through the royalty on energy production and devoting most of it to those investments in alternative and renewable energies. Again, we do this without borrowing money by establishing a renewable and alternative energy trust fund and putting funds from domestic production entities into that trust fund. In doing so, we do more for alternative and renewable energy than President Obama’s entire $800 billion stimulus plan.

No. 3, the third big thing the No Cost Stimulus Act of 2009 does, it streamlines the regulatory burden and clarifies environmental law. We streamline the review process for new nuclear energy production, and we prevent the abuse of environmental laws, which were not meant to be used as a way to simply stop and block all of these projects.

Madam President, I wish to close as I began. Energy is a big topic, and ensuring affordable, reliable energy is central to who we are as a country because energy is a great equalizer. We are a society of equals. We have never had distinct classes. We have always had great mobility. You can make it in America. If you are successful, you can do anything. You are not limited in that way. Affordable, reliable energy is a key equalizer that ensures that American way of life.

So what should energy policy be about? It should be about four things: No. 1, ensuring affordable energy for all Americans, particularly middle- and low-income families, so that we keep that great equalizer in the center of our society, in the center of our economy.

No. 2, it should be a way to grow the economy with our abundant domestic resources, particularly as we need to get out of this serious recession.

No. 3, good energy policy should work us toward energy independence so we don’t have to be at home and we rely less on foreign sources.

No. 4, a good energy policy should ensure that it is consistent with national security, which, of course, increasing our energy independence is.

I truly believe the No Cost Stimulus Act of 2009 achieves all of those broad goals in a very significant way. Just as clearly, President Obama’s energy tax proposals, which across the board increase the tax burden on utility businesses and on domestic energy production, move us in the opposite direction.

President Obama said very recently about GM, in the midst of the latest GM bailout, that: “GM has been buried under an unsustainable mountain of debt, and piling an irresponsibly large debt on top of the new GM would mean simply repeating the mistakes of the past.”

This is an old saying: What is good for GM is good for the country. I would like to modify that to say: What is true for GM is true for the country. So why are we piling an irresponsibly large debt on top of our existing historically high levels of debt in this country? We need another way. We need something like the No Cost Stimulus Act of 2009. We need to learn again how to generate wealth and a healthy economy. We need to refocus here at home on our abundant energy resources that is the way we can have a sound energy policy that meets those four crucial goals I mentioned and allow us to work out of this severe recession—not by borrowing more from the Chinese, not by spending more taxpayer dollars, and it is all borrowed money right now—but focusing here at home on our own resources, on our own people, on good sustainable jobs we can build here toward a prosperous future and toward a new energy future.

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

The acting President pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The acting President pro tempore. Without objection, it is so ordered.

THE FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. LIEBERMAN. Madam President, I rise today to describe and explain my amendment to H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. The central purpose of this legislation is to give the Food and Drug Administration the authority to regulate tobacco products. I support the bill’s goals and am an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products under H.R. 1256 passes muster under budget rules only because of the increase in tax revenues generated by one federal employee retirement program, I want to make sure that the overall retirement system treats federal employees fairly. To accomplish this, I and colleagues on the Homeland Security and Governmental Affairs Committee—Senators COLLINS, AKAKA, and VOINOVICH—have developed this bipartisan amendment to make a number of needed corrections and improvements to the federal employee retirement program. In addition to Senators COLLINS, AKAKA, and VOINOVICH, I would also like to thank Senators MURKOWSKI, MIKULSKI, INOUYE, and BEGICH, who have all asked to be included as cosponsors of this amendment.

The central purpose of our amendment is to bring justice to federal employees who—because of quirks in the law, errors, and oversight—have lost out on retirement benefits for which they would otherwise be eligible. Many of the provisions of this amendment have the very strong support of federal employee unions and organizations of managers.

Our amendment would add back into the pending substitute amendment several of the reforms to the federal retirement system that were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I have prepared a complete written summary of these provisions, and I will ask consent that it be printed in the record. Now I want to focus on those that are most significant.

One of the most important reforms in our amendment would lift retirement penalties now experienced by long-time federal employees under the Civil Service Retirement System who want to switch to part-time work at the end of their careers. The amount of an employee’s annuity is based, in part, on the highest rate of salary that the employee received over a period. Because an employee’s salary ordinarily reaches its highest rate at the end of the employee’s career, employees count on that end-of-career work period to help determine the amount of annuity. However, as the law now stands, employees who have a substantial period of service before April 1986, and who now switch to part-time work at the end of their career, get part of their annuity determined on the basis of the amount of salary received, which, for the part-time work, is only a fraction of the rate of salary received. With retirement credit for part-time work so reduced, many employees have little incentive to stay on part-time, and simply opt to retire altogether.

Our amendment would fix this problem by using the rate of salary, not the amount of salary, for determining the entire amount of the employee’s annuity. This would result in a more incentive that now discourages federal employees near retirement from working on a part-time basis while phasing into retirement.

Our amendment is not only fair to the employee, but also good for the government, by helping to retain valuable employees who wish to phase down their work but to continue offering their talent and experience to serve the country.

Our amendment would also provide a new retirement benefit for federal employees who had previously been treated unfairly and who are eligible for the new retirement benefits. This is one of the provisions in our amendment that was passed by the House as part of its version of H.R. 1256, and this provision is also very similar to a bill introduced by Senator Feinstein in the Senate, S. 487, which was unanimously approved by the Homeland Security and Governmental Affairs Committee late last month by voice vote.

A second provision in our amendment would correct an injustice in calculating the retirement benefits for nonjudicial employees of the DC courts, the Court Services and Offender Supervision Agency and the DC
Public Defender Service. Legislation in 1997 and 1998 converted these individuals from being employees of non-federal agencies into being federal employees. The converted employees were brought under the Federal Employees Retirement System, which essentially expanded eligibility for retirement and the amount of their benefits anew, without recognition of their previous service.

Some employees of these three agencies hired between the years of 1984 and 1987 to opt into the DC plan, but instead required them to be covered by the new federal retirement system. We ask a tremendous amount from the men and women of the Secret Service, one of the most challenging jobs within the federal government. It is not too much to expect that the federal government abide by its promises in return. Accordingly, this amendment will enable Secret Service employees who converted to the DC Metro plan if they so choose.

