involved in a major service project within its community.

In 1995/96, the school sponsored a cleanup project during which 250 students and adults cleared years of accumulated trash from green belts within their community.

In 1997, when a major flood devastated the homes and businesses of many of Northern Nevada's citizens, over 600 students and adults donated more than 4,000 man hours to helping flood victims recover their lives and property.

And in 1998, over 300 students and adults from Pau-Wa-Lu and Carson Valley Middle Schools have planted trees in Autumn Hills, an area that has been devastated by forest fire.

I am pleased to recognize Pau-Wa-Lu Middle School for its commitment to community and instilling this same spirit in its students.●

RULES FOR SPECIAL COMMITTEE ON YEAR 2000

● Mr. BENNETT. Mr. President, I rise today to submit for the RECORD, in accordance with Senate Rule 26.2, the Rules for the Special Committee on the Year 2000 Technology Problem which were adopted by a unanimous vote of the Committee on Wednesday, May 20, 1998.

Also, I want to express my gratitude to the leadership on both sides of the aisle for their support, without which we could not have created this very important Committee. I also want to take a moment to mention that the Sergeant at Arms' great help in assisting us in the set up of our offices. Finally, I would be remiss not to mention that the hard work and patience of the staff of the Rules Committee has also aided us in moving forward in a more expeditious fashion.

RULES OF PROCEDURE

I. CONVENING OF MEETINGS AND HEARINGS

1. Meetings. The Committee shall meet to conduct Committee business at the call of the Chairman.

2. Special Meetings. The Members of the Committee may call additional meetings as provided in Senate Rule XXVI(3).

3. Notice and Agenda:

(a) Hearings. The Committee shall make public announcement of the date, place, and subject matter of any hearing at least one week before its commencement.

(b) Meetings. The Chairman shall give the Members written notice of any Committee meeting, accompanied by an agenda enumerating the items of business to be considered, at least 5 days in advance of such meeting.

(c) Shortened Notice. A hearing or meeting may be called on not less than 24 hours notice if the Chairman, with the concurrence of the Vice Chairman, determines that there is good cause to begin the hearing or meeting on an expedited basis. An agenda will be furnished prior to such a meeting.

4. Presiding Officer. The Chairman shall preside when present. If the Chairman is not present at any meeting or hearing, the Ranking Majority Member present shall preside. Any Member of the Committee may preside over the conduct of a hearing.

II. CLOSED SESSIONS AND CONFIDENTIAL MATERIALS

1. Procedure. All meetings and hearings shall be open to the public unless closed pursuant to paragraph 3 of this section. To close a meeting or hearing or portion thereof, a motion shall be made and seconded to go into closed discussion of whether the meeting or hearing will concern the matters enumerated in Rule II.3. Immediately after such discussion, the meeting or hearing may be closed by a vote in open session of a majority of the Members of the Committee present.

2. Witness Request. Any witness called for a hearing may submit a written request to the Chairman no later than twenty-four hours in advance for his examination to be in closed or open session. The Chairman shall inform the Committee of any such request.

3. Closed Session Subjects. A meeting or hearing or portion thereof may be closed if the matters are consistent with Senate Rule XXVI(5)(b).

4. Confidential Matter. No record made of a closed session, or material declared confidential by the Chairman and Vice Chairman, or report of the proceedings of a closed session, shall be made public, in whole or in part or by way of summary, unless specifically authorized by the Chairman and Vice Chairman.

5. Radio, Television, and Photography. The Committee may permit the proceedings of hearings which are open to the public to be photographed and broadcast by radio, television, or both, subject to such conditions as the Committee may impose.

III. QUORUM AND VOTING

1. Reporting. A majority of voting members shall constitute a quorum for reporting a resolution, recommendation, or report to the Senate.

2. Committee Business. Three voting members shall constitute a quorum for the conduct of Committee business, other than a final vote on reporting, providing a minority Member is present. One Member shall constitute a quorum for the receipt of evidence, the swearing of witnesses, and the taking of testimony at hearings.

3. Polling.

(a) Subjects. The Committee may poll (1) internal Committee matters including those concerning the Committee's staff, records, and budget; (2) authorizing subpoenas; and (3) other Committee business which has been designated for polling at a meeting.

(b) Procedure. The Chairman shall circulate polling sheets to each Member specifying the matter being polled and the time limit for completion of the poll. If any Member so requests in advance of the meeting, the matter shall be held for meeting rather than being polled. The clerk shall keep a record of polls. If the Chairman determines that the polled matter is one of the areas enumerated in Rule II.3, the record of the poll shall be confidential. Any Member may move at the Committee meeting following a poll for a vote on the polled decision.

IV. SUBPOENAS

1. Subpoenas. Subpoenas may be authorized by the Committee at a meeting of the Committee or pursuant to Rule III.3.a (above). Subpoenas authorized by the Committee may be issued over the signature of the Chairman after consultation with the Vice Chairman, or any member of the special committee designated by the Chairman after consultation with the Vice Chairman, and may be served by any person designated by the Chairman or the member signing the subpoena.

V. HEARINGS

1. Notice. Witnesses called before the Committee shall be given, absent extraordinary circumstances, at least forty-eight hours notice, and all witnesses called shall be furnished with a copy of these rules upon request.

2. Oath. All witnesses who testify to matters of fact shall be sworn. The Chairman or any Member may administer the oath.

3. Statement. Any witness desiring to make an introductory statement shall file 50 copies of such statement with the clerk of the Committee 24 hours in advance of his appearance, unless the Chairman and Vice Chairman determine that there is good cause for a witness's failure to do so.

4. Counsel:

(a) A witness's counsel shall be permitted to be present during his testimony at any public or closed hearing, or staff interview to advise the witness of his rights, provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Chairman may rule that representation by counsel from the government, corporation, or association creates a conflict of interest, and that the witness shall be represented by personal counsel not associated with the government, corporation, or association.

(b) A witness who is unable for economic reasons to obtain counsel may inform the Committee of this circumstance at least 48 hours prior to his appearance, and the Committee will endeavor to obtain volunteer counsel for the witness. Such counsel shall be subject solely to the control of the witness and not the Committee. Failure to obtain counsel shall not excuse the witness from appearing and testifying.

5. Transcript. An accurate electronic or stenographic record shall be kept of the testimony of all witnesses in closed and public hearings. Any witness shall be afforded, upon request, the right to review that portion of such record, and for this purpose, a copy of a witness's testimony in public or closed session shall be provided to the witness. Upon inspecting his transcript, within a time limit set by the committee clerk, a witness may request changes in testimony to correct errors of transcription, grammatical errors, and obvious errors in fact. The Chairman or a designated staff officer shall rule on such requests.

6. Minority Witnesses. Whenever any hearing is conducted by the Committee, the minority on the Committee shall be entitled, upon request made by a majority of the minority Members to the Chairman, to call witnesses selected by the minority to testify or produce documents with respect to the measure or matter under consideration during at least one day of the hearing. Such request must be made before the completion of the hearing.

7. Conduct of Witnesses, Counsel and Members of the Audience. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing, the Chairman or presiding Member of the Committee present during such hearing may request the Sergeant at Arms of the Senate, his representative, or any law enforcement official to eject said person from the hearing room.

