

SENATE—Wednesday, May 20, 1998

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

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, we press on with renewed hope for the debate over crucial issues before us. We know that if we trust You and proceed with honest exchange and civility, You will help us succeed together.

Make us so secure in Your love that our egos will not get in the way; grant us Your power, so we will not need to manipulate in a power struggle; free us from secondary loyalties, so we can focus on the future of our Nation as our primary concern. Thank You for the strength and vitality that You provide. We commit this day and our lives to You. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. ALLARD. Thank you, Mr. President.

SCHEDULE

Mr. ALLARD. Mr. President, for the information of all Senators, today the Senate will resume consideration of the tobacco legislation. There are two amendments currently pending, and it is expected that a vote on or in relation to one or both of those amendments will occur by 11 a.m. this morning.

It is hoped that following disposition of those amendments, Members will come to the floor to offer and debate remaining amendments to the tobacco legislation under short time agreements. Therefore, Members should expect rollcall votes throughout Wednesday's session as the Senate attempts to make good progress on this important bill.

I thank my colleagues for their attention, and I yield the floor.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The able Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is our effort to try to divide the time between now and 11 evenly on both sides, although we are going to do that without a unanimous consent request. We would like to try to do it just as a mat-

ter of comity; and hopefully we can make that work.

I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDENT pro tempore. The clerk will report the bill.

The assistant legislative clerk read as follows:

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

The Senate resumed consideration of the bill.

Pending:

Kennedy/Lautenberg amendment No. 2422 (to amendment No. 2420), to modify those provisions relating to revenues from payments made by participating tobacco companies.

Ashcroft amendment No. 2427 (to amendment No. 2422), to strike those provisions relating to consumer taxes.

Mr. WELLSTONE addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

Mr. President, I ask the manager that I may have 6 minutes to speak.

AMENDMENT NO. 2422

Mr. WELLSTONE. Mr. President, when the Congress first conceived of comprehensive tobacco legislation, the primary goal was to deter youth smoking—I will say that again—the primary goal was, and is, to deter youth smoking.

We have now discovered, through millions of documents—the State of Minnesota has led the way; my State, Minnesota, has led the way—that the industry has over the years intentionally marketed to our children, intentionally targeted our children. Our children, our sons and daughters—their profits. Our children's lives for their money. This is an unacceptable trade-off.

Mr. President, do not take my words as a Senator from Minnesota as the final words on this matter. Let us just look at the tobacco companies' own documents.

An R.J. Reynolds document penned in 1976:

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

Philip Morris in 1981:

Today's teenager is tomorrow's potential regular customer, and the overwhelming ma-

majority of smokers first begin to smoke while still in their teens . . . The smoking patterns of teenagers are particularly important to Philip Morris.

The 1998 report, "Taking Action to Reduce Tobacco Use," published by the Institute of Medicine of the National Academy of Sciences, concluded—and I quote—

. . . the single most direct and reliable method for reducing consumption is to increase the price of tobacco products, thus encouraging the cessation and reducing the level of initiation of tobacco use.

And, colleagues, we can look at tobacco to see what effect raising prices has.

Between 1979 and 1991, real prices in Canada increased from \$2.09 to \$5.42. And when that happened, the smoking usage among 15- to 19-year-olds fell from 42 percent to 16 percent. This is dramatic evidence; it is not a conjecture on my part. It is an important analysis.

Now, colleagues, the tobacco industry has blitzed the Senate on this amendment. We have a second-degree amendment that doesn't want to do with any raise in price. And what are they saying? They are saying that this will bankrupt us. What are they saying? This will create a black market.

But, Mr. President, Jeffrey Harris, who is a leading and impartial expert, talks about the tobacco industry making about \$5 billion in profits in the year 2003. It does not sound like they are going to go under.

And we can look at other countries—the United Kingdom, Ireland, Denmark, and Finland—all of which have added on taxes to reduce usage, none of which has had a problem with this black market which we are supposed to be faced with.

Mr. President, let me just simply say again what my colleague Senator KENNEDY has said. The \$1.10 tax that we now have, the \$1.10 increase in the price—Senator MCCAIN deserves a tremendous amount of credit for his leadership. But the fact of the matter is, if we had \$1.10, we could decrease youth smoking by about 34 percent; that would be \$1.10. If we went to \$1.50, we could decrease youth smoking close to 56 percent.

I say to my colleagues, even if the evidence is somewhat ambiguous, even if there are other studies suggesting that this might not happen, at least to this extent, what side do we want to err on? Do we want to err on the side of not jacking up the price and dramatically reducing the demand, especially among teenagers and young people, and getting to a 60 percent reduction? Or do we want to err on the side

of not having the price high enough, combined with other smoking cessation programs that we need to put in effect, and continuing to see our children addicted, continuing to see our children take up smoking tobacco, and continuing to see our children die at an early age?

Mr. President, let me conclude. Price increases will not bankrupt the industry. Price increases will not create a black market. What price increases will do is save lives. Let me repeat that one more time, because quite often what the tobacco industry has done over the years—I think my State of Minnesota has proven this through the documents that we have unearthed—is what they do is what they know how to do best, which is they simply lie and distort the truth.

So let me be clear about what this amendment is about. Colleagues, the price increase in the Kennedy amendment will not bankrupt the industry. The price increase that the Kennedy amendment calls for, \$1.50, will not create a black market. What this price increase will do is save lives. It is for the lives of all Americans, it is for the lives of young people that should not die a premature death, that I ask my colleagues to support Senator KENNEDY's amendment.

Yesterday, my colleague from Massachusetts pointed out that an additional 40-percent increase will mean that 750,000 more children will not start smoking—750,000 children that won't start smoking. This is about saving lives. This is, I think, perhaps the most important public health amendment that we have, because if we want to dramatically decrease demand and stop smoking among teenagers, we have to get the price up there to lessen the demand. This amendment does that. I ask all of my colleagues to support this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. AL-LARD). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to thank my friend and colleague from Minnesota for his excellent presentation and his compelling arguments and for the persuasiveness of his argument.

The fact of the matter is on this issue the American people are on our side. The question is going to be in the next hour and a half or 2 hours whether the Members of this body are going to be on the side of the children of this Nation and on the side of the parents of this Nation in taking the kind of important steps that are recommended virtually by every public health official that has studied this issue over a long period of time. We have placed in the RECORD the various studies and the various support material.

The fact of the matter is, although there is some progress that will be

made under the proposal that is before the Senate, what will happen if there is no change at all, if there is no change at all, is that we obviously will not see any reduction in youth smoking. With the proposal that is before the U.S. Senate now, we will see a 34-percent reduction in youth smoking as a result of the increase in the cost of cigarettes. With the \$1.50 increase, a 56 reduction. The attorneys general established as a goal a 60-percent reduction. The Commerce Committee established as a goal a 60-percent reduction. Our particular proposal will go to 56 percent and with the kind of look-back provisions we will obviously be able to achieve this goal. That is what this issue is about.

We will have the opportunity, as the Senator from Minnesota has stated, to save 750,000 American children from smoking, and we will have the opportunity to save some 250,000 to 300,000 lives of children. This is the most important public health issue.

It is important for us to look at what is happening to the young children of this country over the period of the last 5 years. Look what has happened since 1991, 1993, 1995, 1997. Over this period of time, we have seen the absolute explosion in the utilization of cigarettes by young people in this country. The target of the tobacco industry, as demonstrated by their own material, has been with the youth of this country, and particularly with the minorities of this Nation. All you have to do is look at these statistics from 1991 through 1997. There is an 80-percent increase in black and non-Hispanic use of cigarettes, 80-percent increase. This is what is happening in the United States of America. Among Hispanics, it has gone up some 34 percent over the period of these past 6 years. Among white, non-Hispanic young people in our country, some 28 percent. This is an average rise, since 1997, of 32 percent—32-percent increase.

What all of that means in terms of addiction, what all of that means in terms of the dangers with substance abuse, this is a gateway drug. Members of the Senate are talking about doing something about substance abuse. You have a chance to do it in an hour and a half by doing something about curbing the use by our teenagers of these cigarettes. This is a national tragedy. We have an opportunity in an hour and a half to do something about it.

You can have the various questions whether it really makes much of a difference if we move ahead with an increase in price or does it really make very much difference in terms of the young people of this country. Let's take a look at what the record has been from 1980 to the present time on the issues of price and the issues of teen smoking.

We can have study after study after study, but, Mr. President, for those op-

posed to this amendment, I hope they would be able to refute what this chart demonstrates, and demonstrates very convincingly. Here we have in the early 1980s and 1982, we have a sharp increase in the costs, the real price of cigarettes, and a sharp decline, considerable sharp decline in teenagers smoking. This is what Philip Morris said about that, and we are not talking about an academic study. We are not talking about medical economists. We are not talking about Members of the Congress and the Senate who just want to see an decrease in smoking because we somehow think there might be some reduction in teenagers smoking.

This is what the industry said in the Philip Morris memo from 1987 that was in the Minnesota trial: "The 1982, 1983 round of price increases prevented 500,000 from starting to smoke"—that is indicated in this line here—"500,000 teenagers from starting to smoke. This means 420,000 of the nonstarters would have been Philip Morris smokers. We were hit hard. We don't need that to happen again."

"We don't need that to happen again."

No wonder out in the waiting room, in the reception room, I can't get in there because of the tobacco lobbyists—high-priced tobacco lobbyists. They don't want this to happen again. And it can happen. It can happen. It can happen in an hour and a half from now if the Members of this body are going to put the public health first in this debate on the issue that we have at hand.

Here the chart shows the increase in the price and the reaction as a result of the statistic—the reduction in teenage smoking—and the tobacco industry acknowledging the relationship. So we have, as we went through the period of the 1980s, the increase in the real price, and we saw a rather significant increase in the real price going up during this period of time, and we see the corresponding reduction in terms of the teenage smoking. Until when? Until when? Until 1991. Then what happened to the real price? The real price went down and the real price went down on what they call Marlboro Friday, when the Nation's largest tobacco company, Philip Morris, fired the newest salvo which reversed the decade-long use in smoking. They slashed 40 cents off the brand of Marlboros, the most popular brand among children. The strategy was designed to protect prices. If Philip Morris reduced prices by 50 percent in Massachusetts, and a month later, R.J. Reynolds—the second largest tobacco company, which manufactures Camels—had a corresponding reduction.

So we have the major tobacco companies going down, the major price going down. Look on this chart what has happened in terms of youth smoking, escalating, going up dramatically. Price decline, youth smoking increases; price

increase, youth smoking goes down. We have seen that continue over a long period of time.

We could say what happened in here over the period for the last year or two, we have seen little blips going up, 10 cents, to cover the costs of various settlements they have had, an increase of 35 percent. It would not really reflect on this chart.

Now what we have seen in here is \$5 billion in tobacco industry advertising, an explosion in advertising. It makes our case, Mr. President.

It makes our case for the proposal that we have at hand. Increase the cost and the price of cigarettes, do it in a significant time with a shock treatment of 3 years. The way that we saw it this time, it is going to have a dramatic impact on young people. Increase the antitobacco advertising, which is in this bill; develop the cessation programs, which are in this bill; strengthen the look-back provisions, which are in this bill; do the kind of prohibition on advertising that is in this bill, and you have the combination of elements that will work to bring a significant reduction in teenage smoking—a significant reduction in teenage smoking.

Mr. President, we must have learned from the past. We have a pathway here that is outlined by the history of this industry, and the things that have been effective—not just studies, not just testimony, not just surmise, but real facts, Mr. President. Over that long period of time, we have the incontrovertible case that has been made here yesterday, last night, and this morning, again, that cannot be answered. We will hear answers like, oh, well, we will develop a smuggling industry; we can't do this because we don't know where the money is going to be expended; we can't do this because we will have this or that kind of a problem.

There is an issue before the Senate: Can we do something with regard to seeing a significant, dramatic reduction in terms of teenage smoking? The answer to that is, yes, by supporting our amendment that virtually every public health official in this country supports—not only Dr. Koop, not only Dr. Kessler, but the Cancer Society, the Lung Society, and every public health group across the Nation, Republican and Democrat alike. That is the issue that we have. Now is the time to make that judgment. We will have the opportunity to do that in a short period of time.

Mr. President, I see others who want to address the Senate. I yield at this time.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, although we haven't established an exact time for the tabling motion, as I mentioned last night, we will try to do them

sometime around 11 o'clock. But I do want the proponents and opponents of these amendments to have ample time to discuss and debate. I think we are working on an informal agreement that we will go from side to side. I see the Senator from Missouri here. If it is agreeable, I would like for him to have recognition next. I will just comment briefly, if I could.

If the Ashcroft amendment is agreed to, smokers won't be relieved of any price increase in this bill. Quite the contrary. If the amendment prevails, the States, at an enormous time and expense, will resume their suits, as we all know. There have been four settlements already, and 36 other States are in line. As we know from the other four States, they will prevail. There were four suits, four settlements. Minnesota is receiving twice—double—what they would have received as a result of the June 20 agreement between the attorneys general in the industry.

So let's not have any mistake. This amendment won't eliminate an increase in cigarette prices, because when the tobacco companies agree to pay the State of Minnesota a certain amount of money, they increase the price for a pack of cigarettes in order to be able to make a settlement. That is how it computes. Make no mistake, its passage will delay getting about the business at hand, and 3,000 kids a day will begin to smoke and a thousand will die substantially earlier as a result.

Mr. President, I will make more comments later. Have no doubt about the effect of the Ashcroft amendment, which would be simply to delay price increases and delay our ability to attack the issue of kids smoking, because there will be added expenses passed on to the consumer as a result of these settlements. In case the Senator from Missouri missed it, Minnesota and the tobacco companies just settled for double what had been in the original settlement. Those costs will be passed on to the person who purchases a pack of cigarettes. Economics work that way.

Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I wanted to indicate to my friend from Arizona that the Senator from Missouri indicates to me that he intends to speak for a relative period of time. It was agreeable to him as a result of that to try to accommodate a couple of Members over here, unless they want to wait until afterwards. I am just trying to balance it. Could the Senator perhaps give us some indication of the length of time, so we can try to pin this down?

Mr. ASHCROFT. Mr. President, I can't give a specific time. I would be pleased to let a couple of your folks go ahead, and I will follow them if that would be the understanding.

Mr. MCCAIN. We have to go back and forth.

Mr. KERRY. Mr. President, that is fine.

Mr. MCCAIN. He is going to talk sooner or later. I am sorry he can't determine how much time he is going to talk.

Mr. KERRY. Fine, Mr. President. We will try to stick with that.

A NEW GRANDCHILD FOR SENATOR LAUTENBERG

Mr. KENNEDY. Mr. President, a new grandchild for our good friend and colleague from New Jersey was born early this morning. That is joyous and good news. In the midst of this tumultuous debate, we can all join in wishing him congratulations.

Mr. LAUTENBERG. My daughter called at 8:30 saying that she had the baby at home at 5:30.

Thank you very much for the kind words.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. KERRY. With that appropriate announcement, and the joy that it brings, we will yield to the Senator from Missouri and take our licks.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

AMENDMENT NO. 2427

Mr. ASHCROFT. Mr. President, I rise today to discuss the tobacco bill. While I will begin my remarks discussing my pending amendment to strike all of the consumer taxes out of the bill, I also wish to address the large expansion of Government in the pending legislation. I will discuss the inevitable black market that will result from the policies in this bill. I will also address the failure of this administration to focus its priorities and resources on teen drug use.

Mr. President, along with my colleagues, I am truly concerned about teen smoking. However, I do not believe that is the focus of this legislation. Teen smoking is not the central thrust of what is happening here.

This is a massive, massive tax increase on low-income Americans. Instead of helping children, it is very likely to end up hurting children and hurting families. I think it is important that we carefully review the content of this legislation with that in mind. Thirty-nine percent of high school students in Missouri reported smoking during the past 30 days. This is a terrible statistic to have to cite. However, communities in the State are looking for ways to reduce smoking in my State and it is working. It is working without destroying the capacity of low-income families to provide for their children. It is working without

destroying the capacity of low-income families to be independent. It is working without an \$800, or \$900, or \$1,000, or \$1,600 tax increase on those low-income families. Three packs a day for a family at \$1.50 a pack takes you to about \$1,600 a year.

If we can find a way to reduce the impact of teen smoking without taking \$1,600 a year out of the budgets of these poor families, that will be \$1,600 a year that could be spent for education, \$1,600 a year these families will be able to retain and spend for better health care, or it will be \$1,600 a year these families can spend for food and clothing.

For example, I come from a town called Springfield, MO. It is my hometown. My family moved there when I was a very young lad. In stepping up its enforcement of local ordinances prohibiting the sale of tobacco products to teens, they are enacting constitutional limitations on advertising. Parents, teachers, and community leaders are working together to fight the problem. They think they can do it, if they work together. I believe they can do it. They can do it without ruining finances and the opportunity that low-income families ought to have to provide for themselves. The tobacco industry knows they can do it. As one tobacco executive stated, they can't win fighting teen smoking rules on the State and local level. The tobacco industry knows there are going to be rules there, and they can be there, and there can be effective rules.

If this tobacco bill contained the solutions to the problems that are being enacted in communities today, I don't think I could be here to argue nearly as effectively that this bill is not focused on teen smoking.

A lot of communities are making possession of tobacco products illegal for teens. This bill doesn't do that. This bill says it is all right for teens to have tobacco. This bill basically says it is all right for teens to smoke. This bill just says it is wrong to sell it to them and it is wrong to advertise it. But it doesn't really do anything about the possession of tobacco.

Although Congress has the authority, we do not make it illegal for minors to possess or use tobacco even where we control the local situation. We make the laws. We are the city government in some respects for the District of Columbia. It would be possible for us to say, at least where we have authority on military bases, or the District of Columbia, that we could have laws against teen smoking and against the possession of tobacco. But we don't have that in this bill. We only have rules regarding the point of sale. Whether one store or another can sell it, and whether or not they can be on top of the counter or under the counter, or whether or not the brand name can be visible, or things like

that, even then we only make the retailers responsible for the transaction. There is no disincentive for teenagers to try to possess and acquire and smoke cigarettes. There is not any in this bill. This is designed as if teenagers are totally expected to be irresponsible. First of all, the decision is, they can't make good decisions; and, second, we don't ask them to make any good decisions. We don't even ask them to refrain from smoking in this bill.