Finally, our amendment incorporates two additional bipartisan reforms of the federal pay and benefits system that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator KAKA, Senator AKAKA, Senator MURKOWSKI, INOUYE, and BEGICH, called the “Non-Foreign Area Retirement Equity Assurance Act of 2009.” This legislation will bring federal employees in Hawaii, Alaska, and other “nonforeign” areas in line with federal employees in the lower 48 states with regard to pay and pension. Federal employees in the lower 48 states receive locality pay, which is taxed and counts towards employees’ pensions. Federal employees in nonforeign areas instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

This puts nonforeign area employees at a substantial disadvantage when it comes time to retire. To correct this situation, the legislation would move federal employees in nonforeign areas from the nonforeign COLA system to locality pay that would both be taxed and counted towards employees’ pensions. Federal employees in nonforeign areas instead receive a nonforeign cost of living allowance, which is neither taxed nor counted towards pensions.

We have also included in this amendment a bill, S. 629, which was introduced by Senator COLLINS, Senator VOINOVICH, Senator KOWSKI, MIKULSKI, INOUYE, and BEGICH, named the “Part-Time Reemployment of Annuitants Act of 2009.”

This legislation would authorize Federal agencies to reemploy retired Federal employees, under certain limited conditions, without offset of annuity against salary. The purpose is to help agencies weather the upcoming wave of retirements by hiring back retirees on a limited basis.

Under present law, most annuitants who return to work have the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule, and our amendment would grant Federal agencies the power to hire annuitants at full salary and annuity if certain conditions are met.

The bill includes several limits intended to ensure that the authority is used for the intended purpose, to fill particular staffing gaps and needs. A reemployed individual may not work more than a maximum of 520 hours—i.e., 65 days—in the first 6 months after reemployment, or any 12-month period—i.e., 130 days—in any 12-month period, or exceed a total of 3,120 hours—i.e., 390 days—for any one individual. These limits represent working at about half time.

Moreover, reemployed annuitants at an agency may not comprise more than 2.5 percent of the agency’s total workforce, and may not exceed 1 percent of the agency’s total workforce unless the agency head submits a written justification to OPM and Congress. The legislation would sunset after 5 years.

Federal employees, wherever they work, are a dedicated group of people who are asked to make a number of sacrifices for the sake of their country. We ask a tremendous amount from the Secret Service, obviously, sacrifice more, with some of their lives. Our amendment will update and bring retirement parity and fairness to many federal employees. This amendment will provide a measure of assurance for hundreds of thousands of public servants. I urge my colleagues to support this amendment.

Madam President, to reiterate, I rise today to describe and explain and speak on behalf of bipartisan legislation to amend this underlying bill I am proud to introduce, along with Senator COLLINS, Senator AKAKA, and Senator VOINOVICH. The central purpose of the legislation before us, of course, is to give the Food and Drug Administration the authority to regulate tobacco products. I support the aims of the bill strongly and I am proud to be an original cosponsor of the Senate counterpart, S. 982.

Because the regulation of tobacco products is estimated to result in some reduction in tobacco excise taxes, the bill before us, H.R. 1256, passes muster under budget rules only because of an increase in revenues generated by a change that is made in the proposal in the Federal Employee Retirement System. The aim of Senator COLLINS, Senator AKAKA, Senator VOINOVICH, and myself, in proposing this amendment is to make sure that while that revenue-raising change occurs, that the overall retirement system treats Federal employees as fairly as possible.

In addition to the Senators I have mentioned, I also thank Senators MURKOWSKI, MIKULSKI, INOUYE, and BEGICH, who have also become cosponsors of this amendment.

The central purpose of the amendment is to bring justice to Federal employees who, because of quirks in the law—frankly of errors or oversights—have lost out on retirement benefits for which they would otherwise be eligible.
Many of the provisions of this amendment have the very strong support of the groups representing Federal employees and managers as well. Our amendment would add back into the pending substitute amendment several of the reforms set forth in the retrenchment and Federal retirement system amendments that actually were already passed by the House in its version of H.R. 1256. In addition, the amendment includes two very significant reforms to the Federal employee pay and retirement systems that our Homeland Security and Governmental Affairs Committee recently approved by voice vote without dissent.

I should state here for the record that the committee now has very broad jurisdiction which has been added to, in recent years, when we became the Homeland Security Committee, but in the original governmental affairs jurisdiction of the committee we not only have general oversight of the activities of government, of the Federal Government, but the committee is responsible for the civil service, for those who work every day to enable our Federal Government to work for the citizens of our country.

I have a complete written summary of the provisions that are in this amendment. I will offer it a little bit later, but now I want to focus on a few of the most significant changes.

One of the most important reforms in the amendment would lift retirement penalties now experienced by long-time Federal employees under the Civil Service Retirement System when they want to switch to part-time work at the end of their careers. It is very important, as we face a time of increasing retirement from Federal service and increasing demand on Federal service. The amount of an employee’s annuity is based in part on the highest rate of salary an employee received over a 3-year period. Although an employee’s salary an employee received over a 3-year period is based in part on the highest rate of salary, for determining the amount of retirement benefits—something Civil Service Retirement System participants are already allowed to do. So that is an inequity this amendment would eliminate.

The amendment also provides relief to approximately 170 U.S. Secret Service agents and officers who have lost out on tens of thousands of dollars in retirement benefits they did not receive what they were promised when hired. This provision would restore this small group of agents and officers to the retirement system that they were promised and paid into over their careers, and over so much of the men and women of the Secret Service that we should treat them fairly.

Finally, our amendment incorporates those two additional bipartisan reforms of the Federal Pay and Benefit System that our Homeland Security and Governmental Affairs Committee recently approved without dissent.

