Forgive me for being cynical. Forgive me for wondering if there is some common sense around here. How about standing up for things that matter in a way that says to our trading partners: This country demands action. This country demands open markets. This country demands fair trade. This country demands a stop to dumping in our marketplace. This country demands an end to unfair trade at secret prices by State trading enterprises that would not be legal in this country.

How does this relate to farmers? As I said before, family farmers must find a foreign home for much of what they produce. Regrettably, our trade policy has now produced very large trade deficits for two reasons. One is because foreign markets have evaporated, dried up, been reduced in size.

It is true that no one in the Congress or the administration caused the Asian crisis. I understand that. Yet there are other problems—the failure to enforce fundamental trade laws, the failure to enforce NAFTA, the negotiation of incompetent trade agreements; and then the failure to even live up to those incompetent agreements. This is not, in my judgment, something that we should be expecting from our trade representatives.

Mr. President, I know my colleague from Utah is seeking recognition. How much time remains, if I might inquire?

The PRESIDING OFFICER. Six minutes 51 seconds.

Mr. DORGAN. Let me take about 2 or 3 additional minutes. I know my colleague has things he would like to say to the Senate, as well.

Let me conclude by saying this. I regret coming to the floor and talking in these terms about the trade ambassador's office or about the administration. I think the trade strategy of this Congress is abysmal, to the extent we have one—and I guess largely we do not because you do not hear anybody talking about a trade strategy except myself and a couple others.

It is this Congress that passed NAFTA. It is this Congress that passed the United States-Canada Free Trade Agreement. It is this Congress that passed the WTO. I didn't vote for any one of the three. But we helped cause these problems, and we ought to help solve them.

This administration has a responsibility, and so does this Congress. And this Congress bears responsibility for the farm policy, the underlying farm policy that relates in some part to this trade policy that is such a significant failure.

Our President has been very helpful in trying to push for a disaster and emergency package that will be helpful to family farmers, to save them from catastrophe, the catastrophe of collapsed prices.

How would anyone in this Chamber, how would anyone in this country like to do business when someone says to you: By the way, your income is going to be changed this year. You say: How is that? And they say: You are going to receive depression-era income. We are going to adjust your income to depression levels.

That is what has happened to family farmers. How many here would like to lose 40, 60, or 80 percent of your income and be told that is the way the market system works? It is not the way it works in a country that cares about producing on the land with a network of family farms.

Europe does not do that. Europe has 7.5 million farms. And it says: We want you to stay on the farms because we want to have a healthy rural system in our country, with small towns that are thriving and family farms that are making a living.

That happens in Europe. It happens because they have public policy that demands it. This country does not have comparable public policy. I hope that it will someday soon.

This Congress must create that public policy. This President will lead in that direction. That is what he believes. This President is strong on those issues. I criticize this administration on trade. On farm policy, this administration has been very helpful.

It is this Congress that is dragging its feet. As a member of the conference committee, I hope very much that we will soon get back to work on an emergency and a disaster package to respond to the desperate needs of family farmers.

I also hope this administration will take action, aggressive action, to deal with these trade problems. I hope the administration and Congress will understand the gravity of the trade deficit and the gravity that the unsustainable increase in our current account deficit poses to this country's economy.

Mr. President, I thank the Senator from Utah for his courtesy.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague for his kindness.

FEDERAL TOBACCO LAWSUIT

Mr. HATCH. Mr. President, never in my years of service to the people of Utah and this country have I witnessed an administration more inclined to twist, deform, or ignore, the rule of law than the Clinton administration. The past 7 years are replete with exploits of legal manipulation. Indeed, the legacy of the administration may prove to be that its most significant exploits—infamous or otherwise—were accomplished by warping the law for blatant political purposes. Here are just a few of the most notorious examples: Attorney General Reno both misapplied and ignored the Independent Counsel Act in order to prevent the appointment of an independent counsel in the campaign finance investigation; the 1996 election fundraising scandal where soft money prohibitions were ignored and foreign donations were illegally and eagerly accepted; fundraising from the White House—it was deplorable the Escalante Proclamation, where a huge chunk of Southern Utah was effectively annexed by the Federal government without any prior consultation with Utah officials, to my knowledge—certainly not any elected officials; the misuse of FBI files by the White House—the myriad proclamations of Executive Orders as a vehicle to skirt the authority of Congress; and just to mention one more, the violation of the Vacancies Act to hold in office individuals lacking Senate confirmation.