VI. AMENDMENT OF RULES

The rules of the Committee may be amended or revised at any time, by a majority vote of the Committee, provided that no less than 3 days notice of the amendments or revisions proposed was provided to all members of the committee.●

TRIBUTE TO THE OUTSTANDING DISASTER ASSISTANCE PROVIDED BY THE GRAND FORKS AIR FORCE BASE AND ITS BRANCH OF THE AMERICAN RED CROSS

● Mr. CONRAD. Mr. President, I rise today to pay tribute to the extraordinary disaster assistance efforts of the Grand Forks Air Force Base (AFB) and its branch of the American Red Cross.

Twelve months have passed since my state suffered the worst winter and spring of its history. A record eight blizzards dropped more than eight feet of snow on North Dakota, and brought with them sub-zero temperatures well into the month of April. The worst and final storm, Blizzard Hannah, glazed the state in a thick coat of ice, knocked out power for much of North Dakota, and made the snowmelt that followed even more devastating. On the heels of these paralyzing storms came a ''500-year'' flood, driving thousands from their homes, many in the middle of the night.

The hasty evacuation of Grand Forks, North Dakota, was the single largest evacuation in recent American history. Roused from their beds by the wail of sirens, many citizens left their city with little more than the clothes on their backs. Homes inaccessible and loved ones far away, thousands lacked shelter.

I firmly believe that the evacuation of Grand Forks would have been impossible without the Grand Forks AFB providing for those in need of a safe place to sleep and something to eat. The Base opened the doors of its homes and cleared its hangars of aircraft to house neighbors in need. It is estimated that 4,500 residents of Grand Forks found shelter at the air base.

The assistance of the Grand Forks AFB Red Cross was also invaluable. Red Cross volunteers worked tirelessly over the period of the flood feeding the displaced, staffing the hospice center for the elderly, locating loved ones, and ably dealing with the daunting task of sheltering thousands. Then, when the waters receded, the Grand Forks AFB American Red Cross continued its efforts: cleaning flood-damaged homes, housing those whose homes remained unlivable, and working to meet the needs of its neighbors. Six hundred fifty volunteers recorded nearly 48,000 hours of service in the flood and flood-recovery effort.

Mr. President, these were volunteers in the best sense of the word. The men and women of the Grand Forks AFB Red Cross were not immune to the emotional upheaval of last year's disasters in the Red River Valley. These volunteers had families and jobs, and in many cases suffered disaster losses of their own, but they gave of their time freely. Though many of these men and women only enjoyed a brief stay at Grand Forks AFB, we North Dakotans will always consider them neighbors.

The dedicated and selfless service of Grand Forks AFB personnel made me tremendously proud of America's Air Force, and our base. I was particularly impressed that Air Force personnel labored to battle flood waters, even as their own homes were inundated. I felt it was the least I could do to author an amendment which ensured that all Grand Forks AFB personnel would have full access to an Air Force disaster relief program.

Together with all my fellow North Dakotans I would like to extend my sincerest thanks to Grand Forks AFB an the base's American Red Cross. The base commander at the time, Brigadier General Kenneth W. Hess, and the Station Manager of the American Red Cross at the time, Mary Martin, deserve special thanks. Additionally, I would like to thank the current base commander, Colonel James A. Hawkins, for his continued assistance in helping Grand forks get back on its feet. Under their leadership, the base and the Red Cross helped save a community, and made the state and the Nation proud.

Mr. President, I ask that my letter to Brigadier General Kenneth W. Hess be printed in the RECORD.

The letter follows:

U.S. SENATOR,
Washington, DC, May 6, 1997.

Brig. Gen. KENNETH W. HESS,
Commander, 319 Air Refueling Wing, Grand Forks Air Force Base, Grand Forks, ND.

DEAR GENERAL HESS: Working on the disaster has become all consuming, but I did want to take a moment to let you know how much I appreciate the courtesies you extended to me and my staff on our recent stay. Too, I shall be forever grateful to you for all you have done for the people of North Dakota.

The night-time evacuation of the city of Grand Forks would have been impossible without the availability of the Grand Forks Air Force Base facilities to those in need of shelter. Your quick response and leadership made a situation rife with danger manageable. This same helpful attitude was evident everywhere on the Base—encouragement, hope, and a warm smile went along with the uniform whether at the Emergency Operations Center of the Command Center. And, kindness did not hamper your efficiency—The Grand Forks Air Force Base was a gracious host to the President of the United States and six Cabinet Members in the midst of a disaster.

General Hess, you can be very proud of the men and women of the 319 Air Refueling Wing. One Airman mentioned to a member of my staff, ''We're glad to help out. We are just one big Grand Forks family.''

With deepest appreciation,
Sincerely

KENT CONRAD,
U.S. Senate.●

RECOGNITION OF ROSS P. MARINE

● Mr. BOND. Mr. President, On May 31, 1998, Ross P. Marine, DHL, MHA, Senior Vice President and Chief Operating Officer, Trinity Luthern Hospital, Kansas City, Missouri, and former Administrator, Truman Medical Center East (Truman East), and the Director of Public Health for the Jackson County Health Department (JCHD), is receiving the Citizen of the Year award from UNICO/Kansas City Chapter. As the recipient, he may select a charity of his choice to receive half the proceeds from the awards dinner. Mr. Marine has chosen to give his donation to the Truman Medical Center East Auxiliary's commitment to the renovation of the Obstetrics Unit into a new Labor, Delivery, Recovery and Postpartum wing at Truman East.

UNICO stands for Unity, Neighborliness, Integrity, Clarity and Opportunity and is a national organization made up of men and women of Italian descent who work for positive community service. A Board member or current officer nominates the candidate, for Citizen of the year. Candidates must have an interest in their community and working with others to make their community a better place.

Mr. Marine has continually shown that he not only has concern for the betterment of his community, but has also taken a leadership role. He made health care more accessible by starting five public health outreach facilities. Truman East received $38 million in renovation and expansion because of Mr. Marine's efforts. While embracing the credo of UNICO, ''Service above Self,'' he has helped his community and therefore Missouri as a whole. He has been appointed to numerous Boards of Directors and received many awards for all his outstanding achievements.

Commending Mr. Marine for his many years of service to his community and the field of medicine, I am glad to say that the State of Missouri is enriched with his wisdom and leadership. I join the many who congratulate and thank him for his hard work and wish him continued success in future years.●

CELEBRATION OF INTERNATIONAL SPACE DAY

● Mr. GRAHAM. Mr. President, as the senior Senator from the state that launched the Mercury astronaut pioneers into space, sent Apollo astronauts to the moon, and has hosted numerous space shuttle launches since 1981, it is a tremendous privilege to lead the U.S. Senate in recognizing May 21 as ''International Space Day.''

Our nation's exciting adventure in space began just over forty years ago, with the launch of the Explorer I satellite on January 31, 1958. The celebration of this anniversary gave us cause to look back at America's four decades in space. ''International Space Day'' gives us a chance to look forward and assess how to seize the space opportunities of the future.

Mr. President, forty years after we launched our first satellite and nearly thirty years since Neil Armstrong took mankind's first steps on the lunar surface, Americans remain captivated by the exploration of space.

Students across the nation eagerly study past achievements and future adventures in space exploration. In Florida, tourists flock to the Kennedy Space Center on Cape Canaveral to see the famed launch pads and rockets that have boosted man into space. Right here in Washington, the National Air and Space Museum, National Space Society, and the aerospace industry have put space right on Congress' doorstep.