First, the amendment incorporates a bill introduced as S. 507 by Senator Akaka and Senator Bayh, which I believe may speak on this when I am done, cosponsored by Senators Murray, Inouye, and Begich, called the Non-foreign Area Retirement Equity Assurance Act of 2009. These obviously are colleagues from Alaska and Hawaii, so it has unique relevance there. The legislation would bring Federal employees in Hawaii and Alaska and other "nonforeign" U.S. territories in line with Federal employees in the lower 48 states with regard to pay and pension. Federal employees in the lower 48 receive locality pay, which is taxed and counts toward employee pensions. Federal employees in nonforeign areas, such as Alaska and Hawaii, instead receive a nonforeign cost of living allowance, which is neither taxed nor counted toward pensions.

This puts Federal workers in places such as Hawaii and Alaska at a substantial disadvantage when it comes to retirement. To correct this situation, this legislation would remove Federal employees in nonforeign areas—Alaska, Hawaii, etc. from the nonforeign COLA system to locality pay that would both be taxed and would count toward pensions.

We have also included in this amendment a bill, S. 629, which was introduced by Senator Collins and cosponsored by Senators Voinovich, Kohl, and Biden, which provides for the Part-Time Reemployment of Annuitants Act of 2009. This is relative to something I talked about earlier. It would allow Federal agencies to re-employ retired Federal employees under certain limited circumstances without offset of annuity against salary. In other words, we have some retired employees who, after a long period of service, have built up specialized skills we need and will need more and more in the years ahead, as a generation retires from Federal service. Yet now there is an economic disincentive for those retired employees to come back part time or for limited periods of time to serve the American people.

Under present law, most annuitants who return to work lose the amount of their pension offset against their salary. Congress has enacted certain limited exceptions to this general rule. Our amendment would grant all agencies the power to hire annuitants at half salary, while maintaining their full retirement benefit, if certain conditions are met.

The bill includes several limits to ensure that this authority is used for the intended purpose, which is to fill part-time staffing gaps and needs and not used to frustrate the desire of a new generation of Federal workers to come in. A reemployed individual may not work more than a maximum of 520 hours, 65 days, in the first 6 months after retirement or more than 1,040 hours, 130 days, in any 12-month period or exceed a total of 390 days for any one individual for the entirety of their retirement.

Each of these proposals that are part of our amendment treat Federal employees fairly. They correct inequities; in some cases, overcompensation. The fact is, in many countries of the world, developed countries particularly, one of the most respected professions, lines of work one can go into is civil service, what we call the civil service. We are not where we should be in this country. These are the people who make the Federal Government work. We should treat them fairly and, in this unique circumstance, when we are taking some parts out as a change in the Federal retirement system to offset the loss of excise taxes on tobacco, there is some money left over which we can use to correct these inequities on Federal employees. That is why I am so pleased this is a bipartisan amendment.
human capital management; that is, the best management of our Federal workforce.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii, Mr. AKAKA. Madam President, I ask unanimous consent to speak as in morning business for 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Madam President, I thank Chairman LIEBERMAN for his leadership. He has been doing a grand job in moving legislation on issues of homeland security. I rise today to support the Family Smoking Prevention and Tobacco Control Act. Tobacco products kill approximately 400,000 people each year. The FDA must be provided with the authority to regulate deadly tobacco products, limit advertising, and further restrict children's access to tobacco.

I commend my friend from Massachusetts, Senator KENNEDY, for his long-term commitment to advancing public health legislation, and I thank my friend from Connecticut, Senator LIEBERMAN, in overseeing the oversight of regulatory reform of the Federal Workforce, and the Department of Labor's new Department of Retirement Security and provide more options for Federal employees.

The provisions in the managers' amendment would make four changes to enhance the Thrift Savings Plan. Federal employees would be automatically enrolled in the TSP with the option of opting out of the program. Federal employees also will be eligible for immediate matching TSP contributions from their employing agency. In addition, the Thrift Savings Board will have the option to create a mutual fund window during which employees will be able to select mutual funds that are appropriate for their investment needs. Finally, employees will be allowed to invest in a Roth IRA through the TSP.

As chairman of the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, I also am proud to support my other good friend from North Carolina, Senator LIEBERMAN, in offering an amendment to support additional retirement security and equity provisions for the Federal workforce.

Most important to my home State of Hawaii, the amendment provides needed retiree equity to Federal employees in Hawaii, Alaska, and the territories. Nearly 20,000 Federal employees in Hawaii, and another 30,000 Federal employees in Alaska and the territories, currently receive a cost of living adjustment which is not taxed and does not count for retirement purposes.

Because of this, workers in these areas retire with significantly lower annuities than their counterparts in the 48 States and DC. This situation is scheduled to go down later this year along with the pay of these nearly 50,000 Federal employees if we do not provide this fix.

In 2007, the Office of Personnel Management offered a proposal to correct this retirement inequity. After soliciting input from all affected employees, I introduced the Non-Foreign Area Retirement Equity Assurance Act. The bill passed the Senate by unanimous consent. Unfortunately, the House did not have time to consider the bill before adjournment.

I reintroduced this as S. 507, which is included in this amendment, with Senators MUKURUDZU, INOUYE, and BEGICH. It is nearly identical to the bill that passed the Senate last year.

This is a bipartisan effort to transfer employees in Hawaii, Alaska, and the territories to the same locality pay system used in the rest of the United States, while protecting employees' take-home pay in the process. In this current economic climate we must be careful not to reduce employees' pay.

The measure passed unanimously through committee on April 1. OPM recently sent a letter asking for prompt, favorable action on this measure.

This is one of the most important issues facing Federal workers in Hawaii, Alaska, and the territories. I urge my colleagues to support this change.

One of the other provisions in the amendment corrects how employees' annuities are calculated for part-time service under the Civil Service Retirement System. This provision treats Federal employees under CSRS the same way they are treated under the newer Federal Employee Retirement System. Eliminating this unnecessary disparity is a matter of fairness and correction.

Similarly, this amendment includes a provision to treat unused sick leave under the old retirement system as under the new system.

The Congressional Research Service recently found that FERS employees within 2 years of retirement eligibility used 25 percent more sick leave than CSRS employees within 2 years of retirement. OPM also found that the disparity in sick leave usage costs the Federal Government approximately $68 million in productivity each year.