This list does not even include the myriad events, dissemblance, and contempt for the law and our courts, which brought us the impeachment.

Given this record, I must confess that I wasn't shocked to learn that the Department of Justice may have misled Congress in sworn testimony and then filed suit against the tobacco industry.

Last Wednesday, the Department of Justice filed in Federal district court a multibillion dollar suit against the tobacco industry seeking recoupment of losses to Federal health care programs. After reviewing the 131-page complaint, I have serious reservations concerning several key counts in the complaint. Moreover, I am skeptical of the entire lawsuit.

It is well known around here that I am no friend of tobacco use, nor an apologist for the tobacco industry. Indeed, I have never used tobacco products in my life and am opposed to tobacco use. I never inhaled or chewed tobacco.

Along with my cosponsor, Senator FEINSTEIN, I worked hard last Congress to pass legislation that would have gone a long way in helping Americans to kick the habit and in reducing teen smoking. The legislation required the tobacco companies to pay over $400 billion to settle existing lawsuits—$429 billion, to be more accurate. In return for the settlement of these lawsuits, the companies would have stopped targeting children and would have funded smoking cessation efforts.

While this measure has yet to pass, I strongly believe that the fairest and most effective solution to the use of tobacco is omnibus legislation such as the Hatch-Feinstein bill rather than relying upon legally dubious lawsuits. Litigation cannot effectively deal with important public policy problems, such as what measures the industry must take to reduce youth smoking or what effect will rising prices have on the black market for cigarettes.

Given my skepticism about the administration's fidelity to the rule of law, I have several questions concerning the Federal lawsuit. The first question I have is, What is the administration's motivation here? It has been reported that many attorneys at the Department of Justice opposed filing of a lawsuit because the Federal Government did not possess a valid cause of action or claim against the tobacco companies.

Indeed, Attorney General Reno, at the April 30, 1997, hearing before the Judiciary Committee, testified that no Federal cause of action existed for both Federal Medicare and Medicaid claims. I disagree with the assertion made by David Ogden, Acting Assistant Attorney General for the Civil Division and the current nominee for that post, that Attorney General Reno was referring only to State actions. Ms. Reno's contention that no Federal cause of action existed was made clearly in response to a question by Senator KENNEDY, who asked whether the Federal Government could recoup both Medicare and Medicaid payments.

It was only after President Clinton, in his State of the Union Address in January, called for a suit against the tobacco industry that the Department of Justice changed its tune and, presto, announced that a legitimate cause of action may exist.

I have been criticized in the past for saying that the politically minded and partisan White House, and not the Attorney General, is in reality running the Department of Justice. In the case of the Federal tobacco litigation, it appears once more that the White House is directing the activities of the Department of Justice for political ends. This lawsuit is a horrible precedent that, if it continues, will erode the liberty of the American people. Here again, the rule of law is apparently being replaced by the rule of the politically correct and expedient.

I urge my colleagues to read the fine story appearing in last Friday's Wall Street Journal entitled ''Justice Reverses: Lobbying Effort Wins Turnabout On Tobacco Suit.''

This story chronicled the change in the Department's position concerning the viability of the Federal tobacco suit. The story demonstrated that the Department's attorneys were skeptical about a Federal lawsuit. It also established that the Department brought suit only after pressure from the White House and outside lobbyists, who apparently were paid by an outside consultant for their efforts to help convince the Department to change its viewpoints.

I ask unanimous consent to have this article printed in the RECORD.

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

[From the Wall Street Journal, Sept. 24, 1999]

TOBACCO—JUSTICE REVERSES: LOBBYING EFFORT WINS TURNABOUT ON TOBACCO SUIT

(By David S. Cloud, Gordon Fairclough and Ann Davis)

WASHINGTON.—On a rainy day in January of this year, a group of high-profile academics and lawyers with experience in the tobacco wars trooped into a conference room filled with dour Justice Department officials to make a case for filing a federal lawsuit against the tobacco industry.

The prosecutors were dubious. ''The meeting was tense,'' says G. Robert Blakey, a Notre Dame law professor and member of the group, which some called the Tiger Team. ''You could palpably feel the hostility in the room.''