''International Space Day'' is an appropriate occasion to reflect on how our exploration and utilization of space dramatically affects our day-to-day lives. It is especially timely this week, when the breakdown of the Galaxy Four satellite has wreaked havoc in our nation's telecommunications sector. Many of us have constituents who were unable to listen to National Public Radio's reports on this week's floor debate on comprehensive tobacco legislation. Thousands of Americans have been inconvenienced because their pagers do not work. Doctors, businesses, television viewers and radio listeners—virtually everyone in our society—have been affected.

Relatively few Americans have had the opportunity to escape the Earth's atmosphere and gravity, but space affects all of us. Galaxy Four is just one example of how critical the utilization of space is to our economy. We are on the brink of a new frontier in commercial space activity, with almost weekly launches of new communications satellites and the most competitive space launch market in decades.

In 1998, the Senate will have a unique opportunity to remove barriers that impede U.S. companies in the exploration of this new frontier. U.S. Senator CONNIE MACK and I introduced the Commercial Space Act in the Senate last fall and we hope to see it passed soon.

Mr. President, this is an exciting time to be discussing space issues in the U.S. Congress. At NASA's Kennedy Space Center—the nation's premiere launch base—the space shuttle continues to faithfully serve our manned space program. An international team of engineers and astronauts is assembling a new space station. In 1997 and early 1998, the Mars Pathfinder blazed a four-wheel drive trail on the Red Planet and the launch of the Lunar Prospector marked our return to the moon. In October, my colleague JOHN GLENN of Ohio will return to space after thirty-seven years on Earth. VentureStar is under development as our nation's space vehicle of the future. And space tourism—featuring space planes that operate from traditional airports—is becoming more and more of a likelihood.

I hope these developments inspire young Americans to develop the science, math, and engineering expertise that our nation needs to maintain its leadership in space. Congress should encourage efforts like that of the U.S. Space Foundation's Mission Home, a program that brings together space societies and aerospace companies to educate communities all over the nation about our exciting future in space.

Mr. President, Disneyland will rededicate its Tomorrowland on Friday—forty-three years after it first inspired young adventurers to aim beyond the stratosphere. I will depend on all 100 members of this legislative body to help make sure that the United States is actively preparing for its tommorowland by keeping our nation on the forefront of the exploration, utilization, and commercialization of space today. Working together, we can ensure that every day is space day in the U.S. Senate.●

50TH BIRTHDAY OF THE ISRAEL'S INDEPENDENCE

● Mr. SANTORUM. Mr. President, in 1948 when Israel was fighting its most costly war ever—the war for independence—Israel's future Prime Minister was told by the greatest military experts in the world that his newly created State of 600,000 had no chance of surviving. Now, in 1998, Israel is celebrating its 50th year of independence.

I commend the Jewish Federation of the Scranton-Lackawanna community for observing this historic occasion the weekend of May 1–3.

The State of Israel became a home for Jews after more than 6 million European Jews were massacred during the Holocaust. Over the past 50 years, Israel has acted as a refuge for thousands of Jews throughout the world and integrated them into their society, while rebuilding a nation and creating an active democratic political system.

On May 17, I joined Mayor Edward Rendell and Israeli Consul General Daniel Ashbel in Philadelphia to celebrate Israel's 50th Independence Day birthday party. During the opening ceremonies, I thought of how Israel is a land of wonderful contrast. It is both a nation of great history and a nation of great accomplishment. From the historical perspective, the events that have sprung forth from that land over the centuries are overwhelming to even consider. No matter what religious tradition one might follow, the basic laws that went on to frame many of the tenants of our democratic form of government, and the rules of conduct in a civil society, came out of the land we have always called Yis-ra-el.

Today, Israel has a growing economy, farms on land that were once claimed by the deserts, and high-tech companies producing cutting edge products for our global marketplace. No other society in the course of human history can claim such progress in 50 short years. No other nation can claim to have risen to these heights from the horrors of the Holocaust. That is why Israel is so unique, so special, and so deserving of our unyielding and unconditional support.

The United States has always maintained a relationship with Israel that is based on mutual respect. America's commitment to Israel's security undergirds the entire peace process and provides Israel the confidence it needs to take very real risks for peace. I encourage the United States to continue to act in a respectable manner by not imposing a settlement on Israel that is contrary to its national security interests.●

WE THE PEOPLE . . . THE CITIZEN AND THE CONSTITUTION COMPETITION

● Mr. CLELAND. Mr. President, I rise today to recognize the following students from Dunwoody High School in Dunwoody, Georgia and their teacher for their excellent performance in the We the People . . . The Citizen and the Constitution. I would like to congratulate the students who competed in this year's competition: Bakari Brock, Jennifer Campbell, Richard Cartwright, Michael Cayes, Carol Chandler, Melissa Chastney, Zack Cullens, Melissa Derrick, Kevin Franklin, Erin Green, Judy Hudgins, Rebecca Lamb, Dwayne O'Mard, Sandra Park, Andrea Pierce, Jennifer Price, Scot Prudhomme, Carlyn Sibler, Geren Stone, Dannon Taylor, David Weiner, David Yoo, and teacher Celeste Boemker. I would also like to recognize the efforts of the State Coordinator, Michele Collins and District Coordinator, John Carr, who helped these students make it to the finals.

This bright group of young students competed against 49 other classes from around the nation, testing their knowledge of the United States Constitution and our government. Administered by the Center for Civic Education, the program is the most extensive of its kind, reaching more than 26 million students in elementary, middle and high schools. The students spent hours in role playing and testing to prepare themselves for this competition. The three-day program simulates a Congressional hearing in which students' presentations are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues.

Mr. President, it is with great pride that I offer my congratulations to these students from Dunwoody High School for their outstanding performance at the We the People competition, and wish them continuing success with their future studies.●

CONTINUING JUDICIAL VACANCY CRISIS IN THE SECOND CIRCUIT

● Mr. LEAHY. Mr. President, the Senate's Republican leadership is refusing to take action to end the judicial emergency in the United States Court of Appeals for the Second Circuit.

On March 25, the five continuing vacancies on the 13-member court caused Chief Judge Ralph Winter to certify a Circuit emergency, to begin canceling hearings and to take the unprecedented step of having 3-judge panels convened that include only one Second Circuit judge. On April 23, Chief Judge Winter was forced to issue additional emergency orders. For two months and into the foreseeable future the Senate has neglected its responsibility to the people of the Second Circuit.

I have been urging favorable Senate action on the nomination of Judge Sonia Sotomayor to the Second Circuit to fill a longstanding vacancy for many months. That nomination remains stalled on the Senate calendar. Two weeks ago the nomination of Chester J. Straub to the Second Circuit was favorably reported by the Judiciary Committee. That nomination is now also on the Senate calendar awaiting action. Today, the Senate Judiciary Committee is favorably reporting two additional nominees to the Second Circuit, Judge Rosemary Pooler and Robert Sack. That makes four nominees to the Second Circuit awaiting confirmation, four nominees who can end the judicial vacancies crisis that plagues the Second Circuit. But for the inaction of the Majority Leader in calling for votes by the Senate on this qualified nominees, the crisis could end this week. I, again, urge that action.

Before the last recess I introduced legislation calling upon the Senate to address this kind of judicial emergency before it takes another extended recess. The Senate has pending before it four outstanding nominees to the Second Circuit whose confirmations would end this crisis.