This solution was proposed by Federal managers who wanted additional tools to build a more efficient and productive workplace and to provide employees with an incentive Congress should have provided to CSRS employees under CSRS.

This amendment also will make good on the recruitment promise made to a small group of Secret Service agents. Approximately 180 Secret Service officers, hired during 1984 through 1986, were promised access to the DC retirement plan. This amendment would provide it.

The majority of these retirement reform provisions have the endorsement of all the major Federal employee groups including: the American Federation of Government Employees, the National Treasury Employees Union, the National Active and Retired Federal Employee Association, the Senior Executives Association, the Federal Managers Association, the Government Managers Coalition, and the list goes on.

I strongly encourage my colleagues to support this bill and the Federal retirement reform provisions.

I thank Chairman LIEBERMAN for his support and his leadership.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HAGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HAGAN. Madam President, I ask unanimous consent to speak in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mrs. HAGAN. Madam President, I thank you.

Madam President, I rise in opposition to the Family Smoking Prevention and Tobacco Control Act that is before us. We believe this bill will not reduce smoking among teenagers and to regulate tobacco products, it goes far beyond these two goals.

This broad, sweeping legislation will further devastate the economy of North Carolina and many of my constituents. In my State, we have 12,000 tobacco farmers and 65,700 jobs tied to this industry. It also generates close to $600 million annually in farm income. And the economic impact of tobacco in North Carolina is $7 billion. We know we are in the midst of an economic crisis, and the bill before us today will further impact the economy in North Carolina by putting thousands of people out of work and exacerbating the already high levels of unemployment throughout our State.

Many aspects of the bill will make it impossible for tobacco manufacturers to earn a living. For example, the labeling requirements in the bill will present a burdensome and costly obstacle for many of the smaller tobacco manufacturers, as will the marketing and advertising restrictions in this bill.

But I am also concerned that the bill will allow the FDA to develop standards for tobacco products for which technology now may not exist. For example, the bill requires the FDA to establish standards for the reduction or elimination of certain components, including smoke components. The problem is that many of these components are naturally found in the tobacco leaf and technology may not be available to extract these natural—they are not artificial—components. Allowing the FDA to develop unattainable standards will put farmers in an outright impossible position—again, hurting generations of families and businesses in North Carolina.

But let me make it clear that the bill is going to make it more difficult for...
Madam President, the third amendment I wish to discuss is amendment No. 1232, which has to do with testing of tobacco products required in U.S. laboratories. This bill before us today requires foreign-grown tobacco to meet the same standards applied to domestically grown tobacco. But the problem is, the bill does not contain language suggesting this is the intent. Indeed, I sincerely doubt we will have difficulty convincing my colleagues this has been an uphill fight, too. I have tried to avoid the course of those days to highlight for the American public why it is bad policy. I have highlighted portions of the bill that I thought were flawed. I do not have to look very far into FDA’s past to figure that out. The solution to this problem is to require tobacco products intended for domestic consumption to be, simply, tested in our country.

This requirement would help ensure that our domestic tobacco manufacturers are not put at a competitive disadvantage to foreign manufacturers, and that foreign manufacturers do not get preferential treatment because domestic manufacturers would be subject to stricter testing requirements. It would also help to ensure that foreign manufacturers are not simply dumping unsafe products into the U.S. market.

I urge support of this amendment. Madam President, I wish to discuss amendment No. 1252, which has to do with testing of tobacco products required in U.S. laboratories. This amendment is critical to ensure that as new standards and regulations are imposed on tobacco manufacturers, farmers, and their families will be protected.

Again, there are 12,000 tobacco farmers in North Carolina who are on the line. Their livelihoods are on the line. We need to be sure they are able to have a playing field they can work with.

I urge support of this amendment.

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

Mr. BURR. Mr. President, later this morning, today, we will go back on the tobacco FDA bill. As one who has tried to educate Members on why this is a flawed bill, let me state I am fighting an uphill battle. I have been wrong.

I wish to thank my friends and colleagues who have come to the floor over the last days to support their belief that this is misguided, not the regulation, but the fact that we are concentrating this in the Food and Drug Administration, an agency that has the trust and confidence of the American people that the gold standard of proving safety and efficacy for all drugs, devices, biologics, and cosmetics, and food. I ask unanimous consent to speak for up to 30 minutes.

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

Mr. BURR. I thank the Presiding Officer.

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Department of Justice, the Office of the President, the Department of Health and Human Services, the Department of Education, the Department of Labor, General Services Administration, the Department of Veterans Affairs, the Federal Trade Commission, the Environmental Protection Agency, U.S. Postal Service, and the Department of Defense. Now we are going to take all of those areas of Federal regulation and we are going to condense them all into the Food and Drug Administration, which has a mission statement of proving the safety and efficacy of every product over which they have jurisdiction.

Twenty-five percent of the U.S. economy is currently regulated by the Food and Drug Administration. Americans go to bed at night after taking pills prescribed by a doctor and filled by a pharmacist with the comfort of knowing they have been approved to be safe and effective. Through this bill we are going to dump the Food and Drug Administration a product that is not safe and it is certainly not effective.

I have tried to point out the flaws. Heck, I have tried to point out the good parts of the bill. I have tried to be one-sided on it. But every time one of my colleagues from the other side of the aisle has come to speak, we have either seen charts that are 10 years old or data that is 10 years old. We have seen one-sided charts that they have wired in a light that didn't even exist 10 years ago. I haven't seen a single question I have asked in this debate answered by the other side or even their opinion of what is wrong with the substitute. It has all been rhetoric.

I wish to share a story with my colleagues. This story is a news report. It was a report CNN ran on a product that is new to the market. It is called Camel Orbs. It is not a cigarette, and it is really not smokeless tobacco; it is a so-called tobacco substitute. It has all been rhetoric.