But this week the Justice Department made a startling turnabout. On Wednesday it filed a massive civil lawsuit in federal court here charging that major tobacco companies carried on a 45-year campaign of deception that obfuscated the risks of smoking and drove up government health-care costs. The suit is potentially the biggest threat yet against the already beleaguered industry. It is also a major test of Attorney General Janet Reno's Justice Department.

The story of how the department overcame its doubts is a tangled one, involving pressure on the department from several directions at once—from the White House, Congress and plaintiffs' lawyers involved in state suits against the industry.

Inside the department, an institutional reluctance to take on a case involving untested legal theories and an industry sure to wage a bruising fight slowly fell away as key officials realized that they had the makings of a case, albeit a difficult one.

The effort to persuade the department to change its mind began over a year ago, following the collapse of efforts to pass sweeping federal legislation that would have broadened regulatory oversight of tobacco companies and settled the state cases. Mississippi plaintiffs' attorney Richard Scruggs called top Clinton domestic-policy aide Bruce Reed at the White House and volunteered to represent the federal government free in an antitobacco case.

''They were excited about it,'' Mr. Scruggs says, and were looking for ways to bring the industry back to the negotiating table before the eventual settlements with all the states. He had several meetings with Mr. Reed and others at the White House. But the White House was having trouble sparking interest at Justice, according to administration officials.

The biggest obstacle was Frank Hunger, another Mississippian, who headed the department's civil division, which would have handled the case. Mr. Hunger had been married to Vice President Al Gore's sister, a smoker who died of lung cancer. Advocates of a lawsuit considered him a natural ally, but it turned out that Mr. Hunger and his top aides were dubious that the federal government had a strong statutory basis to sue the industry.

In a meeting with Mr. Scruggs, Mr. Hunger was cordial, but said: ''My lawyers are telling me we can't do it,'' according to Mr. Scruggs. Mr. Scruggs wrote a memo, to address their concerns, but says he got no response. Mr. Hunger declined to comment.

Mr. Scruggs and his allies had a strong motivation to get the federal government involved. Some of the lawyers had represented states in suits against the industry and were hoping to see those settled, in part so they could collect legal fees. They thought the industry would be more likely to settle if it faced the combined weight of the state suits and the federal government.

During the summer and fall of 1998, they worked other angles in hopes of persuading the Justice Department. They met with Mr. Reed and assistant White House counsel Bruce Lindsey to brainstorm.

Then, later in the autumn, Mr. Scruggs says, he got a call from Sen. Kent Conrad (D., N.D.) informing him that Senators Conrad, Edward Kennedy (D., Mass.) and Bob Graham (D., Fla.) were interested in getting him to do a federal case. To persuade Ms. Reno that her staff was wrong, Mr. Scruggs assembled what he called the Tiger Team of Mr. Blakey; professors Laurence Tribe and Einer Elhauge of Harvard Law School; Jonathan Massey, a Washington lawyer; and Kim Tucker, a lawyer then on leave from the Florida attorney general's office. He estimates that he paid them a total of about $250,000 for their efforts.

Inside Justice, interest in tobacco was building anyway. Mr. Hunger announced his intention to leave at the end of 1998. In December, Ms. Reno made the decision, which was kept confidential, to move forward with the lawsuit, aides said. She designated David Ogden, who succeeded Mr. Hunger, to put together the team. It included William Schultz, a former Food and Drug Administration official and onetime aide to tobacco critic Henry Waxman, a Democratic congressman from California.

Many career lawyers in the department remained skeptical, but President Clinton surprised them by announcing in his State of the Union address to Congress in late January that a suit was in the works.

Working in strict secrecy, 15 Justice Department lawyers reviewed thousands of pages of internal industry documents unearthed in state lawsuits. Roberta Walburn, an outside lawyer who represented Minnesota, was hired to help sift through the evidence and discuss legal theories. One shift of Justice Department lawyers worked by day, another by night.

Other outsiders were rebuffed. Ms. Tucker, who worked with the Scruggs team, said she had trouble getting her calls returned. She says a Justice Department attorney even told her: ''At some point, outside assistance becomes a hindrance. We at Justice will decide what, if anything, is in the interest of the United States.''

Ultimately, the Justice Department decided on a bold use of the Racketeer Influenced and Corrupt Organizations statute, which permits the government to go after profits derived from fraud.