Unfortunately Republican Senate leadership has not taken the judicial vacancies crisis seriously and has failed to take the concerted action needed to end it. They continue to perpetuate vacancies in almost one in 10 federal judgeships.

With 11 nominees on the Senate calendar and 32 pending in Committee, we could be making a difference if we would take our responsibilities to the federal courts seriously and devote the time necessary to consider these nominations and confirm them. Instead, we are having hearings at a rate on one a month, barely keeping up with attrition and hardly making a dent in the vacancies crisis that the Chief Justice of the United States has called the most serious problem confronting the judiciary.

By a vote of 16 to 2, the Judiciary Committee reported the nomination of Judge Sonia Sotomayor to the Senate. That was on March 5, 1998, over two months ago. No action has been taken or scheduled on that nomination and no explanation for the delay has been forthcoming. This is the oldest judicial nomination pending on the Senate Executive Calendar. In spite of an April 8 letter to the Senate Republican Leader signed by all six Senators from the three States forming the Second Circuit urging prompt action, this nomination continues to be stalled by anonymous objections. Our bipartisan letter to the Majority Leader asked that he call up for prompt consideration by the Senate the nomination of Judge Sonia Sotomayor. That was over one month ago.

Judge Sonia Sotomayor is a qualified nominee who was confirmed to the United States District Court for the Southern District of New York in 1992 after being nominated by President Bush. She attended Princeton University and Yale Law School. She worked for over four years in the New York District Attorney's Office as an Assistant District Attorney and was in private practice with Pavia & Harcourt in New York. She is strongly support by Senator MOYNIHAN and Senator D'AMATO.

She is a source of pride to Puerto Rican and other Hispanic supporters and to women. When confirmed she will be only the second woman and second judge of Puerto Rican descent to serve on the Second Circuit.

Judge Rosemary Pooler was nominated back on November 6, 1997, as was Robert Sack, a partner in the law firm of Gibson Dunn & Crutcher. They participated in a confirmation hearing on May 14 and were reported to the Senate by the Judiciary Committee today.

Since May 7 the fourth pending nomination to the Second Circuit, that of Chester J. Straub, has also been on the

Senate calendar. Mr. Straub is a partner in the law firm of Willkie Farr & Gallagher.

Judge Sotomayor, Judge Pooler, Robert Sack and Chester Straub can and should all be confirmed to the Second Circuit before the Senate adjourns for its Memorial Day recess.

In his most recent Report on the Judiciary the Chief Justice of the United States Supreme Court warned that persisting vacancies would harm the administration of justice. The Chief Justice of the United States Supreme Court pointedly declared: ''Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary.''

The people and businesses in the Second Circuit need additional federal judges confirmed by the Senate. Indeed, the Judicial Conference of the United States recommends that in addition to the 5 vacancies, the Second Circuit be allocated an additional 2 judgeships to handle its workload. The Second Circuit is suffering harm from Senate inaction. That is why the Chief Judge of the Second Circuit had to declare the Circuit in a state of emergency.

Must we wait for the administration of justice to disintegrate further before the Senate will take this crisis seriously and act on the nominees pending before it? I pray not.●

CONGRATULATIONS TO EAST HIGH SCHOOL, FINALIST IN THE WE THE PEOPLE . . . THE CITIZEN AND THE CONSTITUTION

● Mr. ALLARD. Mr. President, I rise today to pay tribute to the students from East High School in Denver, CO who participated in the ''We the People . . . the Citizen and the Constitution finals held here in our Nation's Capital, May 2–4, 1998. East High School competed against 49 other classes from across the Nation. Their hard work was rewarded with an Honorable mention as one of the top ten finalists in the competition.

I am always pleased when I have the opportunity to come to the Senate floor to praise students that have taken an interest in their government and their Constitution. By taking part in this competition, the students of East High School have served to strengthen the foundation of our democracy.

Mr. President, I would like to congratulate the participants, Daniel Berson, Lisa Bianco, Rosemary Blosser, Tristan Bridges, John Patrick Crum, Jessica Dismang, Belle Duggan, Sterling Ekwo, Heidi Gehret, Sarah Givens, Jamaal Harmon, Courtney Hopley, Scott Kronewitter, Melanie McRae, Jennifer Newman, Gavin Rember, Jennifer Roche, Sarah Showalter, Jessica Slenger, Lauren Strickland, Matthew Vellone, Feliz Ventura, Michaela Welch, and their teacher Ms. Deanna Morrison for doing such a fine job of representing Colorado.

I cannot overstate the achievements of these young people, they are some of the best and brightest that America has to offer. I am proud to say that I, along with all Coloradans, congratulate East High School on a job well done.●

UNIVERSITY OF MICHIGAN MEN'S ICE HOCKEY CHAMPIONSHIP

● Mr. LEVIN. Mr. President, I rise today to congratulate the University of Michigan hockey team on their 1998 NCAA Championship—The Wolverines' second hockey title in three years.

On Saturday, April 4th, the Michigan hockey team defeated Boston College (3–2) in overtime for the championship. This is a remarkable achievement for a team which lost nine senior players from last year's team, including the Hobey Baker trophy winner and 5 players who each scored 20 or more goals in the season. The 1997–98 Michigan team featured 10 freshmen, one of whom scored two goals in the final game, and another who scored the winning goal in overtime in the championship game.

When the 1997–98 season started, it was expected to be a rebuilding year for the Wolverines. The young team faced a difficult season against some of the toughest teams in the nation. Instead, the Michigan team earned a 34–11–1 record, seizing every chance to display their athleticism, sportsmanship, teamwork, and perseverance.

The University of Michigan ice hockey players have always been among the ''leaders and best.'' As the Wolverines celebrate this year's victory, they also commemorate the anniversary of their first NCAA title fifty years ago, when the tournament began. In the last 50 years, the Wolverines have brought nine championship titles back to Ann Arbor, making them the winningest team in NCAA men's ice hockey history.

The ''Victors'' are indebted to the strong leadership they have from Head Coach Red Berenson and players, Captain Matt Herr and Assistant Captains Bill Muckalt and Marty Turco. These three seniors, along with Chris Fox and Gregg Malicke, advanced to the Final Four four seasons in a row. In addition, senior Bill Muckalt was named a Hobey Baker award candidate and All-American player, and senior goaltender Marty Turco finished his college career with one of the most impressive records in college hockey. The goalie's four years at Michigan gave him a record of 127 career victories and nine victories in NCAA elimination games, making him the winningest goaltender in NCAA tournament history. Turco was also selected most valuable player in the Final Four after stopping 28 shots in the championship game.

I extend my best wishes to the University of Michigan Men's Ice Hockey Team on a tremendous season and the 1998 NCAA Championship—Go Blue!●

LYMPHATIC FILARIASIS

● Mr. FAIRCLOTH. Mr. President, I rise today to speak on behalf of a charitable contribution worthy of note. Lymphatic filariasis is a terrible disease that our citizens are not likely to see here in the United States, but it is one of the World's most disabling and disfiguring diseases. It affects people in 73 countries, mainly in tropical and subtropical areas of India, Africa, Asia and South America.

The disease is caused by a parasite, carried by mosquitoes. Efforts to eliminate mosquitoes have not been successful in these regions, and the result is an endless cycle of infection for human hosts.