We create a massive tax increase on 98 percent of smokers to try to discourage 2 percent of all retail sales. What do I mean by that? Two percent of all retail sales in smoking go to teenagers; 98 percent go to adults. So we are raising the taxes on 98 percent in order to try to create a disincentive for the 2 percent.

Unfortunately, I don't think we have done a very good job, because we don't even seek to make illegal the possession on the part of the 2 percent. If, in fact, we don't want teenagers smoking, why do we fail to say something about their possession of tobacco? Why do we fail to say anything about their smoking? It seems to me that we are missing the boat in a significant way if we don't say something about the smoking.

For a long time now, we have had a responsibility imposed on the tobacco companies, and appropriately so, to label cigarettes and to tell people the truth about cigarettes on the package. As a matter of fact, you can't even have a billboard about cigarettes without saying on the billboard something that is true about cigarettes. There ought to be said something through this legislation. We need truth in labeling on this legislation. There is a big truth-in-labeling problem here.

This is an \$868 billion—that is not million, that is billion—tax increase. It creates Government programs; after-government programs funding, sort of, directed for the next 25 years to take decisionmaking away from future Congresses of the United States, designed to lock things in; creates a huge Government regulatory scheme the likes of which we have not seen since the Clinton proposal to nationalize the health care system.

Here you have a situation. You say you are against teen smoking. You don't even bother to outlaw possession of teen tobacco for teens even in places like the District of Columbia where you have the authority to do so. You do not do what lots of towns are doing around the United States of America in an effective program. You raise \$868 billion worth of taxes, mostly on poor people, on people who can ill afford to pay it. You raise taxes on 98 percent of the smokers, who are the adults, in an effort to try to curtail smoking on 2 percent of the smokers, the young people.

We create this huge Government regulatory scheme which will have the

Federal Government virtually in every store, supermarket, or convenience store telling them how to run their business. This designs a system that will undoubtedly create a black market in tobacco sales, a black market that will make Prohibition look like a very peaceful time in our country's history. Cigarette smuggling will become very, very lucrative. Some people think that smuggling doesn't exist in the United States now. There is a big problem in cigarette smuggling currently, but it is just the tip of the iceberg, which will become apparent if we continue on this plan to impose \$1.50 a pack in terms of the cigarette tax on the working poor of America.

I happen to be a father of three children. I was delighted to hear the good news of the Senator from New Jersey. I happen to have some good news in my own family. These are the pictures of my grandson who was born just 8 weeks ago. I didn't really plan this to be a part of any presentation. But the Senator from New Jersey should have pictures shortly.

Mr. LAUTENBERG. Would the Senator like to give me a chance to show mine?

Mr. ASHCROFT. Yes. I yield, with the opportunity to regain the floor at the end of his display.

Mr. LAUTENBERG. I wish the Senator the same good fortune, I say to my colleague. I thank him.

Mr. ASHCROFT. I thank the Senator.

But I don't want my children to smoke. I hope that they have never smoked. I don't know that they have ever smoked. I hope my grandson never smokes. However, what I want more for them is that we have a Government that serves the needs of the American people rather than a Government that serves its own needs. I suspect that this bill, unfortunately, is a bill which tends to address the needs of Government, the perceived needs of the bureaucracy, as much as it tends to do anything that is beneficial, and certainly the kinds of impacts on American families in terms of increased taxes on these hard-working individuals of low income would more than outweigh the benefit.

I have sought to amend this with a simple amendment. My amendment would strip this legislation of the provisions which impose \$755 billion in new taxes on the American people. More precisely, my amendment strikes the upfront payment in the bill and the consequential outcome of that which would result in that kind of commitment by the American people of \$755 billion.

Those who support this bill would like for the American people to believe that it is a tough tobacco bill. But what the American people are beginning to find out is that this bill, while it is tough, is going to be tough on the American people.

Mr. President, it is my understanding that there are Members who need an opportunity to speak. I would be happy to yield the floor on the condition that I would be given the floor at the conclusion of this time to speak.

Mr. McCAIN. I object.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. ASHCROFT. Mr. President, what the American people are beginning to find out is that tobacco companies won't bear the cost of this payment.

I regret my inability to cooperate with other Members of the Senate, but an objection has been heard. I will continue with my remarks, but I hope to be able to accommodate my colleagues.

Mr. President, what the American people are beginning to find out is that tobacco companies won't bear the cost of the payments, that consumers will. This bill requires that the consumers pay the price. A lot of people are distressed. A lot of people have come to the conclusion that big tobacco is not worthy of being favored. Frankly, there are a lot of things in this bill that big tobacco favors.

As a matter of fact, they helped write this bill. It has gotten a little bit beyond their desire in terms of a number of the requirements, but many of the components of this bill are there because big tobacco put them there, things that would limit the liability of tobacco companies and the like. But this bill, in terms of its taxes, is big money. This bill requires that the taxes be passed on to consumers in the form of higher prices.

There has been some discussion about whether these are really taxes or not, because they are not called taxes in the bill. That is another aspect about the truth in labeling that ought to exist here. We have required it of tobacco companies. We ought to require it of the Congress. These are charges which are authorized. They are authorized in the bill. They are basically required in the bill. But they are required to be collected as part of the price of cigarettes, and then the money is to be given to the Government. And the Government is to spend the money. But we refuse to call them taxes.

Now, whenever the price of something is increased with the requirement that the money be given to the Government and that the Congress then decide how the money is spent, that looks an awful lot like a tax. That is the definition of a tax. Our failure to call it a tax in the bill doesn't mean that it is not a tax. It just means that it is a tax that we will not admit is a tax.

They say if it walks like a duck and squawks like a duck, if it quacks like a duck and acts like a duck, it is probably a duck. Well, this is a higher price that is charged for these cigarettes. It is collected from the people. It gets transmitted to the Government and

the Government spends it on Government programs. Now, I think that walks like a duck and squawks like a duck. I think it acts like a duck and quacks like a duck. I think it is a duck or it is a tax, if you want to use that word.

And here is the provision from the bill itself. I guess it is section 404—I need to be corrected on that—instead of section 405. Frankly, we haven't had this bill in its final form long enough to examine it. This is another one of these bills that comes to the floor of the Senate before the Congressional Budget Office has had a chance to score it, before anybody has a chance to read it. We throw it on the desk and we say we are starting to debate it. Little wonder we have some of these numbers wrong.

Section 404 says, "Payments to be passed through to consumers." So all the big, heavy penalties in this bill, they are not to be borne by the tobacco companies. These are to be borne by consumers. Consumers are going to pay for this. And, obviously, that is something. So that the bill doesn't just allow tobacco companies to recoup their costs, it requires that they not impair their profits, that they not otherwise find ways to keep the consumers from paying this very massive tax, a regressive tax that hits the poor people of America the most. It requires that these taxes be paid by consumers. The only way this bill is going to have a major dent in the way tobacco is consumed is that the Federal Government gets paid big, big bucks.

As I indicated earlier, many local communities—State, city and county governments—are providing ways to reduce teen smoking. They want to do it by outlawing the possession of tobacco by young people so that smoking by young people would be considered illegal. This bill doesn't do that. This bill taxes the 98 percent of the adult smokers at an incredibly high rate, along with the 2 percent of teen smokers, and really impairs the ability of families to make ends meet. It actually penalizes the companies if they do not pass these costs on. So no company, no tobacco company is to pay any of this \$755 billion that I am seeking to delete in this amendment. It is illegal, according to the bill, to have the tobacco companies pay any of this money. This money is to be paid by consumers.

Also, my amendment strikes the annual payments required by this legislation. Again, this bill actually requires the tobacco industry to pass along this cost to consumers. Remember, these are not the real penalties on tobacco companies. These are taxes levied on the users of tobacco products. Under this amendment, tobacco companies would still pay hefty penalties if teenage smoking targets are not met.

So my amendment does not save the tobacco companies from paying pen-

alties if the teenage smoking targets are not met. The incentives for the tobacco companies to avoid teenage smoking are left in this bill, and there is a serious penalty in the bill that would require that the payments be made by tobacco companies if we do not reduce teen smoking. That is left alone. What I take out of the bill is the \$755 billion in taxes on consumers.

A lot of people wonder why, if the tobacco companies are the bad folks, as the subject of this bill, that instead of taxing the tobacco companies, we are taxing consumers. Well, they ought to wonder about that. Basically, what we do is we leave the requirement that teen smoking be reduced, we leave the penalties if you do not reduce teen smoking on the tobacco companies. But we stop the tax that will take \$800, \$1,000, \$1,600 from three-pack-a-day families, \$1,600 a year out of their budgets, out of their take-home budgets.

So our approach is not to say that the tobacco companies should not be responsible for reducing teen smoking. Tobacco companies were responsible for promoting it. This amendment does not say they are not responsible for reducing it. This amendment says the tobacco companies will be responsible for reducing it, and if these tobacco companies do not get it reduced, they, as a matter of fact, are going to be in serious trouble. They are going to have to pay very significant penalties. But I do not believe we should say that the American people are the ones who should be penalized for the conduct of the tobacco companies.

Frankly, that is what this bill does. There is a lot of evidence in this case, in this situation about tobacco companies and about their conscious desire to focus their advertising on teen smokers and potential teen smokers, and there is a big presumption that if people didn't start when they were teens, they wouldn't start later. It might be that those people would start later on. You know, you can't automatically assume that if someone starts when he is 14, if you don't let him start when he is 14, that he would not start later when he was 18, 19 or 20. Everybody starts driving a car at the age of 16. That doesn't mean, if you move the age up to 20, that nobody would start driving a car later on.

There is a presumption in all this data that somehow if they didn't start when they were younger, they wouldn't start later. These same people who start young while it is legal now may start older when it is legal later if we were to do something like this. I don't think that presumption follows.

But Americans already are burdened with taxes that are inordinately high. Americans today are working longer and harder than ever before to pay their taxes. How many families are

there with both parents in the workplace, working day, working night, trying to make ends meet, trying to have food and clothing for their children? And they are already paying incredibly high taxes. We are now paying the highest taxes overall in the history of this country. And surprisingly enough—I suppose that it is not all that great a surprise—we have got taxes to the point where the Federal budget is in surplus. The Congressional Budget Office indicates that the surplus will be between \$43 billion and \$63 billion. I think that when we have a surplus, we ought to be debating how we reduce taxes on people, how we make it easier for them and their families, how we somehow make it possible for them to meet the needs of their families instead—not how to siphon more money out of the pockets of working Americans.

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

Mr. ASHCROFT. I will yield for a question with the understanding that I do not lose my right to the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator has a right to yield for a question without losing the floor.

Mr. LAUTENBERG. The Senator makes a statement that if this fee was not paid, it would enable the family to spend—I think the figure used was \$1,600 on food and clothing. The Senator said that earlier. And if the addict is using the money to buy cigarettes, that certainly doesn't free up any additional spending power unless the Senator sees another way to do it. I am not quite sure I understand where the Senator goes with that.

Mr. ASHCROFT. I am not quite sure I understand the question. Are you saying that they will use the money to buy additional cigarettes? If you want to restate the question, I will be happy to have you do so. I do not want to lose the floor by having a restatement of the question.

The PRESIDING OFFICER. The Senator does not lose the floor by yielding for a question.

Mr. LAUTENBERG. The Senator before said that \$1,600 a year that the person would pay in additional taxes would prevent them from having the ability to spend it on food and clothing, et cetera.

But, eventually, over a period of time that would be a cost which does not exist altogether for a million teenagers, and they would, therefore, be able to exchange the money not used to buy cigarettes, if they were able to close out on the smoking addiction, to be used for other things; is that not true?

Mr. ASHCROFT. If the Senator is making the point that these people will not be buying cigarettes and therefore would not be paying this tax, that is contrary to what this bill assumes.

This bill assumes this income. And in order to assume this income, you have to presuppose that people will not stop buying cigarettes.

You cannot get \$868 billion over the next 25 years if people stop buying cigarettes. The first presumption of this bill—there are several presumptions—is that people are addicted. That is one of the evils we are supposed to be addressing. But after we presume they are addicted, we take advantage of the addiction by imposing a tax on the addicted. And then we spend the money we receive from the tax. If they are going to quit smoking because the price goes up, then we are not going to get the money. You can't have both the "quit" and the "money." If people quit smoking, they won't pay the tax, and we have \$868 billion in this bill that we are presuming people are going to go ahead and pay. That is the money I am talking about, the \$868 billion that is coming out of the budgets of families.

What is stunning to me is that 59.4 percent of this tax increase, 59.4 percent of it comes from people who make less than \$30,000 a year. 60 percent of the \$800 billion—about \$500 billion—is coming out of the pockets of people who make less than \$30,000 a year. We take that out of their pockets. We can't spend it here if they don't send it here. So this whole bill is predicated on them sending it here. And when they send it here and we spend it, that means they can't spend it.

What do we spend it on? We spend it on 17 new boards and commissions, or—I guess there is an amendment now which says these are no longer to be identified as boards and commissions. So we have gone from the lack of accountability of boards and commissions, to the anonymity of stealth commissions and boards that will be tucked away in agencies. All the spending will still take place, but it will be done without as many labels.

We are talking about a massive tax increase of \$868 billion. That is what is going to happen. That is what is projected. You don't get the money from the people at the same time they keep the money. This money can only be in one place.

Mr. HATCH. Will the Senator yield for a question without losing his right to the floor?

Mr. ASHCROFT. I would.

Mr. HATCH. The \$868 billion is one of the estimates, is it not—

Mr. ASHCROFT. Yes, it is.

Mr. HATCH. Of Wall Street analysts who have thoroughly developed tobacco models, economic models, and have spent literally years developing these models?

Mr. ASHCROFT. Yes.

Mr. HATCH. They say that when you extrapolate out the \$1.10 price of the Commerce Committee bill—or the managers' amendment as I think we should call it—the actual price tag

could range as high as \$868 billion, because the \$1.10 number is based solely on the manufacturers' level and does not count the wholesale or retail mark-ups or any other factors which could lead to price increases, such as state excise taxes?

Mr. ASHCROFT. I think this is more conservative. If you were to go beyond the \$1.50—

Mr. HATCH. I am saying the \$1.50 would be even higher, wouldn't it? That is what I am asking.

Mr. ASHCROFT. Yes. That's exactly right.

Mr. HATCH. The \$1.50 number is certain to be even higher?

Mr. ASHCROFT. We have understated the burden here.

Mr. HATCH. Could I also ask my friend another question? Those who are arguing for a \$1.50 price increase are saying there will be no black market, that there will be no smuggling of any consequence. Is it not true that after California raised its excise tax in 1988, today they are finding that one out of five packs of cigarettes are contraband today. Is that not true?

Mr. ASHCROFT. I have to look at my own experience as Governor. We even had problems with smuggling from neighboring States that had low tobacco taxes. Contraband is already a big problem in tobacco.

Mr. HATCH. Let me just show you this chart in connection with my next question. It is one thing to talk about Norway, Denmark and the United Kingdom as some have in this body. It is entirely another thing to talk about the United States of America where most of the big tobacco companies actually reside and exist.

This chart shows U.S. cigarette imports from Canada, 1984 through 1996. You notice it was relatively level here up until 1990, when Canada suddenly increased their excise taxes dramatically. Then, all of a sudden we have imports from Canada going up dramatically. There were U.S. cigarette imports from Canada in 1984, imports which then went back into Canada and sold as contraband at a lower price. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that. I think we invite a disaster in terms of black marketing and in all kinds of legal violations. We are going to be introducing young people to illegal ways of transacting business on the black market. We are going to be introducing young people to segments of society they should not be associating with.

Mr. HATCH. The Senator serves on the Senate Judiciary Committee with me, and I believe is fully aware of the hearings, where we discussed the fact that four major law enforcement organizations representing hundreds of thousands of policemen in this country said that if we go to \$1.10, which we believe could extrapolate as high as \$800 billion, that we would have a dramatic

increase in contraband which would spawn all sorts of violence?

Mr. ASHCROFT. I am.

Mr. HATCH. The Senator is aware of these compelling arguments from law enforcement?

Mr. ASHCROFT. I am aware of that.

Mr. GRAMM. Will the Senator yield on this point?

Mr. ASHCROFT. I would be happy to yield for a question.

Mr. GRAMM. I want to pose a question related to what the Senator from Utah has said. The Canadian experience, as the Senator is probably aware, is critically important because many economists and others who study this data claim that the numbers asserting a 10-percent increase in prices results in a 6-percent decrease in consumption are false. In fact, if these numbers really held true, we could increase prices by 200 percent and eliminate all smoking in the country. Everyone knows that is a nonsensical result.

Is the Senator aware that, when challenged on this point, the administration has used the Canadian experience as proof of the success of raising taxes? When challenged on the assertion that there is clear and convincing evidence of a dramatic decline in smoking and teenage smoking as a result of tax increases, administration spokesman and Treasury Department official, Jonathan Gruber pointed to the Canadian experience. I would like to read from an editorial by Nick Brookes printed in today's Washington Post. Mr. Brookes is talking about the Canadian experience and quotes the health minister of Canada. Basically, as the Senator from Utah pointed out, the Canadians had such a disastrous experience with black markets and smuggling that it actually drove the effective cost to teenagers of cigarettes down, not up.

Mr. HATCH. If the Senator will yield—

Mr. ASHCROFT. I reclaim the floor.

Mr. GRAMM. Let me finish my question.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. GRAMM. Let me finish my question and then the Senator from Utah will have the opportunity to ask one.

Mr. HATCH. I will be happy to do that.

Mr. MCCAIN. We need to have the regular order here in the Senate. Everybody has a right to speak, but we ought to have a regular order, parliamentary routine here.

The PRESIDING OFFICER. The Senator from Missouri has the floor and he has the right to yield for a question.

Mr. GRAMM. Will the Senator yield?

Mr. ASHCROFT. I will be happy to yield to the Senator from Texas for a question.

Mr. GRAMM. Returning to the point on which I would like to base the question. The administration asserts that there will be a dramatic impact on

teenage smoking by raising tobacco taxes. The question about the impact of higher taxes on teenage smoking was posed today in USA Today. When Americans were asked, "Do you believe higher cigarette taxes will reduce teen smoking?" 70 percent said no and 29.9 percent said yes? Is the Senator aware of that?

Mr. ASHCROFT. I was not aware of that, but I am happy to have the Senator point it out.