Ms. Reno made the final call to go forward on Tuesday, the day before the suit was filed, a Justice official said. She then telephoned the White House and informed John Podesta, Mr. Clinton's chief of staff.

For President Clinton, the suit holds out the possibility of winning far-reaching restrictions in the marketing and advertising of cigarettes, a legacy he has sought early in his first term.

But that is by no means assured. Tobacco lawyers plan to make a concerted push to have the suit dismissed, on the grounds that the government has no statutory authority to combine millions of individual smokers' claims into a single cost-recovery suit. Also, the industry says the RICO claims seeking ill-gotten profits are unwarranted against a legal industry.

The Justice Department's increasing interest in a civil case coincided with the collapse

of its massive five-year criminal investigation of the industry. The case had once seemed promising. But last year, the federal appeals court in Richmond, Va., ruled that the Food and Drug Administration didn't have the authority to regulate tobacco companies. Prosecutors became worried they couldn't charge companies with making false statements about alleged nicotine manipulation to an agency that had no authority over them.

There were other setbacks, too. Brown & Williamson, a unit of British American Tobacco PLC, succeeded in convincing the judge overseeing grand-jury matters to deny the government access to documents the company said were privileged. And several Philip Morris Cos. scientists who were granted immunity in exchange for their testimony revealed little to the grand jury, say people with knowledge of their testimony.

The tobacco industry's jubilation didn't last long. Philip Morris Senior Vice President Steven C. Parrish says an industry lawyer had received assurance from a senior White House official several months ago that a lawsuit wouldn't be filed without the industry getting a chance to make a final presentation. But on Tuesday night, Mr. Parrish says, he learned of the impending lawsuit from reporters.

Mr. HATCH. Another question I have is, Why wasn't Congress consulted? Months prior to the filing of the lawsuit, I had been attempting to ascertain on what legal theories the Department may base a lawsuit against the tobacco companies, but the Department has refused to share the information, even though the Department has asked for an additional $20 million to finance the suit. I assured them that the American people and the Congress will want to know what they are paying for. Congress is not in the habit of writing blank checks, and, in the absence of a straight answer, Congress appropriately refused the additional monies.

Notwithstanding the clear position of Congress, I learned of the filing of the suit from the newspapers. This is particularly galling since the Acting Assistant Attorney General for the Civil Division and the nominee for that office, David Ogden, in written responses dated September 2 to my questions concerning the possible suit against the tobacco industry, wrote that the Department had not even decided whether to file the suit or on what legal theories to pursue any projected litigation. He stated at that time:

The Department is currently in active preparation for this litigation, and we are in the process of making decisions on whether it will be filed and, if so, based on what legal theories.

Now, less than 3 weeks later, the full-fledged suit has been filed.

I have yet another question. Does the Department of Justice have any chance of prevailing on the merits? The Department seeks to ''recoup'' the cost of medical care for treatment of tobacco-related illnesses for those on Medicaid, but the injury claimed by the Federal Government may be questionable. The nonpartisan Congressional Research Service recently issued a study which concluded that tobacco use imposes no net cost to the Federal Government. Indeed, the Federal Government receives approximately $6 billion a year in tobacco tax revenue. Moreover, it is simply absurd for the Government to seek recoupment when it has been a vigorous partner with the tobacco industry in promoting tobacco use.

From the late 1960s to the late 1970s, the Federal Government worked hand in hand with the tobacco industry to develop so-called ''safe'' cigarettes. Until 1974, the Government provided free cigarettes in C rations to servicemen.

Furthermore, cigarettes continue to be sold at substantially discounted rates at military post exchanges. In 1997, the Department of Veterans Affairs blocked claims by veterans for tobacco-related illnesses, contending that these individuals should not be covered because they were responsible for their individual choices and the health problems that resulted from those choices.

Of course, the Federal Government yearly subsidizes tobacco growing. Perhaps the public interest groups should sue the Federal Government, which authorized and fostered the growing of tobacco and the manufacture and sale of tobacco products. Could one not argue that the Government was at least a joint tort-feasor under these circumstances? Furthermore, it is preposterous for the Federal Government now to claim that it did not know of the risks of tobacco use.

Since 1964, the Government has issued Surgeon General reports that warned consumers of the dangers of tobacco use. Since 1966, the Government has required warning labels on cigarette packs. Indeed, everybody not on Mars for the past few decades has known that using tobacco can be harmful.