As I pointed out to my colleagues yesterday when I showed them the charts for continuum of risk, nonfiltered cigarettes have a 100-percent risk factor and filtered cigarettes have a 95-percent risk factor. As you introduce new products into the marketplace that allow individuals to move from cigarettes to other products, you reduce the risk. You reduce the risk of death and disease, and that is one of the three objectives of tobacco legislation. You would think a story on tobacco would lead with that. I haven't seen shy to come to the floor and say that is the result of tobacco usage. But they didn't even go to death and disease. No, they said it was candy. That is how they labeled it.

Even though they mischaracterized the product and took people down the path they wanted to go, that wasn't the bad news of this story. The bad part of the story was they took tins of Orbs and they placed them in the candy aisle at the convenience store, right there beside the Reese's Cups and the chewing gum. Then they took footage of a young boy, I think, reaching over and picking up one of the Camel Orbs, even though this is highly illegal. Even though the convenience store could be prosecuted, and therefore they don't put tobacco products in the candy section, still CNN wanted to make their point. What they did was they used more than they stage what the picture was. Let me say that again. What a better way to make the point than to stage that every retailer in the world out there is putting Orbs, a tobacco product, in its candy section. They portrayed Reynolds America as being deceptive and luring children. No candy. It is not going in the candy section. It is in the tobacco section where smokeless and stick smoke products are.

That is hard to do so difficult. That is why the job I am on a quest for is an uphill battle. It is because nobody on that side wants to come down and talk about the policy.

The bill we are considering was written 10 years ago. No wonder we are using 10-year-old charts and 16-year-old statistics. The truth is, if you look at the statistics today, if you want to address death and disease, then accept the fact that there has to be an opportunity to reduce what my colleagues need to know is that H.R. 1256 gives the FDA full jurisdiction over tobacco products, and it takes this category right here and it locks it in. It cements it because it grandfathers FDA from ever doing anything on the existing products that are in the marketplace: filtered cigarettes and nonfiltered cigarettes. FDA is forbidden from changing anything. The products that were sold continue to be sold.

No new products can be sold. This is why we need to point out that the same restrictions under the same age restrictions all tobacco products do. That means it contains no cartoon images. It must be shelved behind the counter where it is out of reach of children. Heck, it is out of reach of adults. They have to physically ask for the product. By the way, you must show photo ID to buy tobacco products today. Let me say that again. You must show a photo ID to purchase tobacco products today.

When CNN did their story, take a guess on the angle they took. They labeled it as candy—candy—even though it is not candy flavored. They said it was candy. They didn't mention death or disease. You would think a story on tobacco would lead with that. I haven't seen shy to come to the floor and say that is the result of tobacco usage. But they didn't even go to death and disease.

No, they said it was candy. That is how they labeled it.

Our colleagues need to know is that again. In 48 out of the 50 States, the prevalence of marijuana usage is higher than the prevalence of smoking. Let me say that again. In 48 out of the 50 States, the prevalence of marijuana use is higher than the prevalence of smoking. One would conclude from that, since marijuana is illegal—it is not age-testing—since marijuana is illegal, the prevalence among youth would be zero. Well, the American people aren't that foolish. They realize nothing goes to zero. But they also realize it is foolish to suggest that if you concentrate too much attention on marijuana the FDA can then focus on the smoking prevalence is going to go below that of marijuana because marijuana is illegal.
The fact is, putting tobacco regulation at the FDA is not going to have any impact on youth usage. What is going to have an impact on it? Actually taking the master settlement dollars from 1998, the $200 billion the tobacco industry paid to settle with the States, all 50 of them, for two things: one, to defray their health care costs, and two, to fund the programs of cessation to get people to quit smoking and fund the programs to make sure children if we wake up to that, as I pointed out, we have some States that, when the CDC annually makes its recommendations, spend as little as 3.7 percent of what the CDC told them they needed to spend of this tobacco money to make sure kids got an educational message: “Do not smoke. It kills.” Now we are blaming it on the fact that they are not regulated enough today and that we can concentrate this under one Federal agency, the Food and Drug Administration, and hopefully that, mythical thing that happens, youth prevalence of smoking is going to go down. No. It is going to go down when States take the money the tobacco industry gave them and they actually use it to reduce the youth prevalence. I have never been more sure than now that we take up tobacco products, to make sure people switch from smoking products to some other form that has a better effect on death or disease.

I would love to say that my State of North Carolina devotes 100 percent of what the CDC recommends to use on cessation and youth education, but we only spend 17.3 percent of what the CDC recommended of the money we got. When you look at all of the States, though, 17 percent is pretty good. I don’t know whether it was used in other States for sidewalks or for greenways. I know one thing for certain: It didn’t go to try to educate young people in this country not to use tobacco products, or if we want to get the youth usage down, then we have to use the tools we know work, that is, education.

I have listened to my colleagues come to the floor for weeks and make unbelievable statements. All of this has followed the same conclusion: FDA will stop all of this and FDA will put the evil tobacco out of the hands of kids. I think I have made a pretty good case that it is not going to happen, not with this legislation. The sad reality is, if we want to get the youth usage down, then we have to use the tools we know work, that is, education.

I have listened to my colleagues make statements after statement about those dissolvable tobacco products that I pointed out in the CNN expose on tobacco. He repeatedly called it candy, also, even though you cannot buy it in stores, you are 18, and it cannot be put in the candy section—unlike you are CNN and you are doing a story. He said the packaging was intentionally shaped like a cell phone to attract kids. If a cell phone doesn’t work, children don’t want it, let me assure you. But I will make the pledge to him today that if he will offer an amendment to outlaw any packaging that looks like a cell phone, I will cosponsor it with him. If he were right, I think every manufacturer of anything in the United States would make it look like a cell phone today, if it were that effective. My friend went on to call Camel Orbs dangerous. He had no scientific basis for that claim. He quoted an 8-year-old Surgeon General warning on smokeless tobacco that said it caused cancer, but the last time I checked, Camel Orbs didn’t exist back then. He said that I called harm reduction products, such as Camel Orbs, safe.

I have been on the floor 4 days, and I spoke for 2 hours 37 minutes yesterday. I might have slipped, but I don’t believe I have ever referred to any tobacco product as “safe.” If I did, let me correct you. I have never made a claim that there are products that are “less harmful.” I have constantly described and made the point that if you don’t move people from cigarettes to other tobacco products, you will not reduce death and disease.