Mr. GRAMM. The point I want to make is this: The administration has used the Canadian experience as proof of the effectiveness of raising taxes on teen smoking. Canada raised taxes dramatically on cigarettes and then later decided to cut taxes. Is the Senator aware that the Health Minister in Canada, Diane Marleau, has said that the Government's decision to cut taxes in Canada would actually reduce consumption among teenagers because it would "end the smuggling trade and force children to rely on regular stores for cigarettes where they are forbidden to buy them until they turn 19?"

Mr. ASHCROFT. I am aware of that, and I think it is a very important point.

Mr. GRAMM. Is the Senator aware that in Illinois, Massachusetts, Hawaii, and Nebraska teenage smoking has increased as cigarette taxes have risen?

Mr. ASHCROFT. I am aware of that, and I think it reinforces the point that the Canadian Health Minister was making, that there are times when an increase in the price increases the interest of youngsters in smoking.

Mr. GRAMM. Is the Senator concerned that we could get into a position of having an active black market, as is true now in many countries in northern Europe, in Canada, and in many of our own States with high tobacco taxes? If we end up spawning a black market so that cigarettes are purchased by teenagers and by adults illegally, does the Senator share my concern that we could get into a situation where the black marketing of cigarettes could become an entre to inducing people to take a step beyond cigarettes to drugs?

Mr. ASHCROFT. If cigarettes sold illegally become commonplace, it might well be that people will have greater access to an array of contraband items—"Here, you can either buy cigarettes from me, or you can buy marijuana from me, or you can buy drugs from me." I am aware of that potential. I answer the question of the Senator from Texas by saying I am not only aware of it, but I am deeply concerned about it because drugs are a serious threat. They, in many respects, are far more serious than the threat of cigarettes.

Mr. GRAMM. Is the Senator aware that in a poll taken last week, American families were asked what concerns they have about what their teenager is

doing? Thirty-nine percent were concerned about illegal drugs, 16 percent were concerned about joining a gang, 9 percent were concerned about their teenager drinking alcohol, 7 percent were concerned about their teenager having sex, 7 percent were concerned about their teenager driving recklessly, and 3 percent were concerned about smoking. So if we create a black market by increasing tobacco taxes, we could easily be taking a step that converts an issue that concerns 3 percent of American families into an issue that concerns 39 percent of American families, that is their teenager using illegal drugs.

Mr. ASHCROFT. I am aware of that. I think the American people have a pretty clear understanding of what the most serious long-term threats are, and they rank those appropriately. I think it would be a tragedy if we were to, out of good intentions, do something which resulted in a black market and promoted drug use and smoking on the part of teenagers rather than curtailing both of those.

Mr. GRAMM. I will ask one final set of questions, and then I will yield the floor.

As the Senator said, 34 percent of the cost of this tax will be paid by families earning less than \$15,000 a year, 13.1 percent will be paid by families earning between \$15,000 and \$22,000 a year, and 12 percent will be paid by families earning between \$22,000 and \$30,000 a year.

The Joint Tax Committee estimates that an individual making less than \$10,000 a year would see a 41.2 percent increase in their Federal tax burden as a result of this tax increase. The newest numbers I have seen indicate that an individual who smokes could see their Federal tax burden rise by \$356 as a result of this tax. A couple where both husband and wife smoke would see their tax burden rise \$712 a year as a result of this tax.

Here is my question: Considering the concern the Senator from Utah has about black markets, what will the price of a pack of cigarettes be under this bill?

It is my understanding that today, depending on which State you live in, the price is roughly \$2 a pack. The underlying bill has a \$1.10 tax per pack increase, and a series of other provisions that will drive up the cost, including, the look-back penalty, some estimate it could be as high as 44 cents per pack; the liability cost, 50 cents per pack; the licensing fee, 14 cents per pack; and the decline in volume could be as much as 48 cents per pack.

I do not know how to assess these numbers. I certainly do not claim to be an expert on them. Does the Senator have any idea, what the price of a pack of cigarettes will be under the McCain bill and how much a pack of cigarettes will be if this new amendment, raising the cost \$1.50 per pack, is adopted?

It is a critical question. If we know the cost will be \$5 a pack, for example, we can look at the experience of Europe where they have similar taxes. We could look at their black market structure, look at the amount of illegal transactions occurring, and begin to see what the impact of this will be. But nowhere have I seen any bottom-line figure on what the price of a pack of cigarettes will be as a result of the underlying bill and the amendment that the Senator is trying to kill through his amendment.

Does the Senator have any data on that?

Mr. ASHCROFT. There is some data on that. Some analysts have predicted that the price per pack would be much more than the \$1.10 increase by the time you work it through the system. They have estimated that the increase will be \$2.78 a pack.

Mr. GRAMM. So that would mean roughly \$4 a pack, depending on what State you are in?

Mr. ASHCROFT. I think the price these analysts have indicated is \$4.68. You first tack on the \$1.10 tax. Then you add all the other costs in this bill that will most likely be passed on to consumers. Then the look-back penalties capped at \$3 billion a year have to be added. The liability of \$8 billion a year capped has to be added. In the analysis, it was assumed only 20 percent of this will have to be paid out every year. However, due to changes in the bill, and no doubt on behalf of the trial lawyers, I think 100 percent of the \$8 billion will be paid out every year.

It is clear to me that you have a very serious price increase. And the suggestion that it is \$1.10 or \$1.50 is very, very conservative. The truth of the matter is it is likely to be 2 to 3 times that much.

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

Mr. GRAMM. Will the Senator continue to yield?

Mr. ASHCROFT. I continue to yield for a question.

Mr. GRAMM. No one knows exactly the impact of this tax increase. One of the things we need to know, in order to estimate the impact of the bill on things like a black market, is what would be the price of a pack of cigarettes. I assume the Senator is aware that one-half of all cigarettes consumed in Great Britain are purchased on the black market. When you reach the threshold of promoting illegal activity, you end up not getting the revenues and dramatically lowering the price of the product. By adopting this amendment we could actually lower the effective price to teenagers of tobacco products by creating a black market that would come from the increase in price.

Is the Senator concerned about that?

Mr. ASHCROFT. I am concerned about that.

Mr. HATCH. Would the Senator continue to yield to me?

Mr. ASHCROFT. I yield to the Senator from Utah for a question.

Mr. HATCH. I have a series of questions I want to ask. I did enjoy and appreciate the questions asked by the distinguished Senator from Texas, because he raised a lot of very important points that were brought out in the Judiciary Committee's hearings.

Keep in mind, when the Treasury Department testified before the Judiciary Committee, I sent a letter to Secretary Rubin beforehand asking for the economic model they had used to justify their forecast. All they brought was a five-line chart—no model, no backup justification, no real economic analysis.

We had three of the top Wall Street analysts come in and provide us with very highly thought-through analysis showing that the price of cigarettes per pack could go up somewhere between \$4.68, \$4.78 and \$5.00 or thereabouts. And that is on the basis of the Treasury's projected \$1.10 increase, not the \$1.50 figure we are debating today.

Now, my friend and colleague, Senator KENNEDY, has made a passionate plea here for \$1.50. That would mean at a minimum an additional 40 cents more on each pack of cigarettes, although it will probably be higher. That is at the manufacturer's level. That does not count all the extrapolated things the distinguished Senator from Missouri has talked about.

Is that right?

Mr. ASHCROFT. That is correct.

Mr. HATCH. The Senator from Massachusetts has suggested that the bill increase each pack of cigarettes by \$1.50 instead of \$1.10.

Of course, everybody knows that the distinguished Senator from Massachusetts and I share a common goal of reducing youth smoking, as evidenced by the Hatch-Kennedy bill which was enacted last year. That bill added an excise tax to reduce youth smoking and to help with child health insurance.

But is the Senator aware that there is no proof that raising the price by \$1.50 per pack would reduce youth smoking by 60 percent as has been alleged? Are you aware of that?

Mr. ASHCROFT. There isn't any proof.

Mr. HATCH. Not any?

Mr. ASHCROFT. It is a vast presumption, and it is a dangerous presumption.

Mr. HATCH. Is the Senator aware there is domestic and international evidence that such a price increase will worsen problems for law enforcement officers and lower-income taxpayers?

Now our colleague from Massachusetts showed a chart of Canadian cigarette prices and youth smoking over time. Let me point out that chart also demonstrates how youth smoking is not predicted by price.

Between 1979 and 1981, Canadian prices were static, but youth smoking decreased by 10 percent. Is the Senator aware of that?

Mr. ASHCROFT. I am pleased to be aware of it.

Mr. HATCH. All right. Our colleague from Massachusetts also suggested we can use the Canadian experience to predict American youth behavior. If true, then American and Canadian youths smoke for the same reasons—peer pressure and status. Many experts agree that status smoking, like \$150 tennis shoes, is far less price sensitive. Even a \$1.50 price increase will fail in head-to-head competition with ads like this in *Sports Illustrated* for Camel. Here is an attractive model smoking a cigarette—"What you're looking for" the advertisement says.

The fact of the matter is that many members of the scientific and medical communities do not see as essential a price increase of up to \$1.50.

Is the Senator aware that after following 13,000 kids for 4 years, Dr. Philip DeCicca of Cornell University, in a National Cancer Institute funded study—a National Cancer Institute funded study, a public health study, if you will—found "Little evidence that taxes reduce smoking onset between 8th and 12th grade"? Are you aware of that?

Mr. ASHCROFT. I am.

Mr. HATCH. Dr. DeCicca's analysis is even more compelling when you look at our principal target, those kids who never smoked. He found that the effect of price on the probability of starting to smoke by grade 12 was essentially zero, zip, zero; that price did not influence them. Children were going to use tobacco products anyway because of peer pressure and status. It had no effect.

Is the Senator aware of that?

Mr. ASHCROFT. I am aware.

Mr. HATCH. This study is crucial because it is perhaps the only scientific study tracking the smoking behaviors of the same kids over a period of time. All other studies have relied on a cross-sectional analysis of unlike communities.

Now, is the Senator aware that just a few days ago the Congressional Research Service released its updated report, "The Proposed Tobacco Settlement Effects on Prices, Smoking Behavior and Income Distribution," where they carefully reviewed the scientific literature on the effects of price on youth usage?

Now, let me just quote from that report. And I want to ask the Senator if he is aware of this?

The findings in these studies cast doubt on the large participation elasticities that were initially assumed in formulating policies to reduce teen smoking.

Perhaps this is true because while 36.5 percent of youth have smoked in

the past month, only 14.3 percent of youth smoked more than 10 cigarettes each day. Experts believe addicted persons are less responsive to price.

Now, let us not fool ourselves. Kids are different from adults and often unpredictable.

Is the Senator aware of those facts?

Mr. ASHCROFT. I certainly am. And I think the nature of the questioning of the Senator is very helpful in developing for us all an understanding of the real impact of price in terms of teen smoking. I welcome his questions.

Mr. HATCH. I believe the Senator will remember, if he will, that Dr. Frank Chaloupka, who testified before the Judiciary Committee, has written: "Youth and young adults have been found to be less responsive to price than older groups."

Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that. I was grateful for his important contribution.

Mr. HATCH. Our colleague from Massachusetts showed a chart entitled, "Cigarette Prices and Daily Cigarette Smoking Among Canadians Age 15 through 19" which he suggested concludes the price increase caused all of the reduced youth smoking.

Is the Senator aware of that?

Mr. ASHCROFT. Yes, I am.

Mr. HATCH. Let me bring to the Senator's attention, during that same period, U.S. youth smoking decreased by 40 percent. So much for that argument of the Senator from Massachusetts. Were you aware of that?

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. I have one final concern about the chart displayed by our colleague from Massachusetts on tobacco use and price. That chart ended in 1991. It did not include any data since then. I want to show you this chart again.

This chart shows the growth of Canadian exports to the United States. You will notice up until 1991 the growth was minimal, hardly at all. And then it moved suddenly up. The Judiciary Committee heard testimony that most of these cigarettes were smuggled back into Canada. Now, since smugglers do not seek IDs, I suspect youth were able to easily obtain bootleg cigarettes at an affordable price. Maybe this is why we have not seen the smoking prevalence rates and prices beyond 1991; perhaps that is why the chart of the Senator from Massachusetts ended there. But this is when they hiked up the excise tax in Canada. Look how the imports from Canada to the United States went up. Of course, they continued to just skyrocket because they were sending their exports to the United States and then the contraband was coming back.

Only when they had to voluntarily reduce their prices did their exports to the United States go down.

Mr. ASHCROFT. If the Senator is asking if that represents a black mar-

ket for cigarettes in Canada, I think he is right. These were imported to the United States for smuggling back into Canada, and it represents that while the prices were high in Canada, there was a real aggravated problem with a black market in Canada. As long as you sell cigarettes illegally, I think selling them to underage individuals is an easy next step.

Mr. HATCH. If you listen closely to the debate, you will hear some assert with mathematical certainty that we need to increase the tax on cigarettes by \$1.10 a pack, or \$1.50 a pack, or by \$2 per pack to get the maximum health impact in terms of youth participation rates.

We saw that yesterday in the arguments from the Senator from Massachusetts and the Senator from North Dakota, respectively.

Mr. CONRAD. Will the Senator yield?

Mr. HATCH. If I could finish my questions to the person who has access to the floor.

And we have heard more today along those lines.

Now, we will hear about the Surgeon General's reports, about the Institute Of Medicine report, about the Chaloupka study. Is the Senator aware of the widely-cited findings that for every 10 cents that the price of tobacco goes up we can expect to see a 7-percent decrease in youth smoking? Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that citation and study. I don't believe it.

Mr. HATCH. Let me go further. I am sorry to take so much of the Senator's time, but I think it is important.

Mr. ASHCROFT. I think this is important.

Mr. HATCH. Those figures sound impressive at first, but we need to stop and question how applicable such a study is for a complex adolescent social behavior and for the price increases we are debating today. Are there not limits to extrapolating this estimate into the price range that we are talking about today?

Mr. KERRY. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. KERRY. Does the Senator not have to ask a legitimate question?

Mr. HATCH. I have been asking questions one right after the other.

The PRESIDING OFFICER. The Senator from Missouri has the floor, and he does have the right to yield for a question.

Mr. KERRY. Would the Senator permit a parliamentary question? Would the Senator from Missouri yield for a question?

Mr. ASHCROFT. The Senator from Missouri has yielded for a question, which is underway. As soon as the Senator from Utah is finished with his question, I will be happy to yield for another question.

Mr. HATCH. Is the Senator aware—and I apologize to my colleagues. I do

want to get through this, because this is important. The distinguished Senator has raised these issues. He deserves a lot of credit.

And, secondly, I point out that the other side had a lot of time last night and this morning to talk about their positions on this. The record should be made clear that many of their allegations are incorrect. I believe the evidence shows that they are incorrect. I think the Senator's answers to my questions will help to show that there is a dramatically different explanation for many of the charts which have been displayed here last night and this morning.

Let me ask some more questions. Is the Senator aware there must be some limits to extrapolating this estimate into the price range we are talking about, because if we just straight-lined this projection to a \$1.50 increase, we would have to expect that literally all youth smoking would cease? That would be news to those many countries with cigarette prices which are more than \$1.50 higher than in the United States.

Mr. ASHCROFT. I am aware of that. I think it is a point well made.

Mr. HATCH. I ask the Senator if he is aware of this? First, I believe both intuitively as a parent and grandparent many times over, and from examining the data, that if we raise the price of a product like cigarettes, as a general matter, we can expect children to purchase less of it—at least that is the common economic thought. But having said that, and, after all, it is a simple matter of economics that other factors are held constant. As price goes up, we can expect quantity and demand to go down.

I want to take just a few minutes to look behind the actual data of some of the frequently cited studies. Is the Senator aware that a fair reading of the literature suggests we are not dealing with some sort of simple, timeless, immutable algorithm when we are dealing with the price/elasticity issue?

Is the Senator aware of that? He has been making that case here this morning.

Mr. ASHCROFT. I am.

Mr. HATCH. I ask the Senator, isn't it reasonable to question that a difference between the \$1.10 tax and the \$1.50 will not necessarily mean 800,000 premature deaths?

Mr. ASHCROFT. I think the Senator is entirely correct; to assume that you can just automatically make that kind of change really is poor economics. It starts in the primer and stays there rather than finding out the way in which the real world would react.

Mr. HATCH. Is the Senator aware it is unclear if such an analysis is focusing on tax receipts made to the Treasury or the actual at-the-cash-register price?

Mr. ASHCROFT. Yes, I am.

Mr. HATCH. Price is undoubtedly a key factor. I hope I have reviewed some of the key data, and I ask if the Senator does agree with me that we should not overemphasize price alone and, so to speak, put all of our eggs into that one price basket?

Mr. ASHCROFT. It is very wise to point that out. I have to say that the studies which the Senator has cited I think make that a compelling conclusion. You have to ignore an overwhelming weight of scientific evidence to persist in the naive notion that there is a straight line in extrapolation of price increase and demand reduction among teenagers.

Mr. HATCH. Would the Senator agree, in my view we can be most successful in meeting our public health goals by coming up with a "basket" of antitobacco policies that would include price increases, counteradvertising, public education, enhanced enforcement measures, cessation programs, and marketing and advertising restrictions that go way beyond what the Constitution would allow us to legislate?

Mr. ASHCROFT. I am aware of the Senator's position in that respect.

I believe if this were truly an antismoking measure for teenagers and that were its real intent, we would have things like making illegal the possession of tobacco in areas where the Federal Government has jurisdiction.

Mr. HATCH. Does the Senator agree we should come up with a comprehensive package of mutually reinforcing policies, that if we come up with a package at all, overreliance on price strategy could be misplaced?

Mr. ASHCROFT. I agree our pricing strategy is potentially very seriously misplaced in this measure.

Mr. HATCH. Is the Senator aware that the Institute of Medicine of the National Academy of Sciences issued a report calling on the nation to take action to reduce tobacco use? Is the Senator aware of that?

Mr. ASHCROFT. I am.

Mr. HATCH. Let me ask the Senator if he is aware of just a few short excerpts from one paragraph of the 36-page report. The focus is on the need for the level of required price increases. "Raising the prices of tobacco products is a proven way of reducing tobacco use in the short and medium terms. Price hikes encourage the cessation and thwart initiation. Higher prices have the added benefit of reducing use among people not yet addicted to nicotine, including young people whose level of tobacco consumption may be even more sensitive to price. The impact and simplicity of price hikes were the main reason for the 1994 IOM report's first recommendation of a \$2 per pack cigarette tax increase."