Besides this hypocrisy and the difficulty in seeing how the Federal Government has been harmed, I question the veracity of at least two main counts of the complaint. These involve alleged violations of the Medical Care Recovery Act, known as MCRA, and the Medical Secondary Payer Provisions, or MSP. The Department of Justice contends that these two statutes create an independent cause of action for the Federal Government to recover Medicaid benefits for tobacco-related illnesses.

Let me point out that the U.S. Supreme Court, in U.S. v. Standard Oil, in 1947, held that, in the absence of a statute, the Federal Government does not possess the independent right of action to recover the medical costs of servicemen. It was in response to Standard Oil that Congress passed the MCRA in 1962 and MSP in 1984. But these changes to Federal law were limited and discrete in scope.

For instance, MCRA allows the Federal Government to independently sue to recover the cost of medical treatment given to military service personnel, veterans suffering from disabilities unrelated to service, and other government workers who received medical help but were injured by negligent third parties. It does not apply to all Medicaid patients nor does it appear to allow the aggregation of all the individual claims in one massive lawsuit, which is what the Department of Justice has done here. Besides aggregating such claims, liability could be proven only through statistics, but I believe a trial based on statistics would be unconstitutional.

Furthermore, MSP allows only for suits against insurance companies providing liability insurance to tort-feasors, but not against the tort-feasors themselves. The MSP cause of action does not apply because the tobacco companies are in no way acting as insurers of their products.

I am still studying the other causes-of-action sounding in violations of the Federal Racketeer Influenced and Corrupt Organization law, better known as RICO, and State civil fraud statutes. But as a preliminary matter, I have serious doubts about their legal viability. RICO, for instance, was enacted to deal with organized crime syndicates. Here we are talking about a legal product, a product that has not only been approved by the Federal Government but which has been subsidized by the Federal Government. RICO does not apply to lawful activities, such as the manufacture and sale of cigarettes, no matter how obnoxious those products may be. For RICO and the State consumer statutes to apply here, the Department must demonstrate that the tobacco industry criminally and fraudulently marketed and sold their products. This is a difficult task that in almost every case has not been successful in a court of law because the harmful effects of tobacco products were well known. Indeed, the day the Department filed a civil suit, it announced that it was terminating the criminal investigation of the tobacco companies and tobacco executives for lack of viable evidence.

I believe these counts of the complaint were added to force the tobacco companies to settle. A successful RICO suit would force the tobacco companies to disgorge all their so-called illegal profits of hundreds of billions of dollars. This would bankrupt the tobacco industry. The Clinton White House is gambling that the tobacco companies will settle and not take the risk of corporate capital punishment in prohibition of all tobacco use. When all is said and done, it would seem that legislation is what is truly needed for a direct recovery suit against the tobacco companies. In short, it seems that this suit lacks merit.

This is not like the State suits against the tobacco companies. I supported the June 20, 1997, global settlement of those suits and conducted a half dozen or so hearings in an attempt to have Congress set a national tobacco policy. The difference is that the Federal suit appears to have no legal basis.

Let me ask rhetorical questions: What is the big deal? Why should anybody care about another suit filed against the big, bad tobacco companies?

I will tell you why. It is for the reasons I stated in this speech. No administration should be able to circumvent the Constitution and Congress' sole authority to raise and spend revenue for the general welfare by suing for billions of dollars and then spending the money without congressional appropriation. If there is no legitimate lawsuit, the action by the Department of Justice would violate separation of powers. That doctrine is a cornerstone of our Constitution's guarantee of liberty. Simply put, litigation should not replace legislation as the means to effect public policy in a democracy.

Granting the Federal Government the unfettered ability to sue any industry which happens to fall into disfavor in order to effectuate a social goal such as reduction in tobacco-related illnesses is a mistake. It would, in essence, allow the executive branch to bypass Congress and the law and set unilaterally our Nation's tobacco policy.

The way to solve the youth tobacco problem and other social problems is for Congress to legislate in an orderly and coherent manner. Litigation will produce ad hoc and incoherent results. Litigation cannot determine, for instance, whether the FDA should regulate tobacco.