I don’t think tobacco is safe, but I do believe there are products that are safer than smoking. I believe that for adults who choose to use tobacco products, they should have every option available to make sure that that product is something they can access. Compared to smoking, they do reduce death and disease.
Camel Orbs and Sticks represent a 99% reduction in death and disease associated with tobacco use compared to cigarettes. They don’t cause lung cancer, cardiovascular disease, emphysema, or COPD.

The American Association of Public Health Physicians states that those Orbs are the most effective way to fight death and disease associated with current tobacco users. Yes, much to my amazement, the American Association of Public Health Physicians came out and endorsed the substitute amendment to H.R. 1256. Again, yesterday, the Association of Public Health Physicians endorsed the substitute amendment to this bill.

Unlike my friend from Oregon, I have the science to back up my claim. I have the studies from Sweden, and I have looked at the documented evidence. Alternative tobacco products work in harm reduction. I will tell you what doesn’t work—current cessation programs, especially the ones that are not funded by that money that was supplied to the States. The current cessation programs don’t work; they have a 95% failure rate. So 95 percent of the people return to smoking.

Why in the world would we continue to support a pathway for reducing death and disease? Why wouldn’t we acknowledge the science that currently exists and accept, in new policy, a policy that would in fact embrace this?

May I inquire how much time I have left?

The PRESIDING OFFICER. Four minutes.

Mr. BURR. Senators come to the floor and speak about the $13 billion in marketing the tobacco industry spends. They fail to tell you that 95 percent of that money goes to retailers and point of sale displays. That 95 percent of that money goes to retailers.

I want to tell you about a study that was done just yesterday. Mr. Hagan and I have brought to the table, and if, at the end of the day, what you are attempting to do is reduce death and disease, reduce youth usage, I hope I have made the case to you that you should not pass H.R. 1256.

This afternoon, before there is an opportunity to vote, I hope to make the case that you should support the Hagan-Burr substitute. I hope I have made the case to most that even if the chair or the floor of H.R. 1256 or nothing, that the CDC report says if you want to address a reduction in death and disease, the fastest way to get there is to do nothing if, in fact, your only choice is to pass H.R. 1256.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, first, I yield the floor not to defend the tobacco industry. If you are going to sell a drug that products that are sold in the candy aisle by a news organization just story is placing tobacco products in the floor and speak about the $13 billion in money making sure that the tobacco industry spends a tremendous amount of money making sure that they have access to the floor in the last 4 days to debate the policy. At the end of the day, I hope Members of the Senate will weigh the policy, the points that I have made, the evidence, and the research that I have brought to the table, and if, at the end of the day, what you are attempting to do is reduce death and disease, reduce youth usage, I hope I have made the case to you that you should not pass H.R. 1256.

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package, you will find there is no disclosure whatsoever. None. You don’t know what is in there. All you know is this is paper and tobacco to start with, but you don’t have a clue that there is more nicotine or other chemicals added. And you certainly don’t have a warning on the package that some of the chemicals they stick in cigarettes literally cause cancer. It isn’t bad enough that burning tobacco and inhaling the smoke can cause cancer, there are other chemicals that are carcinogenic added by tobacco companies because they think it makes a more pleasant product.

The obvious thing the American consumer would say is: Where is the Food and Drug Administration warning? Why won’t they tell us the ingredients on that tobacco package? Why won’t they tell us if they are dangerous? Because they do not have the legal authority to do it.

From the beginning of time, with the tobacco lobby being one of the most powerful in Washington, they made sure the Food and Drug Administration had no authority when it came to this product. And they can make a conscious choice about purchasing it.

Today we are trying to do something that the tobacco companies’ lobby has been fighting for decades. We are trying to give the Food and Drug Administration take over the responsibility of making certain that American consumers are at least informed about tobacco products so they know what is in that little package, whether it is dangerous or not.

And what about the tobacco companies? They have won cases, and they have had to disclose more information over the years.

The second thing we do is to make sure that the tobacco companies’ lobby has been fighting for decades. We are trying to give the Food and Drug Administration the authority to police how people sell tobacco products in America. This may be an easier issue for me to walk into a public gathering place and see people smoking. Folks understand and they do not expose some innocent person to secondhand smoke. If you want to smoke, if you made that terrible decision that you want to be a smoker, go outside and do it. Don’t try to put yourself in a position where you endanger others.

What we are trying to do with this bill is to move this debate forward. It was not enough that we could put warning labels on at one time that now have become so small and irrelevant that people do not even see them. It wasn’t enough that we banned it on airplanes. If we are serious about protecting our kids from tobacco and smoking, we have to do more.

This may be an easier issue for me coming from the State of Illinois than Senators from tobacco-producing States or tobacco-manufacturing States. I accept that. This is not easy. For them the issue may be different. It may be in terms of tobacco growers and farmers. It may be in terms of tobacco-related employees. For them the idea of reducing the number of people smoking cigarettes has an economic impact. So I am not going to begrudge them coming to the floor and their attempts to change this bill that is before us. It is perfectly understandable. I do not question their motives at all. But I come to it from a public health viewpoint. I think what they are offering as an alternative is not a good one.

We have 1,000 organizations, literally 1,000 organizations, health and consumer organizations across the United States or tobacco-manufacturing States. I accept that. This is not easy. For them the issue may be different. It may be in terms of tobacco growers and farmers. It may be in terms of tobacco-related employees. For them the idea of reducing the number of people smoking cigarettes has an economic impact. So I am not going to begrudge them coming to the floor and their attempts to change this bill that is before us. It is perfectly understandable. I do not question their motives at all. But I come to it from a public health viewpoint. I think what they are offering as an alternative is not a good one. I don’t believe you can save lives by giving away cigarettes.
States that have endorsed this bill. I have literally in my time in Congress, 27 years, never seen a bill with this kind of endorsement. People understand this now. They understand we have to do this now. Senator Kennedy, who is our champion and inspiration, cannot be here. He is battling a brain tumor and doing well, but he cannot make it to the floor. But I will tell you that he is in our hearts, thoughts, and prayers today. This bill is about this. So many organizations join him in his valiant effort to make sure we do this. And I will tell you all that many organizations join him and us in saying this is long overdue.