Now the paragraph notes that this recommendation is consistent with the

Koop-Kessler report and the National Cancer Policy Board, which it notes calls for a \$2 price increase before concluding with this following sentence: "Such a price increase should also have the desired disproportionately greater impact on preventing the initiation of tobacco use among young people."

Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that particular statement.

Mr. HATCH. Let me ask if the Senator agrees. In fairly categorical language, a price hike in the \$2 range is characterized as a "proven way to cut youth smoking." In fact, it almost sounds like the \$2 per pack comes right out of a mathematical formula.

The more something costs, the less of it a kid can probably afford. In an era of \$150-a-pair Air Jordans, we must allow for the possibility that what kids will do, particularly when social status is involved, can be a tricky, sometimes counterintuitive behavior that can involve a lot more than just sheer price.

Does the Senator agree with me on that?

Mr. ASHCROFT. I definitely agree with the Senator. I think that habits by young people in the marketplace frequently do not reflect traditional economic analysis.

Mr. HATCH. Having set out the 1998 IOM study, I compare its tone and ask the Senator if he agrees with the April 1998 CBO report called "The Proposed Tobacco Settlement: Issue From a Federal Perspective?"

Now, this CBO paper examines the literature and paints a far murkier picture of the state of evidence than did the IOM study. For example, the first sentence of this section, entitled "Response of Youth" states—and I ask the Senator if he is aware of this quote—"In contrast with the consistent responsiveness of adults to changes in price, the evidence on how young people respond is highly variable?"

Mr. ASHCROFT. I am aware of that. It seems to me that it actually confronts, in a very direct way, those other studies that make serious presumptions that are unwarranted.

Mr. HATCH. The Congressional Budget Office report: Is the Senator aware of the Congressional Budget Office report reviewing many of the same studies relied upon in the earlier 1994 Institute of Medicine study, and in the 1994 Surgeon General's report entitled "Preventing Tobacco Use Among Young People"?

Mr. ASHCROFT. I am aware of it. I think it is very valuable that they have done so.

Mr. HATCH. It is very important to this debate, it seems to me.

Does the Senator agree with me?

Mr. ASHCROFT. It is very important.

Mr. HATCH. It would seem to me that anybody who is intelligently watching this debate would want to consider this. Is that right?

Mr. ASHCROFT. I think the information provided in the CBO is critical to an intelligent decision in this matter.

Mr. HATCH. The CBO catalogued a wide range of elasticity and reports, "Most findings are on the high side of the range." However, the Congressional Budget Office next cites two studies based on the National Health and Nutrition Examination Survey that found elasticities near zero. After summarizing the data for a series of studies, the Congressional Budget Office discussed a Cornell study that employed a longitudinal methodology as opposed to a cross-sectional analysis undertaken by most studies.

It said in the Congressional Budget Office report, "The participation elasticities that DeCicca and colleagues estimated for each followup were similar to those found in the cross sectional studies. The Congressional Budget Office considered roughly 0.5 to 0.70. However, they found that when children who were already smoking at the time of the first survey in the eighth grade were excluded from the analysis, the effect of price on the probability of starting to smoke by the 12th grade was essentially zero.

Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it.

Mr. HATCH. This study found, after excluding those already smoking in eighth grade, that the effect of price on the probability of starting to smoke by the 12th grade was essentially zero.

The Congressional Budget Office made the following comment with respect to this study: "Findings should be troubling to those who look forward to a large increase in tobacco prices as a foolproof means of reducing rates of youth smoking. It is possible that existing studies showing high price elasticity among teens and young adults which use similar State level adjusters may have inadequately controlled the effect of the community environment."

Is the Senator aware of that quote?

Mr. ASHCROFT. I am aware of it.

Mr. HATCH. It is a very important quote. That certainly does not seem to echo the almost unequivocal of some other studies.

To be fair, the Congressional Budget Office concludes that most of the evidence does, in fact, point to a relatively high price elasticity for young adults but concludes this discussion with the cautionary note that all the would-be social engineers, it seems to me, should take to heart. We have plenty of them around here. "Most of the evidence points to a relatively high total price elasticity of tobacco consumption among teenagers. But those estimates could be exceedingly optimistic. How young people would respond to large changes in the price of cigarettes remains, like many of their behaviors, uncertain."

Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that CBO conclusion. I think it provides us

with a sound basis for questioning what others are assuming, and they are assuming that, I think, at serious peril.

Mr. HATCH. Is the Senator also aware that, unlike the Institute of Medicine, the Congressional Budget Office reads the studies and concludes that the data suggests a level of uncertainty on the price issue?

Mr. ASHCROFT. Yes.

Mr. HATCH. Let's be honest here. There are many uncertainties here. We are talking about tobacco price increases never before contemplated or experienced in our country. But as we listen to this debate, I think it would be wise for all of us to heed the words of caution by the Congressional Budget Office when we hear someone say that all the public health experts agree that price is the single most effective way to cut youth consumption.

Does the Senator agree with me on that statement?

Mr. ASHCROFT. I think is dangerous to say that all the health experts agree, or all statistics agree. I think the Congressional Budget Office study clearly indicates that there are other factors that are very serious that interrupt what would otherwise be economic assumptions and the assumption of addiction itself is a way of saying that ordinary economics don't apply.

Mr. HATCH. If data were unequivocal on the price issue, as some have already argued, or will argue, in this debate, how is it that the Congressional Budget Office—I ask the Senator this—felt compelled to so carefully qualify what some characterize as a near scientific certitude?

Mr. ASHCROFT. My view is that they are self-compelled because they were interested in writing a record which was seriously flawed. The Congressional Budget Office's responsibility is to provide us with the information on the basis of which we can make good decisions, and not seriously flawed information. I think that there is responsibility and an opportunity to improve our potential for good decisionmaking. That is why they would have to challenge those studies which, obviously, would be misleading if not understood in the light of the Congressional Budget Office qualification.

Mr. HATCH. Now, of course, if you were tied down to particular numbers in a budget table or in a bill financing table and neither could justify these numbers so that precisely the pre-ordained amount of revenue comes into the U.S. Treasury, you might be inclined to overplay the public health rationale beyond what is warranted from the actual data. Does the Senator agree with me on that?

Mr. ASHCROFT. Yes, I would. If the President of the United States, for instance, needed a certain amount of money, you might be inclined to find statistics which would provide a basis for generating that amount of money.

Mr. HATCH. I ask the distinguished Senator if he agrees with me that the American people, see if he agrees with me that the American people are not exactly unfamiliar with the sometimes backwards, the end-justifies-the-means, cook-the-books nature of policymaking in Washington.

Mr. ASHCROFT. They are not.

Mr. HATCH. All right. Why do you think the polls are showing that by a decisive 70 percent to 20 percent margin the public thinks the Congress is more interested in the revenue and spending side of this tobacco legislation than we are in the public health component?

Mr. ASHCROFT. Well, for a variety of reasons. I am sure our history is part of that, but part of the reason is that in this bill we are not doing some of the things which could be done to curtail teenage smoking. So it becomes apparent that we are doing things that are not necessary and not doing things that are necessary.

Mr. HATCH. Does the Senator remember back in the late 1980s when the American people made us repeal the catastrophic health insurance legislation, the same public considered and soundly rejected the Rube Goldberg-inspired, Ira Magaziner-designed Clinton health care reform proposal?

Mr. ASHCROFT. We are all well aware of that.

Mr. HATCH. I would submit to you that this is the same public that we can expect to watch us closely as we perform our magic on this particular bill. Does the Senator agree with me with regard to youth smoking?

Mr. ASHCROFT. I think the public is already watching. It is reflected in measurements of the public sentiment when they indicate they believe on about a 70 percent to 30 percent basis that this is a tax and spend, big Government measure rather than a real smoking cessation measure.

Mr. HATCH. Let me just bring to the distinguished Senator's attention that during that same period of smoking decline in Canada, U.S. youth smoking decreased by 40 percent without a price increase. So much for the reasons that price is the only reason for youth smoking decrease. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. I have one final concern with the chart that was used by our distinguished friend from Massachusetts on Canadian tobacco use and price. As I said, that chart ended in 1991. When you look from 1991 on, Canadian imports to our country went up dramatically. Most were smuggled back into Canada and created a huge black market. Does the Senator remember, before the Judiciary Committee, we had the former mayor of Cornwall testify before our committee?

Mr. ASHCROFT. I am aware of that testimony.

Mr. HATCH. And he talked about how the black market came in with all of the accompanying organized crime and criminal activity to the point where his life was threatened, his family's life was threatened, people were shot at, and all kinds of other unsavory criminal practices began. Does the Senator remember that testimony?

Mr. ASHCROFT. I am aware of that testimony, and I thank the Senator for bringing it again to our attention.

Mr. HATCH. Now, the Judiciary Committee—I am sure the Senator is aware of this, too—heard testimony that most of these cigarettes, on that peak, that were imported into the United States were smuggled back into Canada.

Mr. ASHCROFT. They send them out the front door and bring them in the back door.

Mr. HATCH. Sure. They sent them out and brought them back. People are saying there is not going to be any smuggling here, not going to be any black market. They are ignoring hundreds of thousands of police people. They are ignoring the facts that occurred in Canada, England, and almost everywhere else.

Mr. ASHCROFT. They are ignoring the fact that there is a lot of cigarette smuggling in the United States today at current taxation levels. To aggravate that with an additional \$1.50 a pack would be to skyrocket the smuggling problem.

Mr. HATCH. Since smugglers do not seek identification or IDs, I suspect youth were able to easily obtain bootleg cigarettes. Keep in mind Mexico's per pack price is 94 cents. Right?

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. Maybe we have never seen the smoking prevalence rates and prices beyond 1991 in the distinguished Senator's chart because smoking rates did not increase when the tax was decreased by the Canadian government.

Now, despite emphatic and passionate pleas, the scientific evidence on the effect of price is equivocal. Does the Senator agree with me on that?

Mr. ASHCROFT. There is ambiguity as to whether or not price is a conclusive determinant for teenagers in their decision to begin to smoke.

Mr. HATCH. Is the Senator aware that today Barry Meier writes a very compelling article in the New York Times. He says:

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

Is the Senator aware of that comment?

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. Mr. Meier also quotes Mr. Richard Kluger, author of a book on smoking and health, who has said this. I ask the Senator if he is aware of it?

I think this whole business of trying to prevent kids from smoking being the impetus behind legislation is great politics, but it is nonsense in terms of anything you can put number next to.

Is the Senator aware of that?

Mr. ASHCROFT. I am, I am in possession of the article, and I am grateful for the work of Mr. Meier.

Mr. HATCH. I ask unanimous consent that the entire article be printed in the RECORD.

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

[From the New York Times, May 20, 1998]

POLITICS OF YOUTH SMOKING FUELED BY UNPROVEN DATA

LEGISLATION'S DESIRED EFFECTS DRESS UP AS FACTS

(By Barry Meier)

It is the mantra of the nation's opponents of smoking: sweeping changes in the way cigarettes are marketed and sold over the next decade would stop thousands of teenagers each day from starting the habit and spare a million youngsters from untimely deaths.

President Clinton recently warned, for example, that one million people would die prematurely if Congress did not pass tobacco legislation this year. And Senator John McCain, Republican of Arizona and the author of a \$516 billion tobacco bill, has urged lawmakers to stop "3,000 kids a day from starting this life-threatening addiction."

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

After the \$368.5 billion settlement proposal between tobacco producers and state officials was reached last year, for example, the American Cancer Society said a 60 percent decrease in youth smoking in coming years could reduce early deaths from diseases like lung cancer by a million. But while many politicians say the legislation would most likely produce a 60 percent drop in youth smoking, that figure appears to have come from projections and targets.

Social issues often spark unfounded claims cloaked in the reason of science. But the debate over smoking, politically packaged around the emotional subject of the health of children, is charged with hyperbole, some experts say. Politicians and policy makers have tossed out dozens of estimates about the impact of various strategies on youth smoking, figures that turn out to be based on projections rather than fact.

"I think this whole business of trying to prevent kids from smoking being the impetus behind legislation is great politics," said Richard Kluger, the author of "Ashes to Ashes" (Knopf, 1996), a history of the United States' battle over smoking and health. "But it is nonsense in terms of anything that you can put numbers next to."

Everyone in the tobacco debate agrees that reducing youth smoking would have major benefits because nearly all long-term smokers start as teen-agers. But few studies have analyzed how steps like price increases and advertising bans affect youth-smoking. And those have often produced contradictory results.

Consider the issue of cigarette pricing. In recent Congressional testimony, Lawrence H. Summers, the Deputy Treasury Sec-

retary, cited studies saying that every 10 percent increase in the price of a pack of cigarettes would produce up to a 7 percent reduction in the number of children who smoke. Those studies argue that such a drop would occur because children are far more sensitive to price increases than adults.

"The best way to combat youth smoking is to raise the price," Mr. Summers said.

But a recent study by researchers at Cornell University came to a far different conclusion, including a finding that the types of studies cited by Mr. Summers may be based on a faulty assumption.

Donald Kenkel, an associate professor of policy analysis and management at Cornell, said earlier studies tried to draw national patterns by correlating youth smoking rates and cigarette prices in various states at a given time.

But in the Cornell study, which looked at youth smoking rates and cigarette prices over a period of years, researchers found that price had little effect. For example, the study found that states that increased tobacco taxes did not have significantly fewer children who started smoking compared with states that raised taxes at a slower rate or not at all.

Mr. Kenkel added that he had no idea how the price increase being considered by Congress—\$1.10 per pack or more—would affect smoking rates because the price of cigarettes, now about \$2 a pack, has never jumped so much. And he added that there were so few studies on youth smoking rates and price that any estimate was a guess.

"It is very difficult to do good policy analysis when the research basis is as thin and variable as this," Mr. Kenkel said.

Jonathan Gruber, a Treasury Department official, said that the Cornell study had its own methodological flaws and that the earlier findings about prices supported the department's position. He also pointed out that Canada doubled cigarette prices from 1981 to 1991 and saw youth smoking rates fall by half.

Under the tobacco legislation being considered in the United States, cigarette prices would increase by about 50 percent. And while advocates of the legislation say that the increase would reduce youth smoking by 30 percent over the next decade, they say that an additional 30 percent reduction would come through companion measures like advertising restrictions and more penalties for store owners who sold cigarettes to under-age smokers and for youngsters who bought them.

The claim that comprehensive tobacco legislation would reduce youth smoking by 60 percent over the next decade is perhaps that most frequently cited number by advocates of such bills. But that figure first emerged last year in a different context and quickly came under attack.

The American Cancer Society, soon after the settlement plan was reached in June between the tobacco industry and 40 state attorneys general, said that one goal of that agreement—a 60 percent decline in youth smoking rates over the next decade—would spare one million children from early deaths from smoking related diseases. The plan, which recently collapsed, would have raised cigarette prices by about 62 cents over a decade and banned certain types of tobacco advertising and promotional campaigns.

But some tobacco opponents soon found fault with the cancer society's estimates. For one, those critics pointed out that the 60 percent figure represented only a target, and that penalties would be imposed on tobacco

companies if it were not reached. And the cancer society, they added, had not performed any analysis of the June deal to determine whether it could produce a 60 percent decline in youth smoking.

"They basically made up the number and I think it was totally irresponsible of them," said Dr. Stanton Glantz, a professor of medicine at the University of California at San Francisco. "It is like assuming that by snapping our fingers we could make breast cancer go away."

In a letter to Dr. Glantz, Dr. Michael Thun, the cancer society's vice president for epidemiology and surveillance research, acknowledged that the group's statement was based on an "if-then" projection, rather than an analysis of whether the proposal's programs would accomplish that goal.

"The way the number was derived has nothing to do with what will effectively get us there," Dr. Thun said in a recent interview.

The new 60 percent estimate is based on a different formulation. But it, like the cancer society statistic, also coincides with a target for reducing youth smoking that would result in industry penalties if not reached. And along with questioning the impact of price on reaching such a goal, experts are at odds over whether advertising bans and sales restrictions would produce the projected 30 percent drop in youth smoking.

In California, for example, youth smoking began to decline in the early 1990's soon after the state began one of the most aggressive anti-smoking campaigns in the country. But it has begun to rise again in recent years.

Dr. John Pierce, a professor of cancer prevention at the University of California at San Diego, said he thought that reversal might reflect the ability of cigarette makers to alter their promotional strategies to keep tobacco attractive to teen-agers even as regulators try to block them.

For their part, cigarette makers, whose internal documents suggest a significant impact on youth smoking from price increases, appear happy to play both sides of the statistical fence. Last year, they estimated that the price increase in the June plan would cause sales to drop by nearly 43 percent among all smokers over a decade. But now that Congress is considering raising prices by twice that much, producers have turned around and said that higher prices would undermine, rather than help, efforts to reduce youth smoking.

Steven Duchesne, an industry spokesman, said tobacco companies thought that high cigarette prices would encourage those in the black market to target teen-agers.

"Smugglers would sell cigarettes out of the back of trucks without checking ID's," Mr. Duchesne said.

Experts agree that unless significant changes are made in areas like price and advertising, youth smoking rates will not decline. But unlike politicians, many of them are unwilling to make predictions. Instead, they say that the passage of tobacco legislation would guarantee only one thing: the start of a vast social experiment whose outcome is by no means clear.

Mr. ASHCROFT. I am pleased to forward the article to the desk and ask for its inclusion in the RECORD.

Mr. HATCH. Let me ask the Senator, if he will, using another chart, our colleague argued last night that the 1993 American price decrease led to more youth smoking. I would call my colleague's attention to the fact that in at

least 1 year both price and youth smoking decreased. Later, there was a dramatic increase in youth smoking without a proportional price increase. These facts provide further evidence that price is not the only determinant of smoking behavior as some would lead us to believe. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it, and I am convinced that price is not the only determinant.

Mr. HATCH. Now, tobacco analyst Martin Feldman, who actually did the economics on this based upon an extensive model, unlike the Treasury Department, who was willing to testify and face cross-examination before the Judiciary Committee, testified before the Judiciary Committee, and I believe the Senator is aware of this, that between 1986 and 1996, the real price of cigarettes in the United Kingdom, rose by 26 percent and national cigarette consumption fell 17 percent.

Is the Senator aware that youth smoking did not decrease during that same time?

Mr. ASHCROFT. I think that data is very instructive. It tells us something about the fact that the youth culture is not always predictable in terms of traditional economics, that the price may not be the determinant of whether individuals begin smoking as young people.