There is a disturbing trend in misusing the litigation system for what appears to be social ends. Besides tobacco, Government-sponsored lawsuits have been filed against gun manufacturers and paint manufacturers. It was reported that suits are being considered to be filed against automobile manufacturers, the alcoholic beverage industry, manufacturers of pharmaceuticals and chemicals, Internet providers, the entertainment industry, the dairy industry, and even fast food restaurants are being discussed as potential targets.

Boy, it looks as if the trial lawyers of America got control of the Justice Department. They certainly have control of this administration and its projected successors in either AL GORE or Bill Bradley. Let me quote the distinguished legal scholar and former jurist, Robert Bork, who cogently discerned, in an article entitled ''Tobacco Suit is the Latest Abuse of the Rule of Law,'' published in a September 23 edition of the Wall Street Journal:

The Justice Department's complaint is only the most recent, and it will be by no means the last, effort to use litigation to bludgeon private firms in order to accommodate a prohibition that government could not muster the political support to legislate. Gun manufacturers are beginning to face the same problem. Why not sue oil companies, whose gasoline leads to traffic deaths, or fast-food chains, whose products contribute to heart disease?

The only difference is political. If the product is sufficiently unpopular with the politically correct, massive public propaganda efforts will ultimately make lawsuits possible. . . .

Law has been warped for political purposes repeatedly, and never more so than in this Administration. Is there no judge who shall call this case what it is—an intellectual sham and a misuse of the courts to accomplish through litigation what cannot be won through legislation?

I ask unanimous consent that the full text of the Bork article be printed in the RECORD.

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

[From the Wall Street Journal, Sept. 23, 1999]

TOBACCO SUIT IS LATEST ABUSE OF THE RULE OF LAW

(By Robert H. Bork)

At least when the nation decided to end the ''scourge'' of alcohol, it had the political courage to ratify the 18th Amendment making Prohibition the law of the land.

Not so in these pusillanimous days. Now, as then, we are in the throes of a reform campaign waged with the vigor and self-righteousness of the bluenoses of old. This time their target is cigarettes, not whiskey. But our politicians no longer have the courage to legislate the end of what they condemn. Instead, they resort to lawsuits in an effort to end smoking by destroying the tobacco companies. The end, apparently, justifies any means, no matter how fraudulent.

States attorneys general have filed multi-billion-dollar suits, allegedly to recover the medical expenses the states have incurred caring for victims of smoking. Never mind that the states have made far more money taxing cigarettes than they spend on medical care. If that were all, we could shrug, as we usually do, at the cynicism of our elected officials. Unfortunately, the damage runs deeper than the pillaging of shareholders in the tobacco companies.

The Department of Justice has just filed suit to recover an estimated $25 billion spent by the federal, military and civilian insurers on smoking-related illnesses. This follows the settlement by tobacco companies with states that calls for payment of more than $240 billion over 25 years. It is, unfortunately, to be expected that states would file such suits. (Not for nothing is the National Association of Attorneys General—NAAG for short—often called the National Association of Aspiring Governors.) But one might have hoped that the Justice Department, even under Janet Reno, was above such chicanery. Not so.

The real damage done by this noxious mixture of governmental greed and moralism is not to the tobacco companies' shareholders (they should have seen it coming and got out a long time ago) but to what we still, with increasing irony, call the rule of law.

The federal and state suits suffer from the same defect, which ought to be fatal. All of these governments have known for more than 30 years that smoking creates health risks. Yet with that knowledge, they all permitted the sale of tobacco products and profited nicely, indeed enormously, from excise taxes. How can A tell B he may lawfully sell a product that A knows will cause injury and then sue B for the injury caused? Maybe the people injured could sue B, or A as well, but the one party that should have no cause of action, no complaint whatever, is A.

In the case of tobacco, the people who smoked and were harmed should have no cause of action either. Governmental and private organizations for decades have been pounding the message that smoking is deadly; cigarettes even come with an explicit government warning. Smokers are harassed in restaurants and expelled from their offices to catch pneumonia on the sidewalks. You cannot be sentient and unaware of the risks of smoking.

The lame answer to all of this is that nobody had a choice because smoking is addictive and the tobacco companies hid that fact from the government and from smokers. First and least important, tobacco is not addictive as medical science has long defined addiction. Second, everybody not in solitary confinement for the last four decades has known that using tobacco can be habit-forming.