The World Health Organization has embarked on a campaign to stop this dread disease. Lymphatic filariasis infects 76 million people world wide. The parasitic worms, often only the size of a thread, live in humans by lodging in the lymphatic system. They live for up to six years, producing millions of microscopic larvae that circulate in the blood. When symptoms appear, they can be devastating. Kidney damage and painful swelling of the extremities are typical examples of the suffering endured by these victims.

The best previous defense against this disease was the administration of a single dose of two drugs, diethlycarbamazine of DEC and ivermectin. But when these drugs are administered at the same time with another drug, albendazole, the treatment is much more effective. Albendazole additionally kills hookworm, a very severe problem, especially in Africa.

Earlier this year, the World Health Organization's Division of Tropical Diseases announced a program to eliminate lymphatic filariasis. The cornerstone of this eradication program rests on the most generous charitable contribution in history. SmithKline Beecham, one of the world's leading healthcare companies, announced that they will provide their drug albendazole free of charge for the WHO effort. In addition to the drug donation, they are providing significant financial support to WHO to help implement the eradication program.

Yesterday, SmithKline Beecham testified before the House Committee on International Relations during a hearing on the Eradication and Elimination of Six Infectious Diseases. Dr. David Heymann, WHO's Director of Emerging and Communicable Diseases was also testifying. Dr. Heymann has been a great resource and help to me as I've learned about the growing problem of global viral and bacterial epidemics.

The hearing was worth noting, because it featured the contributions of many in the private sector to eradicate disease. Rotary International has made great progress in their effort to eliminate polio around the world. Merck & Co. has very generously, provided their drug Mectizan for the control of River Blindness, another filarial parasitic disease.

Another tireless worker on behalf of World Health, and someone who played a major role in both the Merck and SmithKline Beecham donations, is former President Jimmy Carter. He deserves our thanks and recognition for his efforts.

For the benefit of my colleagues who may not have been aware of yesterday's hearing, I'd like to submit for the RECORD the statement provided by Dr. Brian Bagnall, the Program Director for Lymphatic Filariasis for SmithKline Beecham. They are to be congratulated for their generosity and committment to world health.

The statement follows:

TESTIMONY OF BRIAN BAGNALL, PH.D, FOR SMITHKLINE BEECHAM

INTRODUCTION

My name is Dr. Brian Bagnall and I am the Program Director for Lymphatic Filariasis at SmithKline Beecham. The company is one of the world's leading healthcare corporations. We market pharmaceuticals, vaccines, overt-the-counter medicines, and health-related consumer products. We have 54,000 employees worldwide, 22,000 of them in the U.S.

WHAT IS LYMPHATIC FILARIASIS?

The most eloquent answer I can provide is to show you the following two-minute videotape which includes some comments made by President Carter at a recent company meeting. (Shows video—see appendix for text).

DRAMATIC PROGRESS ACHIEVED ON LYMPHATIC FILARIASIS ERADICATION

The dreadful disease you just saw on the video is now entirely preventable. SmithKline Beecham is committed to doing whatever it takes to help rid the world of it.

SmithKline Beecham announced an agreement this past January with the World Health Organization, through its Division of Control of Tropical Diseases, to collaborate on a global program to eliminate lymphatic filariasis. This program was established after much of the GAO report was drafted. So I'm happy to be able to provide an update on our joint program. It's a massive undertaking to attack the world's most disabling and disfiguring tropical disease.

The necessary tools and strategies of diagnosing and treating this parasitic worm infection have been developed only recently. They have proven so effective that we can now envision worldwide eradication of lymphatic filariasis by the year 2020. Please note that this target date is ten years sooner than the previous estimated date of 2030 which was mentioned by WHO in March 1997 in their submission for the GAO report. There has obviously been exceptional progress. The aim is to treat people living in at-risk areas with two antiparasitic drugs just once a year for four to six years.

One of the drugs will be albendazole, donated free of charge by SmithKline Beecham. We are planning to produce about 5 billion treatments to be used in the 73 target countries over the next 15 of so years. In addition to the drug donation, we will support the WHO efforts with financial support, management expertise and education and training help.

Together with WHO, we are currently in the planning and organizing phase of the program. We hope to begin shipping the first drug donations in the next 6 months to national Ministries of Health which have submitted elimination plans to WHO.

BREAKING THE TRANSMISSION OF LYMPHATIC FILARIASIS

The treatment program I have described, devised by WHO with the scientific and tropical medicine community, has a special mission—breaking the transmission of lymphatic filariasis. It is a truly preventive public health program aimed particularly at children and young adults who are infected with the parasite but who have not yet developed the long-term effects of the disease.

The children usually show no symptoms whatsoever. I might add that there is an additional and important benefit of the program for children and women of childbearing age—the drugs used will significantly reduce concurrent intestinal worm infections, such as hookworm, which cause anemia, stunt growth and inhibit intellectual development.

This strategic drug treatment program does not itself reverse the clinical damage of elephantiasis which results from decades of infection. Such disabled individuals will, nonetheless, benefit from an effective parallel program being recommended by WHO which focuses on skin hygiene and wound prevention.

In some respects, lymphatic filariasis can be compared to AIDS and HIV. Both diseases have a long latent period with years of symptomless infection which can then be transmitted to others. Both are now being treated with multiple drug therapy.

PRIVATE SECTOR PARTNERSHIPS FOR THE FUTURE.

I have said that SmithKline Beecham will do whatever it takes to help rid the world of this simply dreadful and now wholly preventable disease. But large organizations such as WHO and SmithKline Beecham, even with support from the likes of the World Bank, cannot do this alone. We are actively seeking to build a Coalition of Partners for Lymphatic Filariasis Elimination from the public, private and non-profit sectors which make up the worldwide community of public health resources for the developing world.

We also recognize the generous contribution Merck & Co. have made in the past 10 years with their Mectizan Donation Program for control of River Blindness, another filarial parasite disease. We are keeping in close touch with them and hope to work together in the future as part of a growing private sector coalition to fight tropical diseases.

Over the past few months we have been encouraged by the messages of support we have received since our program was announced, including many of your colleagues from the House and Senate. We, together with WHO, want to hear from anyone who wants to join the campaign. We particularly seek partners from other corporations who can help make a major difference by donating their expertise in transportation and shipping, information management, community treatment programs or the provision of other essential drugs. We will gladly speak with others from within the public and private sector about joining us in this cause. And we seek and encourage governments from the developed world to help as well.

Mr. Chairman, we applaud you and the Committee for holding this hearing because it will sound a clear call for action by both the public and private sectors to unite in eradication of these seven terrible diseases.

I would like to conclude by saying that the lymphatic filariasis elimination program complements SmithKline Beecham's much broader approach to improve health. It is our aim, through our products, services and community partnership programs, to enrich the health of everyone in the world. Our collaboration with the World Health Organization allows us to directly improve the health of at least one-fifth of the earth's population and this program will spearhead our healthcare focus within global communities into the new millennium.●

RANDOM HOUSE

● Mr. MOYNIHAN. Mr. President, some while ago it was announced that the German publishing firm of Bertelsmann had purchased Random House, the legendary New York publisher founded in the 1920s by Bennett Cerf and Donald Klopfer. The brilliance of the authors published over the years was exceeded only by that of the young editors that gave their works such superb attention. One of these was Jason Epstein. It was my great fortune to have him as an editor of three books which Random House published—''Coping: On the Practice of Government,'' ''The Politics of A Guaranteed Income,'' and, with Frederick Mosteller, ''On the Equality of Educational Opportunity.'' These were wonderfully produced, no less wonderfully edited—500 or more pages each. Thereafter, they were marketed with what I can only think of as loving care. The subjects were anything but reader friendly, as you might say, but Random House was author friendly and American letters are profoundly in its debt. Recently, in the April 6 issue of the New Yorker, The Talk of the Town began with a wonderful reminiscence by Jason Epstein of his early years at Random House. I ask that it be printed in the RECORD.