Mr. HATCH. Is the Senator aware that actually the British Office for National Statistics reported that the percentage of smokers amongst those 11 to 16 increased by 8 percent despite the healthy price increase?

Mr. ASHCROFT. I am pleased that you would bring that to my awareness.

Mr. HATCH. Our colleague from Massachusetts, for whom I have the greatest respect, would lead us to believe that all public health experts advocate a \$1.50 price increase to reduce teen smoking. There has never been a U.S. price increase of this magnitude.

Mr. ASHCROFT. I am aware of the fact that this would be a totally unique circumstance never before—

Mr. HATCH. Keep in mind it is a lot more than just a \$1.50. That is just the manufacturer's price. You go on up from there?

Mr. ASHCROFT. It would probably be something in the neighborhood of closer to over \$3 in terms of the increase in the price of cigarettes.

Mr. HATCH. Is the Senator aware of the approach that I have been trying to take toward this, that we believe it should be a payment schedule. There would still be excise taxes. We think it should be a payment schedule that the tobacco companies meet regardless of how their profits go, up or down. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of the Senator's position in that regard.

Mr. HATCH. So the payment would not be affected by whether the excise

taxes go up or down. The payments would have to be made over a number of years, all \$428 billion of them, which is \$60 billion more than in the settlement. Is the Senator aware of this, \$60 billion more than the attorneys general, Castano group, et cetera, and tobacco companies' agreement back on June 20, 1997? Is the Senator aware of it?

Mr. ASHCROFT. I am aware of the Senator's intention in that respect.

Mr. HATCH. So it is a stiff increase in penalty, but at least it is at a level where perhaps we can get the companies to come back on board and at least voluntarily agree to the advertising protocols, consent protocols, and voluntarily agree to the look-back provisions and make them, thus, constitutional.

Mr. ASHCROFT. I understand the Senator's position.

Mr. HATCH. You understand my position on that?

In 1996—is the Senator aware in 1996 Secretary Shalala estimated that the 1996 FDA rule would reduce smoking by 50 percent over 7 years? Guess what? There was no price increase in that regulation.

Secretary Shalala used the word "historic"—this is the most important public health initiative in a generation. It ranks with everything from polio to penicillin. I mean, this is huge in terms of its impact. Out goal is very straightforward; to reduce the amount of teenage smoking in the United States by half over the next 7 years.

Are you aware of that statement by our Secretary, our esteemed Secretary?

Mr. ASHCROFT. I am aware of that statement.

Mr. HATCH. Well, there was no price increase in that recognition. How, we are being led to believe that price is the answer. It goes further. David Kessler said this:

Don't let the simplicity of these proposals fool you. If all elements of the antismoking package come into play together, change could be felt within a single generation, and we could see nicotine addiction go the way of small pox and polio.

Are you aware of that statement by the former—

Mr. ASHCROFT. I am aware of the statement of Dr. Kessler.

Mr. HATCH. Former head of the FDA? Here is one by President Clinton:

That's why a year ago I worked with the FDA, and we launched this nationwide effort to protect our children from the dangers of tobacco by reducing access to tobacco products, by preventing companies from advertising to our children. The purpose of the FDA rule was to reduce youth smoking by 50 percent within 7 years.

That was President Clinton's statement. Is the Senator aware of that?

Mr. ASHCROFT. Indeed it was.

Mr. HATCH. I think the point I am making here is no matter what we do here will be a price increase. The question is, How far can you increase it without it being counterproductive and

producing an overwhelming black market in contraband all over our country. Is the Senator as concerned about that as I am?

Mr. ASHCROFT. I am deeply concerned about the creation of a black market which not only destabilizes any of the intentions of this bill, but probably would make cigarettes far more available to young people than they are in society today.

Mr. HATCH. I appreciate the Senator's comments. These quotes by Donna Shalala, by David Kessler, by the President of the United States, with regard to the FDA regulation supposedly going to reduce teen smoking by 50 percent over 7 years—guess what, there was no price increase in that regulation. Now we are led to believe that price increases are the sole answer—at least by the arguments made by the other side on this issue.

Is the Senator aware—let me just examine another factor and see if he is aware of that. We are being told the Senate's inaction on a \$1.50 price increase over the next 3 years will culminate in children dying. Is the Senator aware of that argument?

Mr. ASHCROFT. I am aware of that argument.

Mr. HATCH. It seems to have been made here regularly. If that is the case, why, then, did the President of the United States advocate for a price increase of up to \$1.50 over 10 years? What does our colleague from Massachusetts know that the President didn't know?

Mr. ASHCROFT. I am not in a position to answer that question. I think the question is a very good question, but it would have to be addressed to the Senator from Massachusetts.

Mr. HATCH. Let me just say this, and ask this question. You know, the very people who are arguing for this \$1.50 increase, it seems to me, are the very people who are pricing this bill right out of the marketplace so we cannot get a constitutionally sound bill. Is the Senator aware of that?

Mr. ASHCROFT. I believe that they have increased this, the cost of this bill, by hundreds of billions of dollars.

Mr. HATCH. We have had witnesses from the left and the right, constitutional experts, come before our committee and say that, basically, without a voluntary consent protocol or a voluntary consent decree with the companies on board, that literally—literally, you could not have the advertising restrictions.

Mr. ASHCROFT. I think it is pretty clear that the infringement of the first amendment that has been applied by the highest courts to commercial speech as well as speech by ordinary citizens would be substantial were it not to have the complicity of those affected.

Mr. HATCH. Was not the Senator there in those Judiciary Committee

hearings when these experts on constitutional law from the left to the right said this bill would not be constitutional, would be highly suspect.

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. Unconstitutional both on the advertising restrictions, which of course that is what the FDA regulations call for, and on the look-back provisions? Just to mention two.

Mr. ASHCROFT. I am very well aware of the serious constitutional problems of this proposed measure, which would be intensified, absent the agreement of the companies themselves.

Mr. HATCH. Does the Senator remember Floyd Abrams, leading first amendment expert in this country, in my opinion and I think in the opinion of most people, from the left to the right, in his statement:

Any legislation of Congress which would purport to do by law what the proposed settlement would do by agreement, in terms restricting constitutionally protected commercial speech, is, in my estimation, destined to be held unconstitutional? It is unlikely that at the end of the day the FDA's proposed regulations could survive first amendment scrutiny.

Does the Senator remember that?

Mr. ASHCROFT. I am aware of that statement before the committee.

Mr. HATCH. Is the Senator aware that the American Civil Liberties Union, speaking to the Senate Judiciary Committee, February 20, 1998, had this to say:

Both the legislation and proposed regulation by the Food and Drug Administration are wholly unprecedented and, if enacted, will most likely fail to withstand constitutional challenges.

Mr. ASHCROFT. I am.

Mr. HATCH. Is the Senator aware that Judge Robert Bork said on January 16, 1996:

The recent proposal of the FDA to restrict severely the first amendment rights of American companies and individuals who in one way or another have any connection with tobacco products is patently unconstitutional under the Supreme Court's current doctrine concerning commercial speech, as well as under the original understanding of the first amendment.

Mr. ASHCROFT. I am aware of that. That is why I mentioned the commercial speech reservations that I had earlier.

Mr. HATCH. Isn't it a wonderful thing that the commerce bill, or should I say the managers' amendment, has done that which nobody else has ever been able to do in the history of this country; that is, bring together the ACLU and Robert Bork on this issue.

Mr. ASHCROFT. That, indeed, is an amazing feat.

Mr. HATCH. It really is. But we also had testimony from Larry Tribe, on the left, who also basically said this would be very constitutionally suspect. Now, to make a long story short, the very people who are arguing—I will ask

the Senator this. Aren't the very people who are arguing for this \$1.50 increase the people who have basically blown the tobacco companies out of the equation so that you cannot get the voluntary consent decrees to make these matters constitutional so that this will work, not just from a price increase standpoint but from an advertising restrictions standpoint, and from a look-back provision standpoint?

Mr. ASHCROFT. I think it is pretty clear they have boosted, or seek to boost the kind of financial impact to a very serious—hundreds of billions of dollars—extent.

My objection is that this is all passed on to low-income people, consumers. Obviously there are other impacts as well. Obviously it affects the ability of companies to participate in this kind of settlement.

Mr. HATCH. Is the Senator aware of, similarly, last week we heard testimony on this issue. I asked Professor Burt Neuborne of the NYU law school specifically if he thought the FDA rules could pass constitutional muster. I have to say, he was one of the most impressive constitutional experts I have had in my 22 years of listening to constitutional law from experts on the Judiciary Committee. In asking him a question, I pointed out that earlier in the hearing that Mr. David Ogden, counsel to the Attorney General, testified that the FDA rules were narrowly tailored and could satisfy the leading cases in the area of commercial free speech, the Supreme Court's decision in 44 Liquormart, and the Scenic Hudson cases.

So I asked Professor Neuborne whether the FDA rules were narrowly tailored, as required by current Supreme Court doctrine. I want to see if the Senator remembers what he said.

He said:

I could start by semantics. Mr. Ogden of the Justice Department used the word "appropriately tailored." He is too good a lawyer to use the words "narrowly tailored" because the FDA rules are not narrowly tailored. The FDA rules take the position that all color, all figures, all human beings are inherently attractive to children in a way that causes them to smoke.

Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that. I think it is a profound insight and it absolutely represents good legal analysis.

Mr. HATCH. He went on to say:

But its not a narrowly tailored response to say that all use of color, all use of human figures, all use of imagery is banned so that adults can't see them either, and I don't think that could be reasonably defended.

Do you remember that?

Mr. ASHCROFT. I am aware of that statement and I happen to agree that there is a very serious constitutional problem with this kind of limitation, even of commercial speech.

Mr. HATCH. He is not alone. I venture to say that any constitutional ex-

pert who tries to contradict what these gentlemen have said is going to be in severe jeopardy of losing his or her reputation.

Is the Senator aware that this whole push to raise the cost, to pile on, that basically knocks the tobacco companies out of the equation, to pile on—which is what is happening in this bill and what certainly would be extended by the amendment of the distinguished Senator from Massachusetts—that that basically knocks the tobacco companies out?

Mr. ASHCROFT. I am not in a position to say whether or not what the tobacco companies could do.

Mr. HATCH. They have said—

Mr. ASHCROFT. They have indicated clearly that the additions and the aggravations and the different kinds of changes that have been made have made it impossible for them to continue in their support of the measure.

Mr. HATCH. There is no doubt in my mind that they are not going to continue unless we get this into some reasonable posture. Is the Senator aware that many people lost their breath when they first heard of \$368.5 billion as the settlement figure given last June 20 by the attorneys general, the Castano group and the tobacco companies? They were astounded. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it, and if the people lost their breath thinking this was to be paid by the tobacco companies, they will really lose their breath when they understand these costs are mandated by the statute to be passed on to consumers.

Mr. HATCH. I think the Senator is aware, is he not, that there has to be a way to pay for the program? If you don't have the voluntary consent of the companies, albeit kicking and screaming, then how do you make the bill constitutional in the end? Is the Senator aware of that?

Mr. ASHCROFT. I am aware of the Senator's position.

Mr. HATCH. Is the Senator aware of another position this Senator has, and I think many others as well, and that is that if this bill passes in its current form and is not constitutional, that there will be at least 10 years of effective litigation by the tobacco companies who are not going to allow them to climb all over them, especially when they know these provisions are unconstitutional? Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that, and during that period of time, the poor people, the working-class people of the United States are going to have a very, very serious tax increase as a result of this kind of greed expressed here.

Mr. HATCH. Is the Senator aware that we have 3,000 kids beginning smoking every day and 1,000 will die a premature death?

Mr. ASHCROFT. I am aware that 3,000 children try smoking every day. I am also aware there are about 8,000 children, according to General McCaffrey, who try drugs every day. I am concerned we do not have a so-called solution here that really shoves people even more into the drug category.

Mr. HATCH. Is the Senator aware that if a young teenager smokes, there is an 8 times propensity to graduate to marijuana, and if that teenager then graduates to marijuana, there is a greater propensity to graduate to harder drugs?

Mr. ASHCROFT. I am aware of linkages that have been drawn between marijuana smoking and hard drugs.

Mr. HATCH. So if this price increases that we are talking about here, way above the \$368.5 billion, do not bring the tobacco companies on board—and the tobacco companies say they are not going to come on board—then, basically, we are going to have 10 years of constitutional litigation where approximately 1 million children a year will start a habit later leading to their premature death because we failed to act properly in this matter. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of the fact that the absence of the tobacco companies in any final resolution would result in very serious litigation which would involve serious delays.

Mr. HATCH. Is the Senator aware that I have fought the tobacco industry my whole Senate career, and I take second place to nobody as far as trying to get this matter under control?

Mr. ASHCROFT. Indeed, I am.

Mr. HATCH. Is the Senator aware that on one occasion, I was accused—I won't say by whom—of being a pawn for the tobacco companies, because I want to see this thing work and get it done?

Mr. ASHCROFT. There are a number of incredible things that have been said about the Senator, and I think that is one of them.

Mr. HATCH. Well, it was very offensive to me. If we don't work this out so that the parties agree in a consent decree, then we are going to have years of litigation where even more people will die from smoking-related diseases and millions of kids will be hooked on cigarettes.

In 1996, as I said, and I ask the Senator if he remembers this, Secretary Shalala estimated that the 1996 FDA rule would reduce smoking by 50 percent over 7 years. David Kessler said it. The President believes that. There was no price increase involved in that, just the rule. But that rule will not be in effect if we don't have a voluntary consent decree.

And, I might add, there are those who believe that rule shouldn't be in effect under current FDA law, the way it is currently written.

Let me ask the Senator to consider another fact. We are being told that

the Senate's inaction on a \$1.50 price increase over the next 3 years will result in children dying. If that is the case, then why did the President of the United States advocate for a price increase of up to \$1.50 but over 10 years? Is the Senator aware that Surgeon General Satcher, our Nation's doctor, did not call for a \$1.50 price increase?

Mr. ASHCROFT. I am pleased to be made aware of that by the Senator from Utah.

Mr. HATCH. Rather, he echoed the President's position. He referred to prices as one of the most cost-effective, short-term strategies to reduce youth smoking. Will the Senator help me to understand their failure to be advocates, if the evidence is, as our colleague from Massachusetts said, "overwhelming and powerful"? More recently, my colleague and I attended a Judiciary Committee hearing to determine if it is possible to design a plan to keep kids from smoking. Is the Senator aware of this? Dr. Greg Connally, head of the Massachusetts drug control program, testified that the remarkable success of the Massachusetts program in reducing by 30 percent cigarette consumption in the 18- to 24-year-olds was because of the clean air indoor legislation and advertising. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it, and that is why I think it is unnecessary to massively burden working Americans with an oppressive tax in order to achieve what State and local entities are doing without this kind of imposition on working people of America.

Mr. HATCH. That came right out of Massachusetts.

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

Mr. HATCH. Let me finish this line of thought, and I will be happy to yield.

Mr. ASHCROFT. I reassert my right to the floor, and I will be happy to yield for another question, but I have yielded to the Senator from Utah and the floor is not his to yield.

The PRESIDING OFFICER. The Senator from Missouri controls the floor.

Mr. ASHCROFT. I yield to the Senator from Utah.

Mr. HATCH. Let's look more closely at the 1994 IOM study which is the basis of the 1998 IOM study. A fair reading of this 1994 IOM study seems far less definitive than is being portrayed by some in this debate.

On page 187 of the 1994 Institute of Medicine study, it says:

Only a few studies have examined the question of whether cigarette price increases affect teenagers differently than adults.

It then reviewed the only three studies done to that point in the United States. It found relatively high price elasticities in two of these studies but noted that the third study, the second National Health and Nutrition Exam-

ination Survey, "failed to find a statistically significant effect of cigarette prices on cigarette smoking in youths age 12 through 17." Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it, and I am pleased to have you remind us all of the information in these studies.

Mr. HATCH. So the data that is not so categorical as being portrayed by the proponents of this amendment. In fact, the 1994 IOM report noted the conflict, not the consensus, in the data. It noted that that requires further study.

On page 188 of the IOM study, it says this:

The conflicting results of the few U.S. studies have examined the impact of cigarette prices on consumption by adolescents, including possible substitution of smokeless tobacco products in response to higher cigarette prices, reinforce the need for new research to assess the potential for using higher tobacco taxes to deter adolescent tobacco use.

Is the Senator aware of that?

Mr. ASHCROFT. It is clear that the studies are conflicting. Some of the assumptions which have been purported by others to be universal simply are not universal and are not supportable when they are alleged to be universal.

Mr. HATCH. Is the Senator aware that in a recent peer-reviewed article in the Journal of the American Medical Association, the authors conclude that price increases have limited value? Is the Senator aware of that?

Mr. ASHCROFT. I am pleased to be aware of it and thank the Senator for bringing it to the attention of the Senate.

Mr. HATCH. Since the tobacco companies cut their prices to wipe out the tax increases, these public health scientists attributed the success of the tobacco control program in Massachusetts to other components of the comprehensive program. Is the Senator aware of that?

Mr. ASHCROFT. Yes, I am.

Mr. HATCH. In the same hearing, Dr. William Roper, who is Dean of the University of North Carolina School of Public Health, called for a significant price increase but failed to recommend an amount. Is the Senator aware of that?

Mr. ASHCROFT. I am.

Mr. HATCH. Dr. Michael Fiore, director of the University of Wisconsin School of Medicine Center for Tobacco Research and Prevention and Chair of the Agency for Health Care Policy and Research clinical practice guideline panel on smoking cessation testified that one of the most effective ways to reduce youth smoking is to focus on the current adult smokers. He never mentioned a price increase to reduce youth smoking. Is the Senator aware of that?

Mr. ASHCROFT. I am aware of it.

Mr. HATCH. We all know teenage behavior is at best unpredictable. Dr. Warner of the University of Michigan

estimated that the 1983 doubling of the Federal excise tax would decrease the number of teenage smokers by 800,000. This estimate fell short by one-fourth. This overzealous estimate should give all of us pause in stepping into the unchartered waters of a \$1.50 price increase.

We should not lead our mothers in this society to believe that if we raise the price of cigarettes by \$1.50, their children will not smoke. Is the Senator aware of that?

Mr. ASHCROFT. I agree with that. We should not mislead parents. I would firmly underscore the idea that the single, most important factor in whether or not young people smoke is the extent to which their parents are active in helping them not to smoke.