The law is being deformed in other ways as well. Government suits against the tobacco companies are designed to remove the defenses that could, justifiably, be asserted against individual plaintiffs. While many juries are disinclined to relieve smokers of the consequences of their own informed choices, the government can try to avoid that defense by arguing that it assumed no risk; others did. But of course the government that authorized the sale of a known dangerous product did assume the risk that, under its own laws, it would have to pay when the risk became a fact. The Justice Department's suit would also render irrelevant smokers' lack of reliance upon any company statements as well as the various statutes of limitation.

If that were not enough, the government is charging a violation of the Racketeer Influenced and Corrupt Organizations law—a statute enacted to deal with organized crime—to force the tobacco companies to disgorge their ''illicit profits.'' No wonder President Clinton thinks the companies will buckle and settle. Perhaps they ought to countersue to force the government to pay back its illicit taxes.

The Justice Department's complaint is only the most recent, and it will be by no means the last, effort to use litigation to bludgeon private firms in order to accomplish a prohibition that government could not muster the political support to legislate. Gun makers are beginning to face the same problem. Why not sue oil companies whose gasoline leads to traffic deaths, or fast-food chains whose products contribute to heart disease?

The only difference is political. If the product is sufficiently unpopular with the politically correct, massive public propaganda efforts will ultimately make lawsuits possible. That is what happened here. Yet even Ms. Janet Reno not long ago told a Senate committee that ''the federal government does not have an independent cause of action.'' But the White House insisted, and the attorney general now says she has studied the matter carefully and—presto!—there is a cause of action after all.

Law has been warped for political purposes repeatedly, and never more so than in this administration. Is there no judge who will

call this case what it is—an intellectual sham and a misuse of the courts to accomplish through litigation what cannot be won through legislation?

Mr. HATCH. Mr. President, today's tobacco lawsuit may be tomorrow's beef or dairy industry lawsuit. That is why about 100 trade associations, private business companies, policy organizations, as well as several Governors, have voiced their opposition to this Federal tobacco suit. They understand, as do I, that big government can be as harmful as big tobacco.

I ask unanimous consent that a list of these individuals and organizations be printed in the RECORD.

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

ORGANIZATIONS AND INDIVIDUALS THAT OPPOSE A FEDERAL LAWSUIT

American Insurance Association, American Legislative Exchange Council, American Tort Reform Association, American Wholesale Marketers Association, Americans for Tax Reform, Anchorage Chamber of Commerce, Associated Industries of Kentucky, Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Burley Stabilization Corporation, Business Civil Liberties, Inc., Business Council of New York State, California Manufacturers Association, Cato Institute, Citizens for a Sound Economy, Citizens for Civil Justice Reform, Civil Justice Association of California, Coalition for Legal Reform Member Organizations, Coalition for Uniform Product Liability Law, Coalitions for America, Connecticut Business and Industry Association, Convenience Store Association of Michigan, Council for Burley Tobacco (The), County Chamber of Commerce (New York).

Eastman Chemical Company, Empire State Petroleum Association, Federation of Southern Cooperatives, Food Distributors International, Food Marketing Institute, Frontiers of Freedom (The Honorable Malcolm Wallop), Governors: The Honorable Roy Barnes (Georgia); The Honorable James Hunt, Jr. (North Carolina;) The Honorable Jim Hodges (South Carolina); The Honorable Don Sundquist (Tennessee); The Honorable James Gilmore (Virginia). Grand Lodge Fraternal Order of Police, Greater Dallas Restaurant Association, Gulf Coast Retailers Association, Harney County Chamber of Commerce, Hispanic Business Roundtable, Hispanic Owned Newspapers, Hotel Employees & Restaurant Employees, Houston Distributing Company.

Illinois Chamber of Commerce, Illinois Civil Justice League, Indiana Manufacturers Association, Indiana Petroleum Marketers & Convenience Store Association, Indiana Retail Council, Inc., Institute for Research on the Economics of Taxation, International Association of Machinists and Aerospace Workers, International Paper, Mackinac Center for Public Policy, Manhattan Institute for Policy Research, Mexican American Grocers Association, Mexican Legislative Exchange Council, Michigan Truck Stop Operators Association, Inc., Missouri Council for Burley Tobacco, National Association of African American Chambers of Commerce, National Association of Beverage Retailers, National Association of Convenient Stores, National Association of Manufacturers, National Association of Wholesale-Distributors, National Center for Public Policy Research, National Consolidated Licensed Beverage Association, National Grocers Association, National Korean American Grocers Foundation, National Restaurant Association, National Roofing Contractors Association, National Supermarkets Association, National Taxpayers Union, National Tobacco Growers Association, National United Merchants Beverage Association, Inc., Nevada State A.F.L.–C.I.O., Nevada State Chamber of Commerce, New York State Restaurant Association (Westchester/Rockland Chapter), Newark, City of.