[From the New Yorker, Apr. 6, 1998]

(By Jason Epstein)

INK—CAN THE BERTELSMANN DEAL TAKE PUBLISHING BACK TO ITS ROOTS?

On the morning last week that the purchase of Random House by Bertelsmann was announced, I happened to pass the office of my colleague Bob Loomis and noticed the framed copy of the Random House interoffice phone directory for 1958 that Bob keeps on his bookshelf. The directory is about the size of a postal card and lists some ninety names, including Bob's and mine along with those of Bennett Cerf and his partner Donald Klopfer, the founders of Random House, whose offices were then on the parlor floor of the old Villard mansion, on Madison and Fiftieth. We occupied the north wing. The Archdiocese owned the central portion, which is now the entrance of the Palace Hotel, as well as the south wing, which now houses Le Cirque 2000.

Loomis and I joined Random House in the late nineteen-fifties. Though we took our publishing responsibilities seriously, we did not think of ourselves as businessmen but as caretakers of a tradition, like London tailors or collectors of Chinese porcelain. Bennett Cerf set the tone, and it was his habit to run from office to office sharing the jokes he had just heard over the phone from his Hollywood friends. Several times a day Bennett interrupted meetings between editors and authors in this fashion. Some authors were delighted. But I remember an afternoon when a baffled W.H. Auden asked if we could finish our conversation at Schrafft's across the street. This was, I believe, the last time he set foot in the Random House offices.

For me in those years, book publishing seemed more a sport than a business—a sport that required skill and strict attention to the rules, especially the rule that we had to make enough money to stay in the game. But if we wanted to make real money in a real business we knew that we should forget about afternoons with Auden, Faulkner, and Dr. Seuss and go down to Wall Street. But

this was unthinkable. It was always a pleasure when one of our books became a best-seller, but what counted more was a book that promised to become a permanent part of the culture. Random House published many books that became both.

The editor's job was different then from what it is now. Now layer upon layer of marketing specialists, sales executives, and business managers separate the editor from the bookseller. At the Villard mansion, we made these publishing decisions ourselves. For years, I would begin my day in the mailroom opening orders from booksellers, so that I had the feel of the marketplace literally at my fingertips.

That time was magical and we never expected it to end, even after Bennett and Donald took the company public, acquired Knopf, and, in 1966, sold out to RCA. By the mid-seventies the publishing industry had changed profoundly. The old downtown neighborhoods where booksellers had once rented inexpensive space and knew their customers by name had largely vanished. Readers now bought their books in mall chain stores. The bookseller in Pittsburgh or Portland whom Loomis or I might once have called to recommend a first novel had been out of business for years. Publishers now spoke to their customers through marketing specialists doing their best to fit the increasingly undifferentiated product supplied by the editors into the still less differentiated slots provided by the retail chains. Many worthy titles couldn't be fitted to these new circumstances at all and disappeared. In recent years the mall shops specializing in best-sellers have been largely replaced by so-called superstores, with much larger inventories of books. But the link between writer and marketplace which had once been the editor's function has all but vanished.

The Random House phone book is now the size of a small city directory. Loomis and I are still listed, but after forty years nearly everything else about book publishing has changed. What had been a craft is now an irrational accretion of improvisational adjustments to historic accidents, a largely fossilized organism that can no longer be deconstructed. Its future depends on how well its remaining energies can be directed toward new technological possibilities.

I am delighted to say that these possibilities already exist. The widespread distribution of printed books via the Internet is a reality a mere two and a half years after the appearance of Amazon.com. The eventual shape of Internet bookselling is not yet fully evident, but it is evident enough to foreshadow a much more direct—and economical—link between writer and reader than has existed in modern times. The choice of a career in book publishing may seem bleak at the moment, but if I were starting out today I might give it a try. To publish a book that may make the world a little more intelligible or decent can be almost as satisfying as writing one. And soon it might just be possible to carry on this work with even greater confidence than Loomis and I shared forty years ago.●

HONORING JOHN E. CORRIGAN

● Mr. DODD. Mr. President, I rise today to honor a man who has worked tirelessly throughout his career to create economic opportunities in the northeastern region of this country: John E. Corrigan. Known by his friends as Jack, Mr. Corrigan has served for 23 years as Regional Director of the U.S. Commerce Department's Economic Development Administration. On Tuesday, May 26, 1998, in my home state of Connecticut, friends, family and admirers of this remarkable man will gather to celebrate his retirement after nearly three decades of service to his country as a public official. This celebration, sponsored by the Connecticut chapter of the Northeastern Economic Development Association, will be a fitting tribute to an outstanding public servant.

Jack Corrigan makes things happen. Throughout his career with the EDA, he worked to make dreams a reality. His success is evident across the Northeast where he contributed to the creation of thousands of jobs and economic opportunities during his career. Indeed, Mr. Corrigan brought new meaning to the term economic development. He looked not only at specific applications, but enjoyed the foresight and vision to appreciate the domino effect which federal assistance could have on entire towns, cities, and regions.

As Regional Director of the EDA, Jack Corrigan administered a multi-million dollar grant program. These resources were allocated throughout the region under his watchful eye, always ensuring that the money would provide an economic stimulus for many individuals and businesses. Jack's gentle style, measured approach, and good judgement helped many people to turn their dreams into reality.

In addition to his service as Regional Director, Jack spent three years as Director of the Office of Civil Rights for the EDA. In this position, he distinguished himself as an effective advocate for civil rights and received the silver medal of the Department of Commerce for his outstanding performance in this field.

From 1982 to 1985, Mr. Corrigan took a temporary reprieve from his Regional Director post to serve as Deputy Assistant Secretary for Operations of the EDA. In this position, he was responsible for the agency's grant program and for coordinating the related activities of the agency's six regional offices.

Jack Corrigan will be deeply missed at the Economic Development Administration and throughout the northeast. His legacy, however, will continue as his exemplary public service is remembered and revered for years to come. I applaud the lifetime achievements of a special man and wish him continued success in all of his future endeavors.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DEWINE. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Calendar Nos. 602, 604, 607, 608, 609, 611, 613, 614 and all nominations placed on the Secretary's desk in the Foreign Service. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at the appropriate place in the RECORD, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER (Mr. COATS). Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Jeanne Hurley Simon, of Illinois, to be a Member of the National Commission on Libraries and Information Science for a term expiring July 19, 2002. (Reappointment)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

William James Ivey, of Tennessee, to be Chairperson of the National Endowment for the Arts for a term of four years.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Robert H. Beatty, Jr., of West Virginia, to be a Member of the Federal Mine Safety and Health Review Commission for a term expiring August 30, 2004. (Reappointment)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Thomas Ehrlich, of California, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years. (Reappointment)

Dorothy A. Johnson, of Michigan, to be a Member of the Board of Directors of the Corporation for National and Community Service for a term of five years, vice Walter H. Shorenstein, term expired.