Mr. HATCH. I tell my colleagues, I am just about through with my questions for now. I will have many, many more later on other aspects of this bill. But I wanted to get these points across. I really appreciate the courtesy of my colleague and his forbearance in being willing to answer all these questions.

The main point is, there cannot be clear and unequivocal support for a price increase of \$1.50. I have never seen a price increase of that magnitude. That has never been done.

Dr. Chaloupka also writes that less educated persons are less price responsive. An American adult, who is a one-pack-a-day smoker would face a \$547 increase. The Senator has been making that case, I believe. Is that correct?

Mr. ASHCROFT. Yes. I believe a one-pack-a-day habit in participating in smoking would cost an additional \$547—if you had three packs a day, it takes you to about \$1,600. Money that is taken from the family. It does not matter how much the family makes. It could be very low income. Most smokers tend to be in the low-income areas. So it is a very, very aggressive tax on low-income America.

Mr. HATCH. This tax increase would take away more than 5 percent of the income of an American making \$10,000 a year. Is that correct?

Mr. ASHCROFT. In some cases that is the kind of bite it would take out of their ability to buy food, shelter, and clothing to provide for their families.

Mr. HATCH. Is it not correct, I ask my colleague from Missouri, who has been making very important points here during this debate, is it correct that currently smokers with incomes under \$30,000 pay almost 50 percent of the tobacco excise tax?

Mr. ASHCROFT. Well, right here under the new plan it is projected to almost 60 percent.

Mr. HATCH. Right. If this \$1.50 goes through, it will be probably that high. And even at \$1.10, it would be approaching 60 percent; is that correct?

Mr. ASHCROFT. That is correct.

Mr. HATCH. Well, I am disappointed that some of my colleagues on the

other side of the aisle are so ready to support a new tax-and-spend program supposedly aimed at children but weighing so heavily on the backs of addicted, low-income adult workers under the guise that they are helping children.

Does the Senator agree with me on that?

Mr. ASHCROFT. I do.

Mr. KERRY. Will the Senator yield?

Mr. HATCH. I will take only a few more minutes.

While I agree—I will make this clear—that a price increase is an important component of a comprehensive program, the reason I have gone through all this is there is no clear and convincing evidence of what that amount should be.

Let us be honest, the CBO found there is uncertainty and the price rise is not foolproof.

Do you agree with that?

Mr. ASHCROFT. I do agree that a price rise is certainly not a foolproof strategy for reducing teen smoking. There are ways to reduce teen smoking, and a number of them are not included in this legislation.

Mr. HATCH. I would just like to ask my friend maybe one or two more questions.

If we have to have a tobacco settlement, would it not be much better to force the tobacco companies to come back on board so we can resolve the constitutional issues and have voluntary consent protocols so we can actually reduce youth smoking?

Mr. ASHCROFT. My view is we should target to do things we can actually do to reduce teen smoking, and we have to do it in a way that is not an oppressive tax burden on hard-working families, especially low-income families in America.

The proposal to raise this tax to \$1.50, the proposal to have it at \$1.10 is an unacceptable incursion into the ability of families to provide for themselves. That is why I oppose this \$1.10 pass-through tax on American consumers, particularly low-income individuals.

Mr. HATCH. Is the Senator aware that this Senator, the chairman of the Judiciary Committee, has spent an extensive amount of time studying this issue, trying to come up with a way that you can punish the tobacco companies while getting their consent to the advertising restrictions, so they have to live up to the deal?

Mr. ASHCROFT. I am fully aware of the Senator's efforts in this respect and say he is to be commended for working so hard as he has. I know of no other individual who has dedicated himself more thoroughly to the attempt to resolve these issues than the Senator from Utah as the chairman of the Judiciary Committee.

Mr. HATCH. Is the Senator aware of the Senator from Utah's long-term antipathy toward this industry?

Mr. ASHCROFT. Indeed I am. Everyone is aware of that. We could submit that for the RECORD for which people could take judicial note.

Mr. HATCH. Is the Senator aware of how hard the Senator from Utah studied just exactly what would be the highest amount we could charge and still keep the tobacco companies—yes, kicking and screaming and fighting, and say they are gouged—on board to get these voluntary consent protocols so we can make this matter constitutional?

Mr. ASHCROFT. I think it is pretty clear we can often find how hard someone has worked and studied by the nature of the questions they have asked. The nature of the questions you have asked is such that everyone can know that you have done perhaps as much work as anyone could possibly do in examining these issues.

Mr. HATCH. Is the Senator aware—
Mr. KERRY. Will the Senator yield for an administrative question?

Mr. HATCH. I have one or two questions.

Mr. KERRY. It is not up to the Senator from Utah to make that decision. The PRESIDING OFFICER (Mr. BURNS). Will the Senator respond?

Mr. HATCH. Will the Senator yield further to me?

Mr. ASHCROFT. I will not yield for a different set of questions at this time. I am yielding to the Senator from Utah at this time.

Mr. KERRY. I thank the Chair.

Mr. HATCH. I would be happy to—I do not think the Senator from Utah is abusing the rules. I think I have the privilege to ask all the questions I can. I think these have been intelligent questions. I think they have been right on point. I think they hopefully will help to elucidate what we need to know.

Mr. KERRY. The Senator is not entitled to make a statement.

Mr. HATCH. Does the Senator agree with my last statement?

Mr. ASHCROFT. Yes, I do.

Mr. HATCH. Now—

Mr. KERRY. Mr. President, could I ask one administrative question of the Senator from Missouri?

The PRESIDING OFFICER. Will the Senator from Missouri yield for a question?

Mr. ASHCROFT. The Senator from Missouri will yield for an administrative question on the presumption and understanding that I retain the floor after the question has been asked.

The PRESIDING OFFICER. The Senator will not lose the floor upon responding to the question.

Mr. KERRY. Mr. President, I will not assert this, but ask the Senator from Missouri if he is aware that under the rules of the Senate, and under precedence of the Senate, a Senator may yield for a question, a Senator may not yield for a statement in the guise of a

question, and a Senator may not yield for a question preceded by or followed by a statement. And that under rule 194 of the Senate, either by request of the Senator or by decision of the Chair, a Senator may be asked, in fact, to give up his right to the floor and take his seat if that rule is violated? Is the Senator aware of that?

Mr. ASHCROFT. I am aware of that.

Mr. KERRY. I thank the Chair.

Mr. HATCH. Will the Senator yield?

Mr. ASHCROFT. I am pleased to yield to the Senator from Utah for a question and thank him for his questions. I appreciate the way in which he has framed these questions. I think it has been very productive and helpful in this debate.

Mr. HATCH. I thank the Senator for his leadership on the floor in pointing out the problems that exist with regard to this "piling on" mentality. Is the Senator aware that we did it in the catastrophic bill, and we all lost that?

Mr. ASHCROFT. I am aware of that.

Mr. HATCH. I have no doubt that if the managers' amendment of \$1.10 goes through—does the Senator have any doubt that if a managers' amendment of \$1.10 goes through, let alone \$1.50, that we will wind up with another similar process and problems on our hands?

Mr. ASHCROFT. I think we have a major problem on our hands. I am not concerned about piling on the companies—I am concerned about piling on the consumers, or piling on the poor people of America a tax burden which they should not be asked to carry for reasons which I think are inadequate to justify.

Mr. HATCH. I agree with the Senator and ask a final question. I apologize to my colleagues for taking this time. As everybody knows, I don't take an awful lot of time on the floor. If we are going to resolve this matter, it seems to me, and I wonder if the Senator would agree with me, that we have to take into consideration the approximately 50 million users of tobacco products in this society, many of whom are hooked on these products, or at least addicted to them; we have to consider the children; we have to consider using this money for tobacco-related purposes to the utmost extent that we can.

Would the Senator agree with me on those?

Mr. ASHCROFT. I agree we have to do what we can to appropriately use what resources we can to reduce teen smoking.

Mr. HATCH. I am concerned about what is going on on the floor right now. I am concerned about the managers' amendment. I am concerned about it ever really working, and I imagine the Senator—and this is a question—is as concerned as I am.

Mr. ASHCROFT. I am deeply concerned, particularly about the impact of these massive taxes on low-income

families and their ability to make ends meet and maintain their independence.

Mr. HATCH. Despite what Michael Douglas said in the popular movie "Wall Street," greed is not good, and it is especially onerous and burdensome when the greed comes from Congress itself.

Would the Senator agree with me on that?

Mr. ASHCROFT. I agree that greed is not good, and it is particularly repugnant when it is Government asking for more and more from people who can afford it less and less. I think that is what we have here—those who are asking for more and more from consumers who can afford less and less.

Mr. HATCH. I want to personally compliment the Senator for his work on the floor. I know he has taken a lot of time and has had to give up his office work and a lot of other things to be able to join in this colloquy, but this is important. I believe his colloquy is important if we want to understand both sides of this issue on the \$1.50. I want to compliment the Senator for being willing to have the fortitude, the dedication, and the drive to stand here and do this.

I apologize to the rest of my colleagues for having taken as long as I have to ask these questions, but I think every question has been pertinent and to the point and every question has tried to enlighten, and that is what questions are for. That is why the rules provide for it.

I thank my colleague for allowing me to do this.

Mr. ASHCROFT. I am pleased to have had the opportunity to answer the questions. I indicated the nature of the questions has been a very specific, particularly questions regarding a variety of studies. These studies have challenged the fallacious assumption that there is an automatic streamline correlation between price increase and potential for reducing smoking, especially among young people, and the clear indication on the part of the Senator from Utah, through his questions, of the amount of study, efforts, investigation, and analysis in which he has engaged is the kind of analysis, investigation, study, and questioning that will refine our ability to make the right decision here.

(Earlier the following occurred and, by unanimous consent, was ordered to be printed at this point in the RECORD.)

Mr. MCCAIN. Mr. President, I ask the Senator to yield for a minute so I can make an administrative announcement. It has nothing to do with the issue at hand; it is so that we can provide courtesy to other Members.

Mr. ASHCROFT. Mr. President, I am please to yield, with this understanding: I ask unanimous consent that at the conclusion of the remarks of the manager of the bill, I be allowed again to speak and have my position on the floor.

Mr. CONRAD. Mr. President, reserving the right to object.

Mr. MCCAIN. Let me just do this first.

Mr. CONRAD. Reserving the right to object, let me understand this. The Senator from Missouri is asking that at the end of the managers' remarks he be recognized?

Mr. ASHCROFT. I will yield only in a way that does not forfeit my right to the floor.

The PRESIDING OFFICER (Mr. HUTCHINSON). Is there objection?

Mr. CONRAD. I won't object.

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

Mr. MCCAIN. Mr. President, the reason I interrupt is that many Members were laboring under the correct impression that we were probably going to have a vote about now on a tabling motion. Obviously, because of the extent of the debate and the desire of both sides to speak, we will not have the tabling motion at this time. I will do so after it appears that most Members on both sides have had an opportunity to talk about the issue. I think the Senator from Massachusetts agrees that we would not want to have a tabling motion since the other side has not had an opportunity to speak.

Mr. HATCH. Will the Senator yield?

Mr. MCCAIN. Can I finish speaking?

Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Missouri has yielded to the manager of the bill and then, by unanimous consent, he will resume recognition.

Mr. MCCAIN. Mr. President, I believe the unanimous consent agreement ends when I complete my remarks; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Mr. President, I ask the indulgence of the Senator from Missouri and the Senator from Utah until I finish my remarks. I think that is a fairly common courtesy that is extended around here.

We intend to have a tabling motion on both the Ashcroft second-degree amendment and on the underlying Kennedy amendment, and I would guess probably within a couple of hours we will be able to finish the discussion on this side and have ample time to respond on that side. For the benefit of my colleagues, I am trying to make this process as convenient as I can for every Member of the Senate so that they can anticipate and adjust their schedules accordingly. I have now completed my remarks.

Mr. HATCH. Mr. President, I ask unanimous consent that the remarks of the distinguished Senator from Arizona not interrupt our questions and remarks.

Mr. ASHCROFT. Mr. President, I ask unanimous consent that the remarks of the Senator from Arizona not interrupt

the questions of the Senator from Utah in the RECORD.

I am pleased to yield to the Senator from Utah for a question.

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

Mr. HATCH. We were going through this CBO report. I apologize to the distinguished Senator from Arizona for irritating him. I thought he had finished his remarks. I always intend to extend courtesy throughout the Senate.

Mr. KERRY. Would the Senator extend that courtesy to me for the purpose of an administrative question?

Mr. HATCH. Yes.

Mr. ASHCROFT. Mr. President, I reassert my right to the floor and indicate that I would be pleased to yield to the minority manager of the bill for purposes of an administrative question, with the understanding that at the conclusion of his remarks, or question, I reacquire the right to the floor.

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

The Senator from Massachusetts is recognized.

Mr. KERRY. I thank the Senator from Missouri very much.

Mr. ASHCROFT. If there was a question propounded to me, it was during the time when I was listening to another question. I need to have it again propounded.

Mr. KERRY. I did not propound a question yet. I was waiting for the Senator to finish. I simply wanted to ask the following. There was an effort between the other manager and myself to try to have comity here so that we weren't really operating in a strict sense by asserting rights to the floor. We were trying to move back and forth in a relatively fair manner, without any sense of trying to cut anybody off. There is no effort here to stop somebody from being able to speak. There is an effort to try to share the opportunities with a lot of busy Senators. So what we are trying to do is get a sense of the length of time, in fairness to colleagues who are lined up to speak.

If the Senator wants to continue to speak, that is obviously his privilege. He can also come back at any time and resume speaking. We are making no effort to hold the floor on this side. We are making no effort to delay. Each of the Senators will speak for a brief period of time. So we are very happy to accommodate our colleagues. I simply ask him if he might give us, at this point, some indication of either when he would complete this round or whether he would be willing to allow some other Senators, perhaps, to have a chance to also speak and then perhaps come back. We are trying to do this in a fair-minded way.

Mr. ASHCROFT. May I answer the question without forfeiting my right to the floor?

The PRESIDING OFFICER. Yes.

Mr. ASHCROFT. I earlier agreed and, as a matter of fact, urged you to have

Members from your side go ahead of me. I don't mind them having a chance to speak. When we sought unanimous consent for that, it was objected to by the manager of the bill. I had intended, in every respect, to provide for ample debate.

My view is that this is a very important topic. I learned last night in an announcement by those managing this bill that there would be an effort made to table this amendment without giving a full opportunity for discussion and that there was a time set without even so much as seeking an agreement from Senators as to how much time could be spent.

In my judgment, if you are going to have an \$868 billion tax increase on the American people in pursuit of an objective, which is allegedly the reduction of teen smoking, but has lots of other consequences and is unlikely to achieve the objective, we ought to at least be able to debate it. So I am very willing to consider full debate. I want to have that on this issue. But the managers of this bill have basically signaled to me that they intend to truncate debate, that they don't want this discussed.

So it was my judgment that I needed to come to the floor and bring the evidence with me and then speak about this bill. I intend to speak about it and say what I think needs to be said. I am very pleased to have questions raised. But when questions are raised, obviously, that comes out of the time for me to make my remarks. That would extend the time. I think my position is clear. Early on, I tried to make it possible for those in the Chamber to go ahead of me and make remarks, and that was rejected. So if my only choice is to make my own remarks, then I will make my own remarks. But I sought to make it possible for others to speak.

Mr. KERRY. Mr. President, without the Senator losing any right to the floor, I ask if I may ask a question.

Mr. ASHCROFT. With the understanding that I reacquire the floor at the conclusion of the question, I would be happy to yield.

Mr. KERRY. Mr. President, I ask my colleague if he would agree to the following structure then.

Would it be agreeable to the Senator from Missouri, since he and the intercessions of the Senator from Utah have now taken up about an hour and 15 minutes, if we were to have perhaps 45 minutes or an hour for those on our side to speak, with the understanding that when they are finished the Senator from Missouri would then be recognized to again continue his remarks?

Mr. ASHCROFT. I would like to let the Senator from Utah finish his line of questioning, and then I would be agreeable to such.

Mr. KERRY. Again, without the Senator losing his right to the floor, I propound a question. How long does the

Senator from Utah think that might be?

Mr. HATCH. Am I entitled to speak? I don't think it will be too much longer. But I would like to go through my questions. I am not intending to delay here. This is a very large bill, perhaps the largest the Senate has ever considered, at least in recent memory. We need to question its full impact as we proceed. That is the right way to make policy on such an important issue.

Mr. KERRY. Again, I ask the question without the Senator losing his right to the floor. Could we then enter into an agreement that I ask unanimous consent that when the Senator from Utah has completed his series of questions to the Senator from Missouri, that at that time there be 1 hour allocated to this side of the aisle, to the Democrats, for their debate, at which point the Senator from Missouri would again be recognized to resume his comments?

Mr. GRAMM. Reserving the right to object, Mr. President.

Mr. PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, it is clear we are dealing with an issue of grave importance, representing tremendous amounts of money, with very strong passions on the issue. And, quite frankly, there is relatively little good information about the bill. We don't even know what the impact of this amendment would be in terms of the cost of the product on which the tax would be imposed. The logical thing to do is follow the rules of the Senate. The rules of the Senate are very clear. As long as a Senator wishes to speak, or answer questions, that Senator has the right to do it.

I think, rather than interrupting the process, we would all be better off to just follow the rules of the Senate.

On that basis, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KERRY. Mr. President, parliamentary inquiry: Is it not a rule of the Senate that one may ask for unanimous consent and, in asking for unanimous consent, we are following the rules of the Senate?

The PRESIDING OFFICER. The Senator is correct.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. Objection was heard.

The Senator from Missouri has the floor.

Mr. HARKIN. Mr. President, will the Senator yield for a unanimous consent request?

Mr. ASHCROFT. I will yield with the understanding that my right to the floor is not forfeited to the Senator from Iowa.

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Michele

Chang, a detailee to my staff, and Peter Reinecke and Sabrina Corlette of my staff be granted floor privileges for the duration of the consideration of S. 1415.

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

Mr. HARKIN. I thank the Senator.

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

Mr. HATCH. If I could continue—

Mr. ASHCROFT. I would like to yield to the Senator, but I am in the midst of yielding for questions to the Senator from Utah. I want to persist in that line of questioning. So I reassert my right to the floor.

If the Senator from Utah was asking me a question, I would ask him to request that I yield for the purpose of a question.