Oklahoma Conservative Committee, Petroleum Marketers Association of America, Republican National Hispanic Assembly, Reynolds Metal Company, Small Business Survival Committee, Small Business United of Texas, South Carolina Association of Taxpayers, South Carolina Chamber of Commerce, Southern Nevada Central Labor Council, Standard Commercial Tobacco, Inc., Tavern League of Wisconsin, Tax Foundation, Texas Association of Business & Chambers of Commerce, Texas Citizens for a Sound Economy, Texas Food Industry Association, United Food & Commercial Workers, United States Chamber of Commerce, United States Hispanic Chamber of Commerce, Universal Leaf Tobacco Company, Virginia Tobacco Growers Association, Washington Legal Foundation, Westvaco, Wisconsin Manufacturers & Commerce, Wisconsin Merchants Federation, Congressman Robin Hayes.

Mr. HATCH. Mr. President, if we are going to solve this problem of tobacco, we need to face the music in Congress. We need to pass legislation that will solve it. One reason why the Hatch-Feinstein legislation would have worked is because we believe as high as it was, at $429 billion, the tobacco companies reluctantly would have had to agree with it. Therefore, we could have imposed the free speech articles on them that would have prohibited them from advertising, while at the same time causing them to have to advertise in a way that would help our youth to understand the evils of tobacco. That, we believed, should be done. I still believe that should be done. It was so fouled up in the last Congress that we were unable to get that done.

So I am concerned about the misuse of the law, to be able to punish any industry that whoever is presiding in the Federal Government decides they are against. I think it is a travesty of justice, and even though I don't like tobacco and I have never used the products, and even though I think something certainly needs to be done in this area, you don't do it by abusing the process of law, which I think this administration has repeatedly done, time after time after time. I think, as history views what has gone on in this administration, it is going to have to come to the conclusion that this is an administration that has not been dedicated to the rule of law, while it has been triumphantly pushing the rule of law upon other nations, hoping they could have something like we have in this country.

The fact of the matter is, it is hypocrisy, pure and simple. I am very concerned that if we allow our Justice Department to continue to act in this fashion, we are going to reap the whirlwind in this country and there will be no business that would be safe from the all mighty power of the Federal Government. There is one thing worse than big tobacco and that is an unrestrained big government. That is what this lawsuit is all about. It is a voracious desire to get money in an industry that should be gotten, but in a reasonably legal way, basically through legislation.

I hope everybody will look at this lawsuit for what it is. I hope the courts will dismiss it so we can get about legislating and doing what we should to resolve the problems about tobacco use and misuse in our country.

I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, are we currently in morning business?

The PRESIDING OFFICER. We are in morning business.

Mr. CRAIG. I thank the Chair. I ask unanimous consent that, following my remarks, Senator DOMENICI may have 10 minutes to speak.

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

GOVERNMENT RUN AMOK

Mr. CRAIG. Mr. President, let me also join with the Senator from Utah for what I think he spoke very clearly about: the run amok of Government and the idea that we are going to craft public policy through the courts of our land. I believe that is the fundamental responsibility of the Congress, both the House and the Senate. Yet we have seen this administration and the trial lawyer community of this country decide that. First, it is tobacco. They are going to tell the world how to think and then tell the States and the Federal Government what the policy ought to look like. Now they are turning on the gun manufacturers. I don't care where you stand on the issue of guns. What is wrong in this country is to suggest that trial attorneys will meet in the dark of night to decide what group they are going to take on next, amass their wealth for the purpose of making hundreds of millions more, and then turn to the Congress and say, now that we have made these findings, go legislate a policy. I don't believe that is the essence of the foundation of our representative Republic.

VALUE OF PUBLIC LANDS

Mr. CRAIG. Mr. President, I came to the floor today to speak about an event which happened this past Saturday that in many States across the Nation went relatively unnoticed. It was National Public Lands Day. It was a time for all Americans to recognize the