Those on the other side have come up with a substitute, an alternative. There are a lot of problems with it. I have heard the Senators from North Carolina—Senator Burr was just on the floor—talk about their alternative. We took a look at it. It turns out there are some problems with their alternative.

They want to create a new Federal agency. They don’t want the Food and Drug Administration to do this. Unfortunately, it will be an untested and underfunded agency. They do not understand the concept behind trying to keep tobacco products out of the hands of kids. They say maybe there are some alternative products these kids could use which would not be as dangerous, the so-called risk reduction idea. We started our bill on the premise that the tobacco industry’s practices misleading people and result in terrible health consequences, and they have to be changed.

One of the ways they propose to reduce the risk of tobacco is to change the form of tobacco. Instead of cigarettes inhaled into the lungs, it turns out they believe that spit tobacco, chewing tobacco, is a safer way to use tobacco. The proposal that is being offered by the Senator from North Carolina virtually exempts smokeless tobacco from regulation. We do not know what I am talking about, those little pouches you stick in your mouth that let tobacco juices flow, and so forth. We even have some Senators who chew tobacco, if you can believe that—it is a fact—and spit into cups. Not my idea of a good time. But some of them do it anyway.

This bill would not go after that form of tobacco. There is little, if any, evidence that smokeless tobacco products are a step in the way of quitting smoking or becoming healthy.

In fact, many of these new smokeless products are being marketed to smokers as a way to sustain their addictions in places where smoking is no longer allowed. Take a look at this product: Camel Snus, frost-flavored Camel Snus, 15 pouches. See these little pouches over here?

For those who aren’t familiar with it, snus is a smoke-free, spit-free tobacco product that comes in little pouches which can be placed under the upper lip. And as one high school student described it: It is easy—says the high school kid—it is super discreet. None of the teachers will ever know what I am doing.

This is their idea and the alternative? This is the idea, the alternative of the Senator from North Carolina to kids smoking cigarettes. The Web site for Camel Snus boasts that “snus can be enjoyed almost anywhere, regardless of growing smoking bans and restrictions.”

So do we really want a national policy—as the North Carolina is suggesting—that steers people toward this kind of a product? Let’s look at the facts.

Smokeless tobacco is loaded with dangerous ingredients, just like cigarettes. The National Cancer Institute reports that chewing tobacco contains at least 28 known cancer-causing agents. Smokeless tobacco may be a reduced risk in some respects compared to cigarettes, but its use is still a danger to children. If you need proof of that, look at this poor young man here.

Gruen Von Behrens is an oral cancer survivor. This young man has had more than 40 surgeries to save his life, including one radical surgery that removed half his neck muscles and the lymph nodes and half of his tongue. Like too many teenagers, Von Behrens first tried spit tobacco, which this bill says is safer way of using tobacco than cigarettes, at age 13—13—in order to fit in. It only took 4 years for him to be diagnosed with squamous cell carcinoma. Look what this poor young man has man been through because of a product that our Senate Subcommit-tee tells us is something we should be moving toward in this country.

I think of all those kids who used to have the little can of snuff—baseball players—in the back of their jeans and how cool that was, and I just wonder how many of them face this kind of an outcome because of popular fads. Would we want to endorse that as part of our debate on the future of tobacco in America?

The Burr substitute is based in part on an unproven assumption that smokeless tobacco should be promoted as a way to help people quit smoking. But the 2008 U.S. Public Health Service Clinical Practice Guidelines concluded that the use of smokeless tobacco products is not a safe alternative to smoking, nor is there any evidence to suggest it is effective in helping smokers quit.

Smokers who are trying to quit already have access to safe, rigorously tested, and FDA approved forms of nicotine replacement, like including nicotine gum, the patch, lozenges and other medications.

Let’s steer people who want to quit toward these FDA approved products, not toward smokeless tobacco, which is riddled with carcinogens.

Another weakness in my colleague’s bill is in the limited authority it gives the new agency to oversee the contents of tobacco products.

The Kennedy bill gives the FDA strong authority to regulate the content of both existing and new tobacco products, including both cigarettes and smokeless tobacco products.

The Burr substitute gives the new agency virtually no authority over the content of existing smokeless tobacco products—no mandate how much nicotine, and no matter how many cancer-causing agents they contain.

My colleague’s substitute gives the agency far less authority to remove harmful constituents in cigarettes than the Kennedy bill does, and it makes it far more difficult for the agency to act.

The Kennedy bill allows the FDA to fully remove harmful constituents.

The Burr proposal allows only the reduction—but not the elimination—of known harmful substances.

The Kennedy bill allows the FDA to take into account the impact of product changes on potential users—including children—and the effects on former smokers who might be enticed to re-start nicotine addiction.

The Burr substitute allows the agency to consider only the narrow health impact on existing smokers.

The Kennedy bill allows the FDA to reduce or fully eliminate substances that may be harmful using the best available scientific evidence.

The Burr substitute requires the agency to demonstrate that a single product change is likely to result in “measurable and substantial reductions in morbidity.” This standard will be extraordinarily difficult to meet given the large number of harmful substances in cigarettes. It is language that will tie the agency in knots and prevent actions that are clearly in the interests of public health.

The Kennedy bill includes an outright ban on candy and fruit-flavored cigarettes.

The Burr alternative bans only the use of candy and fruit names on the product, while allowing the use of candy and fruit flavors to entice young people to begin using products laced with nicotine and carcinogens.

All these details are important—they mark the difference between an approach that gives the government real authority to regulate the contents of tobacco products, and an approach that bows down to the industry and leaves tobacco companies in charge of these decisions.

We shouldn’t continue to give those companies that kind of power.

There is another serious problem with the substitute offered by the Senator from North Carolina. It does not adequately protect consumers from misleading health claims about tobacco products.