Mr. HATCH. Will the Senator please ask unanimous consent that the colloquy not be interrupted?

Mr. ASHCROFT. I ask unanimous consent of the Presiding Officer that our colloquy not be interrupted by these other proceedings, and that the other proceedings be printed suitably at the end of the questioning.

Mr. MCCAIN. Reserving the right to object, I certainly wouldn't want to interrupt that important colloquy.

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

Mr. HATCH. I say that the distinguished Senator from Arizona may not appreciate this colloquy.

Mr. ASHCROFT. If that is a question, I am aware of that fact.

Mr. HATCH. I have to admit that I don't appreciate some of the colloquies that have gone on before, but Senators have a right to do so. This is too important an issue for the American public. We need to look at the real facts on such important legislation. We are not just trying to run any bill through because some people want to. I think this legislation deserves debate. We are talking about price levels that will amount to huge tax increases for some American people. We are talking about a bill which does not have the cooperation of the tobacco companies, thus raising serious constitutional questions.

(End of earlier proceedings.)

Mr. ASHCROFT. Mr. President, I am deeply troubled about the fact that we are, in this process, taxing American families and taxing those American families who have very limited income. Fifty-nine point four percent of the \$755 billion that my amendment would take out of this bill, which are taxes on consumers—59.4 percent of that is to be paid by families with incomes of less than \$30,000. If you move it up to the \$60,000 level, you are talking about almost two-thirds of the people, hard-working families from our culture, who struggle to put clothing on the backs of their children and the right kind of food on the table.

There is a suggestion by some that they can just stop smoking automatically. If they are going to stop smoking, why are we counting on the money? We are counting on receiving almost \$1 trillion over the next 25 years from these folks, and it is predicated on the idea that they can't stop smoking. If it were a switch that we could flip on and off, perhaps we would go find the switch and do it. But that is not what we are talking about. We are talking about taxing individuals who don't have any elasticity of demand.

There has been a lot of talk about the elasticity of demand, economics—that if you elevate the price, the demand will go down. If people are addicted, they can't stop, so they have to pay. That is these folks here—59.4 percent of the individuals paying this tax will be individuals making under \$30,000 a year.

Americans are working longer and harder than ever to pay their taxes. The number of moms and dads, two parents in the family, both working; or in single-parent families, obviously, the only parent is working—we are taking more and more of their resources. We take now more of the income of the American people than ever before in taxes. We are at peace, we are in prosperity, but still, Government is costing more than ever before. We have charged so much for Government, we are finding we have a \$43 billion surplus. CBO says it might be up to a \$63 billion surplus.

What are we going to do? Instead of giving people their money back, instead of saying, "You send it, we spend it," we should be saying, "You earned it, we returned it." No, we are not doing that. Where are we going with this? We are inviting another \$868 billion of burden on those who can least afford to pay it. It is just incredible. We should be debating how to return the money to taxpayers, not how to siphon more out of their pockets. As currently drafted, the proposed tobacco bill is nothing more than an excuse for Washington to raise taxes and spend more money.

I might add that earlier I sent to the desk a modification of the amendment making technical changes. That does not require anything. I want to indicate to the Senate that I had done so, and it doesn't require action.

This proposed increase in Government and taxes is the biggest proposed increase since President Clinton's proposed increase on health care. My own sense is that it took a while for the people of the country to realize what the Federal takeover in health care was going to do to this country, when the American people figured out what it was going to cost. And when the American people understand that this isn't a penalty on the tobacco companies, this \$755 billion that I want to

knock out of this bill isn't something that the tobacco companies will pay, this is something consumers will pay.

The law specifically forbids a tobacco company from passing this on to consumers. There is a mandatory rule that this can't come out of the profits of tobacco companies. This can't come out of their retained earnings. This can't come out of their capitalization. This has to be imposed on the backs of these workers, these folks who are making under \$30,000 a year, these additional folks making under \$60,000 a year.

Here we could have an additional 17 boards and commissions. There is the statute: "Payments to be Passed Through to Consumers"—not payments to be endured or suffered by the tobacco companies. But these are payments to be undertaken by poor families. Three packs a day, \$1,600 a year—that is what they are asking for, \$1,600 a year off of the tables, out of the houses, out of the budget for the children in these families. That is what this law is about. This is a law that would take an enormous amount of resources from the families of America. They are already paying taxes that are virtually out of sight. They are already paying taxes for more than food, clothing, shelter, and transportation combined in this country, and we are going to add to the poorest of the poor this incredible burden. Seventeen boards, commissions, and agencies—they say they have been removed from the legislation. The bureaucracies envisaged by the bill will still be there; it is just that they are no longer sort of visible. We have gone from unaccountability to anonymity. That will not cure things. This huge tax increase would be levied against those who are least capable of paying.

According to the Congressional Research Service, tobacco taxes are perhaps the most regressive tax that is levied in America. It is a tax that hits poor people the hardest. And we are discussing what we want to do with that \$868 billion of additional burden on the poor. About 60 percent of this tax increase would fall on families earning \$30,000 a year or less. Those earning less than \$10,000 a year make up only 10 percent of the population, but 32 percent of those people smoke. So the current tobacco tax represents 5 percent of the smokers' income in this category.

This would take from the people who are struggling to make ends meet, making \$10,000 a year, 5 percent of their income. That is really a pack-a-day habit we are talking about. We are not talking about a two-packs-a-day habit. If they have two packs a day, it is far more than 5 percent of \$10,000. Those making between \$10,000 and \$20,000 a year are only 18 percent of the population; however, 30 percent of them smoke. The current tobacco tax would take a real chunk—2 percent of

the smokers' income—in that category. This bill amounts to a tax increase on 31 percent of Americans who earn under \$20,000 a year.

So among those who are the poorest of our hard-working Americans, who are low-income, they are the people who really get hit with this. And 31 percent of all people making less than \$20,000 a year are the individuals who are going to be sustaining this tax burden. Households earning less than \$10,000 a year will feel the bite of this tax increase most of all.

The Joint Committee on Taxation estimates that these households, those earning less than \$10,000 a year overall, would see their Federal taxes rise by 44.6 percent—44.6 percent. Those making between \$10,000 a year and \$20,000 a year make up 18 percent of the population; 30 percent of them smoke. In most areas of the country, somebody earning \$10,000 a year is well below the poverty line. But here we come. We are so interested in additional revenue, at a time when we have surplus, that we are willing to sock it to those who are low-income individuals.

We spend much of our time in this body trying to find solutions for those in this income bracket. We have tax credits; we have welfare programs; we have educational grants; we have job training programs. They cost us billions of dollars a year. We try to lift people in those low-income brackets out of their problems and difficulties. However, today, Members of this body are enthusiastically saddling them with a huge, huge tax burden. In fact, some are even trying to make it worse.

It is pretty clear that some people have come and said that people will stop smoking. I will get to that next. Here it is. The kind of tax increase, if you are making under \$10,000 a year, is 44 percent. We are not really tax increasing anybody since most smokers are concentrated in this part of the graph. Low-income people are going to pay the lion's share. They are going to have very significant increases in their tax load.

Now, some Members were critical about the statement that this is a huge tax increase on low-income people. It was stated that I was assuming that they would be irresponsible and not take care of their families' needs. I am not saying here that anybody is irresponsible. I do think that the Government has frequently been irresponsible. It is irresponsible to take this much of the income from people who are trying to clothe their families and feed their families.

The revenue assumptions in this bill are based on the fact that most people will continue to smoke. You can't have it both ways. You can't say that people are going to suddenly stop smoking; you can't say that and still say you are going to spend the money and collect the money. This is basically a tax, a

tax that relates to the increase in the price of cigarettes, a tax that passes money from low-income, hard-working Americans to big Government in America so the Government can do a wide variety of things.

Frankly, I think some of the things that this proposes to do are literally laughable. Some of the programs that are in this bill are designed to curtail smoking overseas. So we are going to tax low-income Americans, folks who are struggling at \$10,000, \$15,000, or \$20,000 a year to make ends meet; we are going to take money from them and go overseas and run antismoking campaigns. Now, in my judgment, that is a very, very serious disconnect with what we are supposed to do. We are supposed to make it possible for Americans to live decently and independently and provide for their children, to have a framework in which Government at least lets them enjoy the fruits of the things they labor to produce; and if we don't do that, it seems to me that we obviously have failed.

I don't believe we should be taking money from hard-working, low-income Americans and putting it into a foreign aid system that tries to tell people on the other side of the world how they should act and what they should do. If I believed that everybody would quit smoking, the impact of this bill obviously would not be so significant because it would not be a tax. But it is clear that there will be a tax, and there is a predicated set of receipts that is going to run between three-quarters of a trillion dollars and a trillion dollars. Everyone in this Chamber, the administration, and health officials are making the assumption that people will continue to smoke.

As currently drafted, this legislation will cause somebody who smokes two packs daily to pay the Government an additional \$803 a year. A lot of families could take a vacation on \$803. A lot of families could buy additional clothing. A lot of families could afford courses at a junior college to change their skill levels and upgrade their jobs. A lot of families could care for a relative or otherwise do something that we need to get done rather than send this money to Washington, DC. That is \$803 for somebody who smokes two packs a day. For a family smoking three packs a day, it is even more.

My amendment would prevent that from happening. My amendment simply says we are not going to punish the American people for that which the tobacco companies have done; we are not going to hurt the hard-working Americans of low-income as a means of obfuscating to the abuses of big tobacco.

Moreover, as currently drafted, this legislation allows the tobacco companies to deduct the mandatory payments that are ultimately to be paid by consumers as regular business expenses. Over 5 years, that kind of

writeoff would be worth about \$36 billion in the tobacco industry. So if we are giving a tax break to the tobacco industry that is going to be worth \$36 billion to them over 5 years, and part of that comes as a result of the fact that we are taxing individual consumers, I think that is really unfair.

Let's take a second to understand this. In this legislation that is supposed to be so tough on the tobacco industry—and, frankly, the tobacco industry participated in formulating almost all of the basic components of this legislation—the companies act as a tax collector by sending the U.S. Treasury \$102 billion over the next 5 years. Then they get a tax deduction, and they cost U.S. taxpayers—all taxpayers, whether they are smokers or not—\$36 billion in lost revenues because of the tax deduction.

What you get here is a subsidy through the back door. They send in \$102 billion they collect from people and then they get \$36 billion of it back as a tax break for the company. I think that is a particularly anomalous result. That is a result which we certainly do not really want to have. They collect money from poor, hard-working Americans, turn it in, and when they turn it in they get a tax deduction of \$36 billion.

Before we consider passing a massive tax increase, it should behoove us to review the government's record thus far in respect to taxes, spending, and government employment. Where have we been recently in terms of tax increases, in terms of spending? In Washington, taxes and spending are the only things more addictive than nicotine. Policymakers in Washington think they know better how to spend the money of families than American families do.

In the 15 years prior to 1995, Congress passed 13 major tax increases. Last year's Taxpayer Relief Act was the first meaningful tax cut since 1981. The tobacco tax increase would more than erase that relief. We need more tax relief, not less. If we have the increase that is proposed here, it will totally erase the relief we gave last year. The tobacco industry tax, then, proposed in this bill is not a tax on the industry. It is a tax on the consumers. It would more than erase the relief we gave them last year.

The tax relief date has now set a record of May 10. People work longer this year for the Government than ever before. Federal, State, and local taxes claim 37.6 percent of the income of a median two-income family in 1997, more than the couple spent on food, and shelter, on clothing, and transportation combined.

During Bill Clinton's first 5 years in office the Federal Government collected 19 cents in taxes for every dollar increase in the gross domestic product. According to the Joint Economic Committee, the Federal Government is now

taking a higher share of economic growth than under any President in recent history. The Joint Economic Committee continues: The average rate during the entire era before Clinton from Presidents Eisenhower to Bush was 19 percent. Obviously, the Federal Government has yet to reject the idea that it can just tax and spend and tax and spend.

The PRESIDING OFFICER. The Chair notes that you wanted to modify your amendment. Is that correct?

AMENDMENT NO. 2427, AS MODIFIED

Mr. ASHCROFT. That is correct. I modify my amendment which is at the desk, which is technical in nature.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2427), as modified, is as follows:

In lieu of the language proposed to be inserted insert the following:

CERTAIN PROVISIONS RELATING TO AMOUNTS IN TRUST FUND NULL AND VOID.—

Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

- (1) Paragraphs (1) and (2) of Section 401(b);
- (2) Section 402(a); and
- (3) Sections 401 through 406.

Mr. MCCAIN. Parliamentary inquiry, Mr. President: Does that last request require a unanimous consent?

The PRESIDING OFFICER. It does not require a UC.

Mr. MCCAIN. Thank you.

Mr. ASHCROFT. Mr. President, I thank the Chair.

Members of this body have been arguing over the past few days that there is no tax in this bill. In fact, the Finance Committee, in its mark, at least tried to level with the American people by reporting out a bill that calls it a tax. For a long time this was sailing under a sail which was mislabeled. Webster's Dictionary defines a tax as a compulsory payment, usually a percentage levied on income, property, values, sales prices, et cetera, for the support of government. Let's lay this argument to rest now and forever. This is a tax. It is a compulsory payment made at the point of sale for the benefit of government. In this bill we have compulsory payments by the industry.

The bill then requires the cost of these payments to be passed on as price increases to consumers, and even penalizes companies if they fail to collect this tax. Payments are used to fund massive programs for Federal and State governments. It has been said that industry is the group that is convincing people this is a tax bill. Frankly, industry couldn't make this a tax bill if it weren't a tax bill. Frankly, this body cannot keep it from being a tax bill if the language of the bill is really taxing. What we know is that the Senate can't keep it from being a tax if it is really a tax by calling it something else, and industry couldn't make it a tax by calling it a tax. The

truth of the matter is it is an elevated price required to be collected, the proceeds of which go to support government.

The supporters of this bill claim this legislation is needed to curb teen smoking. "Do it for the children" is all we hear. But this bill is about big government, not about protecting the health of young people. It is about more bureaucracy. It is about more Federal programs. It is about higher taxes, new bureaucracy.

The bill reported out of committee contained 19 new boards, commissions, and agencies—17 new boards, commissions and agencies—a blatant expansion of government claim under immediate and harsh criticism. What happened? We have a claim that the bureaucracy has been eliminated. But is it really? I don't think that it is really eliminated. I think the names have been changed. But the same tangled mess as this chart represents still exists in this bill.

This is the structure of the National Tobacco Policy and Youth Smoking Reduction Act that was reported by the Senate Commerce Committee on the 1st of May 1998, just a couple weeks ago. This is a complicated set of extremes. I might add that these are funding extremes. Money is flowing like a flood. The bureaucracy is still in this bill. It is just more anonymous, less visible, less accountable. The names may have been changed, but it is still the same animal.

Let's look at the whole chart. Here we have the International Tobacco Control Trust Fund. Interesting. The International Tobacco Control Trust Fund, foreign aid grants to support tobacco control. The international program is still here. I will talk more about it in a minute.

The Tobacco Asbestos Trust Fund, \$21 billion allows payments to be made for asbestos claims when Congress enacts qualifying legislation. Payments will be made out of the tobacco trust fund for the 22-percent set-aside for public health expenditures.

Compliance bonuses for States: Here it is. It is still in there.

Research activities for CDC, Institute for Medicine, and NIH are still in there.

State licensing program grants are still in there.

The National Tobacco Free Education Program is still on the chart.

The Indian tribe enforcement bureaucracy is still there.

The Indian tribe public health grants are still in there.

Counteradvertising programs are still in there.

The prevention of tobacco smuggling measure is still in there.

Veterans programs are still in there.

The National Tobacco Document Depository is still here.

Smoking cessation programs are here.

Child care development block grants are still there.

We are going to be taxing those low-income families to provide additional child care for others.

Tobacco community revitalization, this is the tobacco farmer; very serious questions about this particular portion of the bill.

The Senator from Texas talked about the so-called Tobacco Community Revitalization Program. He brought out, as a matter of fact, on the floor yesterday the fact that he priced tobacco allotments per acre. It could be purchased for about \$3,500 or \$3,600. Then he indicated that the payment envisaged here was a multiple of about five times that high.

The international programs, which I mentioned, are kind of interesting. The committee bill contained the American Center on Global Health and Tobacco, which was authorized to receive \$150 million a year so that we could sort of be influential overseas with our policy on tobacco.

We want to tax the lowest income families in America. We want to tax hard-working people, increase their taxes. My amendment would delete \$755 billion in taxes on these individuals contained in this bill.

This bill is designed to fund things like the American Center on Global Health and Tobacco. The center is not to be found in the managers' amendment. In its place, the Secretary of Health and Human Services is authorized to establish an international tobacco control awareness effort. So instead of having this agency sort of be out there created by the statute, we have just authorized the bureaucracy to create a new agency. The Secretary of Health and Human Services is authorized to establish an international tobacco control awareness effort.

Now, here we have to remember—we are taxing American low-income families to do this—59.4 percent of all the taxes that go to establish this international program on tobacco awareness are going to come from families making less than \$30,000 a year. What is this new effort required to do? One, support the development of appropriate governmental control activities in foreign countries—enhance foreign countries' capacities to collect, analyze, and disseminate data about the cost of tobacco use.

We are going to fund foreign countries so that they can have studies on how much it costs to use tobacco. And we are going to do that by taxing low-income people. Sixty cents out of every dollar in this program is going to come from families with less than \$30,000—low-income individuals, less than \$30,000. How much money will this cost?

Mr. KERRY. Mr. President, will the Senator from Missouri be willing to yield for a question?

The PRESIDING OFFICER. Will the Senator yield for a question?

Mr. ASHCROFT. I will for a question.

Mr. KERRY. Mr. President, I would ask the Senator from Missouri whether he is aware that the chart that he has there is the representation of the bill when it came out of the Commerce Committee, not of the managers' amendment, and that under the managers' amendment all bureaucracies were, in fact, eliminated and only three existing entities exist? I wonder if the Senator is aware that there are only three entities.

Mr. ASHCROFT. As a matter of fact, I have been speaking about that. I indicated that this was the chart and these functions remain. But very frequently, instead of the bureaucracy still being there and labeled and identified, you have a transfer from the bureaucracy to something that you just ask the Secretary to do.