SMALL BUSINESS ADMINISTRATION

Fred P. Hochberg, of New York, to be Deputy Administrator of the Small Business Administration.

DEPARTMENT OF STATE

William Joseph Burns, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Hashemite Kingdom of Jordan.

Ryan Clark Crocker, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Syrian Arab Republic.

IN THE FOREIGN SERVICE

Foreign Service nominations beginning Alexander Almasov, and ending James Hammond Williams, which nominations were received by the Senate and appeared in the Congressional Record of March 26, 1998

Foreign Service nominations beginning Joan E. La Rosa, and ending Morton J. Holbrook, III, which nominations were received by the Senate and appeared in the Congressional Record of March 26, 1998

Foreign Service nominations beginning Michael Farbman, and ending Mary C. Pendleton, which nominations were received by the Senate and appeared in the Congressional Record of April 22, 1998

NOMINATION OF WILLIAM J. IVEY

Mr. FRIST. Mr. President, on May 13, 1998, the Senate Labor and Human Resources Committee unanimously supported Bill Ivey's nomination to be the Chairman of the National Endowment

for the Arts (NEA). As a member of this committee, and as a Tennessean, I believe Bill Ivey will bring a much needed, new voice to this agency.

Many people in my home State have viewed the NEA as an elitist agency. Bill Ivey brings a new vision with a perspective of the real world. In fact, a newspaper in Tennessee noted that the ''Country Music Foundation director would provide 'Heart of America' leadership.''

Bill Ivey has been the Director of the Country Music Foundation in Nashville, Tennessee since 1971. He has played an integral role in the Nashville music community. He has taught at Vanderbilt University's Blair School of Music and has written a variety of essays on America's musical traditions.

The National Endowment for the Arts has come under increased scrutiny in recent years. Both the American people and Congress have questioned its stewardship of the taxpayers' dollar. Through committee work and the appropriations process, many innovative reform options have been considered, but few have been adopted. Bill Ivey offers the prospect of a fresh start for the National Endowment for the Arts so that all Americans will have pride and a stake in its activities.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

OFFICIAL SITE OF NATIONAL EMERGENCY MEDICAL SERVICES MEMORIAL SERVICE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H. Con. Res. 171, which was received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 171) declaring the city of Roanoke, Virginia, to be the official site of the National Emergency Medical Services Memorial Service.

The Senate proceeded to consider the concurrent resolution.

Mr. DEWINE. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (H. Con. Res. 171) was agreed to.

SENSE OF CONGRESS REGARDING EUROPEAN UNION

Mr. DEWINE. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. Con. Res. 73 and, further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered The clerk will report.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 73) expressing the sense of Congress that the European Union is unfairly restricting the importation of United States agriculture products and the elimination of such restrictions should be a top priority in trade negotiations with the European Union.

The Senate proceeded to consider the concurrent resolution.

Mr. DEWINE. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution appear at the appropriate place in the RECORD.

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

The concurrent resolution (S. Con. Res. 73) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 73

Whereas on a level playing field, United States producers are the most competitive suppliers of agricultural products in the world;

Whereas increased United States agricultural exports are critical to the future of the farm, rural, and overall economy of the United States;

Whereas the opportunities for increased agricultural exports are undermined by the unfair subsidies provided by trading partners of the United States, and by various tariff and nontariff trade barriers imposed on highly-competitive United States agricultural products;

Whereas United States agricultural exports reached a record-level $60,000,000,000 in 1996 compared to a total United States merchandise trade deficit of $170,000,000,000;

Whereas the United States is currently engaged in a number of outstanding trade disputes with the European Union regarding agriculture matters and the disputes involve the most intractable issues between the United States and the European Union;

Whereas the outstanding trade disputes include the failure to finalize a veterinary equivalency program, which jeopardizes an estimated $3,000,000,000 in trade in livestock products between the United States and the European Union;

Whereas the World Trade Organization has ruled that the European Union must allow the importation of beef with growth hormones produced in the United States;

Whereas the European Union has yet to fulfill its commitment under the Agreement on Application of Sanitary and Phytosanitary Measures reached as part of the General Agreement on Tariffs and Trade;

Whereas the European Union has promulgated regulations regarding the use of ''specified risk materials'' for livestock products which have a disputed scientific basis and which serve to impede the importation of United States livestock products despite the fact that no cases of bovine spongisorm encephalopathy (mad cow disease) have been documented in the United States;

Whereas the European Union has hindered trade in products grown with the benefit of biogenetics based on claims that also have a disputed scientific basis;

Whereas these barriers to biogenetic trade could have a profound negative impact on agricultural trade in the long run; and

Whereas there are also continuing disputes regarding European Union subsidies for dairy, wheat gluten, and canned fruits: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the European Union unfairly restricts the importation of United States agricultural products;

(2) the restrictions imposed on United States agricultural exports to the European Union are the most vexing problems facing United States exporters in Europe;

(3) the elimination of restrictions imposed on United States agricultural exports should be a top priority of any current or future trade negotiations between the United States and the European Union; and

(4) the United States Trade Representative should not engage in any trade negotiations with the European Union that undermines the ability of the United States to achieve the elimination of unfair restrictions imposed upon United States agricultural exports to the European Union.

EXPRESSING SENSE OF SENATE REGARDING EUROPEAN UNION

Mr. DEWINE. Mr. President, I ask unanimous consent that the Finance Committee be discharged from consideration of S. Res. 232 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 232) to express the sense of the Senate that the European Union should waive the penalty for failure to use restitution subsidies for barley to the United States and ensure that restitution or other subsidies are not used for similar sales in the United States and that the President, the United States Trade Representative, and the Secretary of Agriculture should conduct an investigation of and report on the sale and subsidies.

The Senate proceeded to consider the resolution.

Mr. DEWINE. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be placed at the appropriate place in the RECORD.

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

The resolution (S. Res. 232) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 232

Whereas, in an unprecedented sale, the European Union entered into a contract with a United States buyer to sell heavily subsidized European barley to the United States;

Whereas the sale of almost 1,400,000 bushels (30,000 metric tons) of feed barley was shipped from Finland to Stockton, California;

Whereas news of the sale depressed feed barley prices in the California feed barley market;

Whereas, since the market sets national pricing patterns for both feed and malting barley, the sale would mean enormous market losses for barley producers throughout the United States, at a time when the United States barley producers are already suffering from low prices;

Whereas the European restitution subsidies for this barley amounts to $1.11 per bushel ($51 per metric ton);

Whereas the price-depressing effects of this one sale will continue to adversely affect market prices for at least a 9-month period as this grain moves through the United States marketing system;

Whereas this shipment is part of about 2.1 million metric tons of European feed barley that have been approved for restitution subsidies by the European Union this year;

Whereas the availability of the additional subsidized European barley in the international market not only artificially depressed market prices, but also threatens to open new import channels into the United States;

Whereas, as the world's largest feed grain producer and the world's largest exporter of feed grains, the United States does not require imported feed grains;

Whereas, at the same time that subsidized European barley is being imported into the United States, some United States feed grains are prevented from entering European markets under European Union food regulations;

Whereas United States barley growers continue to suffer the negative impacts of the sale, regardless of whether the subsidized European barley was originally targeted for sale into the United States and whether the subsidies comply with the letter of current World Trade Organization export subsidy rules; and

Whereas the sale not only undermines the intent and the spirit of free trade agreements and negotiations, it also moves away from the goals of level playing fields and fairness in trade relationships: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF SENATE ON EXPORT OF EUROPEAN BARLEY TO THE UNITED STATES.