The Kennedy bill sets stringent but reasonable scientific standards before manufacturers of cigarettes and smokeless tobacco products are allowed to claim that their products are safer or reduce the risk of disease.

The Burr substitute completely exempts smokeless tobacco products from these standards even if those...
claims are likely to cause youth to take up tobacco for the first time.

When smokeless tobacco manufacturers aggressively marketed their products to young people in the 1970s, often with themes suggesting that they were less harmful than cigarettes, use of those products increased among adolescents.

The Burr substitute only allows the agency to look at the impact of health claims on individual users of tobacco products.

It does not allow the agency to consider whether the reduced risk claim would increase the harm to overall public health by increasing the number of youth who begin using tobacco products or reducing the number of current users who quit.

The Senator from North Carolina has criticized the Kennedy bill for limiting tobacco advertising to black-and-white text-only material in publications with significant tobacco endorsements.

His substitute, he says, goes further by banning tobacco advertising.

That is an attractive talking point. But like so much tobacco advertising, it is misleading. It has a barbed hook buried in it.

The fact is, a broad, indiscriminate ban on tobacco advertising would likely be struck down by the courts.

The courts would probably rule that it is an impermissibly broad limitation on speech.

They would say the ends are not sufficiently tailored to the means, and they would conclude that it violates the First Amendment.

That is what constitutional scholars tell us.

The result of the Senator’s amendment would be a continuation of current law—a continuation of the insidious advertising the industry currently uses to lure new customers. Under the guise of a total advertising ban, he would give us the status quo.

And the tobacco industry would thank him for it.

My colleague from North Carolina has improved the warning labels he would require on cigarettes. But they would not be strong enough.

The Burr substitute would allocate 25 percent of the bottom front of the package to a warning label.

In contrast, the Kennedy bill reflects the latest science on warning labels by requiring text and graphic warning labels that cover 50 percent of the front and back of the package.

Clearly, a health warning that takes up the top half of the front and back of a package will be more noticeable and easier to read than one that takes up only a quarter of the bottom of the package—and that may be hidden by the sales rack.

Senator Kennedy’s bill also gives the FDA the authority to change the warnings in light of emerging science.

Under the Burr substitute, the agency would not have any authority to change the warning labels.

And the Burr amendment’s required warning labels for smokeless tobacco products read more like endorsements than warnings.

For example, one of the required statements is a warning that the product has a significantly lower risk of disease than cigarettes. That is not a healthy warning—it is an unhealthy promotion.

We have an historic opportunity to finally put some real and meaningful regulations in place, and that will stop some of the tobacco industry’s most egregious practices.

For decades, the industry has lied to us, and I don’t know why we would trust them now to do the right thing.

We should not accept the underlying premise of the Burr substitute, that a lifetime of addiction and a high risk of premature death must be accepted, and that our strategy should be to steer people towards “reduced harm” products.

That is the smokeless tobacco approach, not the public health approach.

The Kennedy bill is a strong and carefully crafted solution that puts the public health first.

The Kennedy bill is the bill that should be enacted.

EXTENSION OF MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that morning business be extended until 12:30 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mrs. HAGAN). Is there objection? Hearing no objection, it is so ordered.

Mr. DURBIN. Madam President, I have about 10 minutes remaining, and then I will be glad to yield to the Senator from Kentucky, who has been sitting here. I ask unanimous consent that when I conclude my remarks, the Senator from Kentucky be recognized to speak as the leading business.

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

GUANTANAMO

Mr. DURBIN. Madam President, if you got up early this morning—like about 6 a.m.—and turned on the television, you would have heard a historic speech. President Barack Obama is in Cairo, Egypt, this morning—our time—giving a speech to an assembled group at a university in Cairo about the relationship of the United States and Muslims around the world.

It is a critically important speech.

All of us know what happened on 9/11/2001. We know our relationship with people in the Middle East has been strained at best, and we have been troubled by the threats of Islamic extremism, and so the President went and spoke in Cairo. I listened to his speech. Now, I am biased because he was my former colleague from Illinois and I think so highly of him, but I think he understood what he tried to do was to explain to them how we can develop a positive relationship between people of the Islamic faith and America, and I thought he laid out the case very well in terms of our history, our tolerance, the diversity of religious belief in our country, and how the elements of Islam—extremist elements of Islam—are not even operating in a way consistent with their own basic values and principles.

The reason I refer to that speech is that one of the points that was important was when President Obama said to this assembled group—to their applause—that the United States was going to change its policies under his leadership. He said we are not going to use torture in the future, and he received applause from this group. He said we are going to close Guantanamo, and they applauded that as well.

What the President’s statement said—and basically the reaction of the audience told us—is that regardless of our image of the United States, for some people around the world there are things that have occurred since 9/11 which have created a tension and a stress between us that need to be addressed, honestly. President Obama made it clear that we are starting a new path, a new way to develop friendships and alliances around the world to stop terrorism and stop extremism, and he understands that torture—the torture of prisoners held by the United States—unfortunately created a tension between the United States and other people in the world. They know it of because of Abu Ghraib, the graphic photographs that are emblazoned in our memory, and theirs as well, of the mistreatment of prisoners in Iraq. They know it from the photographs that have emerged and the documentary evidence about the treatment of some prisoners at Guantanamo.

It has, unfortunately, become a fact of life that Guantanamo is this symbol that is used by al-Qaida—the terrorist group responsible for 9/11—to recruit new members. They inflame their passions by talking about Guantanamo and the unfair treatment of some prisoners at Guantanamo. President Obama knew this and said in his first Executive order that the United States will not engage in torture and within a year or so we will close the Guantanamo corrections facility. I think it was the right decision but the right decision is not the right decision but the right decision. If we are truly going to break with the past and build new strength and alliances to protect the United States, then we have to step up with this kind of leadership.

The President inherited a recession, two wars, and over 210 prisoners in Guantanamo, some of whom have been held for 6 or 7 years. Many of these people are very dangerous individuals who should never, ever be released, at least as long as they are a threat to the safety and security of the United States or a threat to other people. Some should be tried. They can be tried for crimes.