It is sense of the Senate that—

(1) the European Union should—

(A) take immediate steps to waive the penalty for failure to use restitution subsidies for barley exported to the United States; and

(B) establish procedures to ensure that restitution and other subsidies are not used for sales of agricultural commodities to the United States or other countries of North America;

(2) the President of the United States, the United States Trade Representative, and the Secretary of Agriculture should immediately consult with the European Union regarding the sale of European feed barley to the United States in order to avoid any future sale of any European barley to the United States that is based on restitution or other subsidies; and

(3) not later than 60 days after approval of this resolution, the United States Trade Representative and the Secretary of Agriculture should report to Congress on—

(A) the terms and conditions of the sale of European barley to the United States;

(B) the results of the consultations under paragraph (2);

(C) other steps that are being taken or will be taken to address to such situations in the future; and

(D) any additional authorities that may be necessary to carry out subparagraphs (B) and (C).

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 105–46

Mr. DEWINE. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on May 21, 1998, by the President of the United States: Protocol to Extradition Treaty with Mexico (Treaty Document No. 105–46).

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol to the Extradition Treaty Between the United States of America and the United Mexican States of May 4, 1978, signed at Washington on November 13, 1997.

In addition, I transmit, for the information of the Senate, the report of the Department of State with respect to the Protocol. As the report explains, the Protocol will not require implementing legislation.

This Protocol will, upon entry into force, enhance cooperation between the law enforcement communities of both countries. The Protocol incorporates into the 1978 Extradition Treaty with Mexico a provision on temporary surrender of persons that is a standard provision in more recent U.S. bilateral extradition treaties.

I recommend that the Senate give early and favorable consideration to the Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 21, 1998.*

AUTHORIZING TESTIMONY AND DOCUMENT PRODUCTION AND REPRESENTATION OF SENATE EMPLOYEES.

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 233, submitted earlier today by Senators LOTT and DASCHLE.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 233) to authorize testimony and document production and representation of Senate employees in People v. James Eugene Arenas.

The Senate proceeded to consider the resolution.

Mr. LOTT. Mr. President, the case of People versus James Eugene Arenas is a criminal case pending in the Municipal Court for Fresno, California. The defendant has been charged with threatening to kill a state official and to blow up a county courthouse.

The California Attorney General, who is prosecuting the case, has subpoenaed an employee on Senator BARBARA BOXER's staff to testify at a preliminary hearing in this case. The remarks underlying these charges were made by the defendant in a conversation with the Senate staffer following a referral from the Senator's office to state authorities of a casework request from the defendant.

This resolution would authorize Senator BOXER's staff to testify and produce relevant documents, with representation from the Senate Legal Counsel.

Mr. DEWINE. Mr. President, I ask unanimous consent that the resolution be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that a statement of explanation appear at the appropriate place in the RECORD.

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

The resolution (S. Res. 233) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 233

Whereas, in the case of *People* v. *James Eugene Arenas*, Case No. 98F2403, pending in the Municipal Court for Fresno, California, testimony and document production have been requested from Kelly Gill, an employee on the staff of Senator Barbara Boxer;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to any subpoena, order, or request for testimony or the production of documents relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate may promote the administration of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges of the Senate: Now, therefore, be it

Resolved, That Kelly Gill, and any other employee from whom testimony or document production may be required, are authorized to testify and produce documents in the case of *People* v. *James Eugene Arenas*, except concerning matters for which a privilege should be asserted.

SEC. 2. That the Senate Legal Counsel is authorized to represent Kelly Gill, and any other employee from whom testimony or document production may be required, in connection with *People* v. *James Eugene Arenas*.

HONORING STUART BALDERSON

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 234 submitted earlier today by Senator STEVENS and Senator LOTT and others.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 234) to honor Stuart Balderson.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DEWINE. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 234) was agreed to as follows:

S. RES. 234

Resolved, That Stuart Balderson is named Financial Clerk Emeritus of the United States Senate.

SEC. 2. That Rule XXIII is amended by adding after ''Parliamentarian Emeritus'' the following: ''and the Financial Clerk Emeritus.''

ORDERS FOR FRIDAY, MAY 22, 1998

Mr. DEWINE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Friday, May 22. I further ask unanimous consent that on Friday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then begin 1 hour for routine morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. DEWINE. Mr. President, for the information of all Senators, tomorrow morning at 9:30, the Senate will begin 1 hour for morning business. At 10:30, the Senate will begin the Iran sanctions bill, under a total time of 3 hours. Also, the Senate will consider the ISTEA conference report. Therefore, votes could occur during Friday's session in an effort to conclude several other items prior to the Memorial Day recess.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DEWINE. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:10 p.m., adjourned until Friday, May 22, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 21, 1998:

THE JUDICIARY

RICHARD M. BERMAN, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK VICE KEVIN THOMAS DUFFY, RETIRED.

DONOVAN W. FRANK, OF MINNESOTA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA VICE DAVID S. DOTY, RETIRED.

COLLEEN MCMAHON, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK VICE JOHN F. KEENAN, RETIRED.

WILLIAM H. PAULEY III, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK VICE PETER K. LEISURE, RETIRED.

REFORM BOARD (AMTRAK)

MICHAEL S. DUKAKIS, OF MASSACHUSETTS, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

SYLVIA DE LEON, OF TEXAS, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

LINWOOD HOLTON, OF VIRGINIA, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

AMY M. ROSEN, OF NEW JERSEY, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

JOHN ROBERT SMITH, OF MISSISSIPPI, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

TOMMY G. THOMPSON, OF WISCONSIN, TO BE A MEMBER OF THE REFORM BOARD (AMTRAK) FOR A TERM OF FIVE YEARS. (NEW POSITION)

CONFIRMATIONS

Executive nominations confirmed by the Senate May 21, 1998:

DEPARTMENT OF DEFENSE

DAVID R. OLIVER, OF IDAHO, TO BE DEPUTY UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND TECHNOLOGY.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

JEANNE HURLEY SIMON, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE FOR A TERM EXPIRING JULY 19, 2002.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

WILLIAM JAMES IVEY, OF TENNESSEE, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE ARTS FOR A TERM OF FOUR YEARS.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ROBERT H. BEATTY, JR., OF WEST VIRGINIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING AUGUST 30, 2004.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

THOMAS EHRLICH, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF FIVE YEARS.

DOROTHY A. JOHNSON, OF MICHIGAN, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM OF FIVE YEARS.

SMALL BUSINESS ADMINISTRATION

FRED P. HOCHBERG, OF NEW YORK, TO BE DEPUTY ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION.

DEPARTMENT OF STATE

WILLIAM JOSEPH BURNS, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HASHEMITE KINGDOM OF JORDAN.

RYAN CLARK CROCKER, OF WASHINGTON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SYRIAN ARAB REPUBLIC.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING ALEXANDER ALMASOV, AND ENDING JAMES HAMMOND WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 26, 1998.

FOREIGN SERVICE NOMINATIONS BEGINNING JOAN E. LA ROSA, AND ENDING MORTON J. HOLBROOK, III, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 26, 1998.

FOREIGN SERVICE NOMINATIONS BEGINNING MICHAEL FARBMAN, AND ENDING MARY C. PENDLETON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 22, 1998.