For instance, I have just been talking about the transition from the international tobacco control trust fund, and in its place the new bill has "the Secretary of Health and Human Services is authorized to establish." So instead of actually establishing, you just authorize that a bureaucrat establishes it. You get it out of the bill, but you still have it in terms of consequence, and you still have all the money available to be spent for the same purposes.

That is my understanding of what has happened here, and you are going to have \$35 million each year for the first 5 years, and then such funds as may be necessary for these international activities. So I am aware of the fact that the bureaucracies were taken out of the bill ostensibly, but I am also aware of the fact that what you let go out the front door it looks to me like you bring back in the back door, because the Secretary of Health and Human Services is authorized to establish—it is not in the bill anymore, but the Secretary of Health and Human Services is authorized to establish an international control awareness effort, and that is basically for the same purposes.

Mr. KERRY. Mr. President, will the Senator further yield for a question without losing his right to the floor?

Mr. ASHCROFT. Yes.

Mr. KERRY. Is the Senator not aware that each of those responsibilities which are designated to existing entities are already existing programs and existing efforts? Most of the requirements, whether it is money in public health, money in farmer community assistance, or health research, they are all ongoing programs, but that this augments their ability to be able to achieve the goals of existing programs?

Mr. ASHCROFT. I understand that some of these programs are already programs which are undertaken, but not even close to the extent that this

bill mandates—thus expanding the already oversized Government bureaucracy. I also understand that what we have here is a pot of money that we think we can generate by taxing the lowest-income, hardest-working poor people in the country. And what we are going to do is to start spending more money for these overseas studies, and we are going to put 60 percent of that additional money that comes out of this additional \$868 billion tax—\$6 out of every \$10 is going to come out of the pockets of Americans earning less than \$30,000 a year. That is really troubling me.

Mr. HUTCHINSON. Mr. President, will the Senator from Missouri yield for a question?

Mr. ASHCROFT. I am pleased to yield for a question, understanding I do not yield the floor.

Mr. HUTCHINSON. I presided the previous hour, and I was fascinated by some of the information that the Senator has been providing our colleagues and the American people. Did I hear the Senator correctly that 60 percent of the increased taxes in the base bill would fall upon lower-income Americans?

Mr. ASHCROFT. Well, people who earn less than \$30,000 a year would pay, according to the estimates, 59.4 percent. So I don't want to inordinately suggest that it is a full 60. It is 59.4 percent of those taxes would hit people who earn less than \$30,000 a year.

Mr. HUTCHINSON. For my benefit, how much in the base bill would a pack of cigarettes increase?

Mr. ASHCROFT. Well, in the base bill it has been suggested that the increase in the cost of a package of cigarettes would be about—total increase would be about \$2.68 at a minimum. That includes all the things that are in the bill. The \$1.10 which is the mandated price increase, by the time it works its way through the system, would be about a \$2.68 increase in the price of cigarettes.

Mr. HUTCHINSON. Two dollars and what?

Mr. ASHCROFT. A \$2.68 increase.

Mr. HUTCHINSON. Would the consumer buying a package of cigarettes actually see the price go up that much?

Mr. ASHCROFT. Yes. I would say it is fair to say they would be seeing that increase in terms of the consequences of the bureaucracy in this bill.

Mr. HUTCHINSON. For a family of three, let's suppose, a mom and dad and a child, in which one or both smoke two packs a day between them or separately—but two packs a day—then we are taking \$5 a day, \$1,500 a year, away from their consumable income. Is my math approximately correct on that?

Mr. ASHCROFT. It would include the current cost of the cigarettes. We are talking about a two-pack-a-day thing. It is really about, the increase is

about—you are right, as a matter of fact.

Mr. HUTCHINSON. So even with a \$1.10 increase, we are looking at better than \$2 a day, or a \$600, \$700 increase?

Mr. ASHCROFT. Yes. At \$1.10 a day, 365 days would be about \$400, and for two packs, that would take it to \$800. I think it figures out to \$803, if it is just at \$1.10 on the increase.

Mr. HUTCHINSON. I did a little focus grouping in Arkansas where I just asked people—one lady had six children, five of whom smoke. They are between the ages are 35 and 40, grown children. I asked her would they quit smoking if it went up \$1.50 a pack. She laughed. She said, "No, they won't. They are addicted, and they wouldn't do it."

Mr. ASHCROFT. My view—and I am pleased to have the question—my view is, this bill is predicated on the idea that people won't quit. If this bill were predicated on the idea that people would quit, we would not have the big numbers and the big money to pass around. We are assuming that these people who earn less than \$30,000 a year are strapped in the habit of smoking, can't quit, and therefore we are going to be able to have \$868 billion of their money over the next 25 years.

Mr. HUTCHINSON. If I could ask the Senator from Missouri, if a family is making \$30,000, with children—and there are many of those in Arkansas, many, many, tens of thousands—assuming the budget is tight already, they are having a hard time making ends meet, that every dollar is already spent, where then would you anticipate them cutting back to pay that additional tax for cigarettes that is envisioned in this proposal?

Mr. ASHCROFT. Families have a tough decision where they cut back, but I imagine it would hurt virtually everything they do in some measure. I doubt if they would take it all out of one area. For instance, I don't think they would stop driving their car, and I don't think they would stop eating. They can't do that. But I think virtually every aspect of their existence. If you are talking \$800, \$1,200 a year, \$100 a month, for instance, on three packs a day, if you take that \$100 of a month out of the budget of low income families, we may drive some of them into dependency. And that is the last thing government should do is make it hard for people to provide for their families. We should be finding ways to make it easier for people to provide for their families.

Mr. HUTCHINSON. With this very dramatic tax increase on low and middle income families, some people could lose their health insurance, end up on Medicaid conceivably?

Mr. ASHCROFT. Obviously, they could be forced into all kinds of reliance on outside sources. With the stress that would happen to a family

that lost \$100 a month by virtue of this kind of massive Federal tax on the family, who knows what happens even in the way the family is composed in a setting like that because financial stress is a big part of the challenge to families generally. This is an anti-family measure. This takes from families a very serious proportion of the resources they use to care for one another. And when we say that Government wants this money so badly it will take it from you, and we know you are going to pay it because you are addicted and can't stop, we have really allowed the greed of Government to overtake us. And to say to families, it doesn't matter about you, we are so interested in doing what we want to do—and it does shock me that we are going to spend this money overseas, keeping data about the costs of smoking overseas. I just can't imagine how many folks in Arkansas or my home State of Missouri, who are earning \$30,000 or \$10,000 or \$15,000, would want to make these kinds of payments so they could keep track of the costs of smoking in foreign jurisdictions. That is mind-boggling.

Mr. HUTCHINSON. If the Senator will yield for a further question?

Mr. ASHCROFT. I will yield for a further question.

Mr. HUTCHINSON. Last weekend I read a 35-page summary of the 750-page original bill, but with the changes that have been envisioned—and the Senator has mentioned this in his remarks—how much would be going overseas for smoking cessation and education programs overseas? How much was that?

Mr. ASHCROFT. The bill, I think, provides that there are \$350 million for each of the first 5 years. And then, after that, there would be "such sums as may be necessary."

Mr. HUTCHINSON. Did I hear the Senator correctly in describing this as a kind of foreign aid bill, at least to some extent?

Mr. ASHCROFT. We are paying for governments overseas. We are paying for someone else's government, for their studies overseas. We are helping foreign governments decide how costly it is for their citizens, I guess. I don't know if this is an idea to make sure—we want people overseas to make sure they realize how much it is costing them to smoke?

I think we have a responsibility to people in this country, who know how much it is costing them to live, to let them keep some of the money they earn so they can help their families. But the \$350 million a year that goes into this program is something that I seriously question whether we want to tax the lowest income people in America in order to achieve.

Mr. HUTCHINSON. Am I correct in understanding that this would be a massive transfer of wealth from the

lower-income Americans to citizens—people who are not even citizens of this country?

Mr. ASHCROFT. Most certainly. It would be taking money from low-income Americans and transferring what resource they have to provide for their families, a significant portion of it, and sending it to foreign governments so they can conduct studies about what the costs of smoking are in their culture.

Mr. HUTCHINSON. Am I further correct that the States that have low per capita income—because almost 60 percent of this will fall on those earning under \$30,000 a year, States like Arkansas, which is ranked in the lower 5 or 10 percent of income in the Nation—that this would fall disproportionately upon those lower-income States?

Mr. ASHCROFT. Obviously. You know, 60 percent of all these sums are going to come from people who earn less than \$30,000 a year. So States that have a high population that earn in the category of less than \$30,000 a year are going to be paying far more of this than the other States which have high-income individuals and are not so populated by individuals who smoke.

Now the real correlation is, if you smoke, you are going to pay this increase in taxes. It turns out that smoking is the custom, is the choice—I think it is a bad one; I have never thought smoking was a good choice—it is the choice of people who are low-income, and it is something they feel they choose to do. It just astounds me that only in Washington, DC, is a bad choice made by free people the basis for taxation.

People are free. We haven't suggested they are not free to make this choice. We just want to make it hard. We are apparently willing to make it hard for those people, and we are willing to do that in order to fund overseas programs.

Mr. HUTCHINSON. Of course I appreciate that. I don't smoke. I have never taken any money from any of the tobacco companies. I know anybody who objects to this bill will be portrayed as being a defender of tobacco companies. I have never taken any.

But my question for the Senator would be. Has there been any study as to what kind of fiscal impact this would have on State and local governments? And is there a potential of it undermining the revenue base that local governments would have because of the increased taxation at the Federal level?

Mr. ASHCROFT. There are some interesting things that come as a result of this proposed tax increase.

No. 1, it would mean that the Federal Government profited more than any other entity or institution from smoking in this culture. We would have more benefit from smoking than any of the companies would in profit. So the

Federal Government would become the No. 1 beneficiary of tobacco use in the country.

No. 2, if there is a serious black market problem with contraband cigarettes, then that changes a number of calculations. One of the things it will change is, if people go into the black market on cigarettes sales, they not only don't pay their Federal tax, which is this additional \$1.50 that is being proposed here today per pack, but they will also not be paying the State tax. You can't imagine some contraband person saying, "We are going to go ahead and pay all the State taxes on these contraband cigarettes, but we are not going to pay the Federal tax."

So it might well be if the black market develops a sense of intensity and there is a substantial velocity in the black market, that money which had previously been paid to States by cigarette marketers, that money from those packs that are no longer being sold in the open market but are being sold in the black market, States could lose that revenue stream which they now have from the legitimate sale of cigarettes.

It should be noted that there is already a black market problem in cigarettes because of different State levels and just because the tax is so high. This would probably—frankly, it might serve to make millionaires out of some people who are already dabbling in the black market for cigarettes.

Mr. HUTCHINSON. If the Senator will yield for one final question, as I listened to his comments, they reflected my own feelings—his concern about low-income Americans. It struck me that those who have professed to be the greatest defenders of the poor are those who seem to be the proponents of this massive tax increase upon working poor Americans. But the Earned-Income Tax Credit Program is a program designed to assist those who are working Americans, low-income working Americans, to prevent them from falling into dependency and being on the welfare system.

Is there anything in this base bill that would, in a sense, compensate those low-income working Americans who are going to see this very confiscatory tax imposed upon them through this dramatic increase in the price of cigarettes, to assist them in reforming the EITC Program or in some way offsetting these additional taxes that they will be paying? Or is this an absolute, real loss of consumable income for those who are most poor in our society?

Mr. ASHCROFT. This is a very good question. I thank the Senator for asking it. These are hardworking people, struggling. They get up early in the day, work late at night, sometimes rely on friends and relatives to help care for their children. Sometimes they can afford day care; sometimes

they can't. But, basically, this is a bill which says we are going to take their money and we are going to spend it in this kind of bureaucracy.

As I indicated, some of these bureaucracies are relabeled and they are not constituted independently anymore. Some of these are constituted only by virtue of the fact that they are authorized for a Secretary, a Cabinet Secretary, to appoint. But, by and large, in the grand scheme of things, this is a situation where the money goes; it does not come. And the money—there is no specific indemnity for individuals who are the people who are hit by this tax. I know of nothing in this bill that says, for people who have a very serious consequence as a result of this tax, we are going to mitigate it in some way. It is simply not there.

Frankly, we have to be honest. The proponents want to impose this tax to make it very difficult for people to smoke. But for people who are addicted, it will be more difficult for them to stop. And that is why they can presume that we will be collecting these hundreds and hundreds and hundreds of billions of dollars.

Mr. HUTCHINSON. I thank the Senator.

Mr. ASHCROFT. Mr. President, I thank the Senator from Arkansas for the kinds of inquiries that he raised. They go right to the heart of the issue. This tax is focused on the lowest-income individuals in the United States, people who have the least capacity to pay. Frequently, people making in the \$30,000 range will be young people. They haven't gotten their incomes up high. They are the people with children in their families, so they need to be able to provide for those children. They need to be able to make sure they are cared for. They need to try to start putting something away so those kids can someday go to college. Instead of allowing them to put something away, we are going to take something away.

For a two-pack-a-day family, that is \$803 we are going to take away. Pardon me, that is under the \$1.10 figure; that is not under the \$1.50 figure. For a three-pack-a-day family, that will take you over \$100 a month we are going to take away so that the family can't put it away for when they have needs. Frequently, in many of these families, they are not in a position to put anything away. These are families literally making it from check to check, and we are intending to come in and make this kind of substantial demand on them.

The bill requires States to have massive licensing schemes for retailers who sell tobacco products. So there will be significant new bureaucracies at the State level. These are just examples of bureaucracy in this bill. I want to mention that just once more. One of the strongest aspects of this bill is the States will be eligible to receive a total

of \$100 million a year in compliance grants if they reach a certain level where kids are unable to purchase tobacco products.

Then it requires States to give out part of those funds to retailers with outstanding compliance records. Let me make it clear. It currently is illegal for a minor to purchase tobacco products in every State of the Union. However, Congress is now establishing a program of bureaucracy to reward retailers for following the law. I think it is pretty clear that this is the kind of double whammy that Government too frequently has. It is against the law in the States for retailers to sell cigarettes to youngsters, and now we are going to have a special incentive program paying large amounts of money, up to \$100 million a year, if the retailers will only abide by the law.

Mr. INHOFE. Will the Senator yield?

Mr. ASHCROFT. I will be happy to yield to the Senator from Oklahoma for a question.

Mr. INHOFE. I was presiding the other day, and I want to make sure I understood you correctly. You drew a relationship between our tax reductions that we were able to pass last year that we all went home and were so proud of—and we are talking about the child credit, and we are talking about the estate tax changes, relating that to the tax increase under certain assumptions. I would like to have you repeat that for my benefit.

Mr. ASHCROFT. I think the facts are these: That this massive tax on poor people in the United States would more than wipe out the entire tax cut passed last year, and that is at the assumption level of \$1.10 a pack—not at the assumption level of \$1.50 a pack, which is the Kennedy proposal.

I want to make it clear that I am against the \$1.10-a-pack increase, not because it is an increase on the tobacco companies, but precisely because it is not. This is not a tax or an injury to the tobacco companies; this is something that is required of the consumer.

What I am saying is that we would collect so much money—even at \$1.10 a pack—from people that it would totally erase last year's tax relief.

Mr. INHOFE. If you will yield further, you are talking about the child tax credit, you are talking about the education incentives, the estate and gift tax reductions, the IRA exemptions, the corporate AMT reductions—all of these would be offset in terms of a tax increase?

Mr. ASHCROFT. The family kinds of things, the capital gains sort of things—these are the things that would be totally wiped out by the additional collections which would be mandated under this bill. They are mandated that they be collected from, basically, the poorest people in the culture—60 percent, basically, under \$30,000. It would mean that over time, over the

last 2 years, we would have had a tax increase not a tax decrease.

Mr. INHOFE. If you will yield further, I think so often we talk about the fact that 54 percent of the taxes would be paid by people with incomes under \$30,000 a year. We forget sometimes to mention that only 3.7 percent of the tax will be borne by those with incomes over \$115,000, which I think is very significant.

I ask you this question since you represent the fine State of Missouri and I represent your neighboring State of Oklahoma. I had an experience and I just want to see if Missouri is anything like Oklahoma.

Over the last 10 days, I have had 3 days of townhall meetings throughout the State. As you know, I am active in aviation. I have all these townhall meetings at airports. With 20 meetings in 3 days—that was kind of a record for me, because normally I do five a day—not one time in one townhall meeting, in Watonga, OK, in Oklahoma City, in Miami, OK, right up on your border, or anyplace in Oklahoma, did anyone bring up the subject of the tobacco bill.

I brought it up in about half those meetings just because nobody had asked the question about this tobacco bill. Then when I talked to them about it, they said they had read about it and they said, "We're opposed to it."

In Oklahoma, in those meetings, there was not one hand that went up when I asked, "Is there anyone here who is in support of this tobacco tax increase in this tobacco bill?" Not one.

Is there something unusual about Oklahoma, or could it be that this is really a beltway issue? Have you tested your people in Missouri on this?

Mr. ASHCROFT. My encounter has been this: First of all, the bill is not raised, but when people find out that instead of punishing the tobacco companies, we are taxing tobacco users, so that an individual who earns less than \$30,000 a year, if he is a two-pack-a-day smoker, he is going to pay an additional \$803 in taxes, they don't understand that. They say, "Wait a second, if you are trying to punish evil tobacco companies, if that is your objective, punish the companies but don't punish hard-working Americans who are struggling to make ends meet."

My phones have begun to ring when people began to understand that this is not a circumstance where we are going to try to punish the tobacco companies to that extent. The real punishment comes because this law requires—this law forbids the tobacco company from taking any of this tax out of its earnings—it requires the company to "pass it on."

What is interesting, it is even more anomalous than that. The tobacco company collects this \$109 billion in the next 5 years, or whatever it is, and turns it into the Government, and we give them a tax deduction for it so that

they end up having a \$36 billion subsidy that comes back for their having, basically, been involved in the collection of this sum of payment to the Government.

My own view is that when people find out this bill really is a bill against hard-working Americans and it is a tax measure, that is when we are going to start hearing more about it. People thought this was antitobacco. There are some things in the bill that distress the tobacco companies, but, frankly, I am more distressed about what we do for them—shutting down their liability, cutting it off. I think it is wrong to say that there is a certain amount that they can be liable for and no more.

You don't have any guarantees against lawsuits as a citizen. If you do things that are wrong, people can sue you. There is no limit to what can be collected against you if you do things that are wrong. This bill puts clear limits in for the tobacco companies, basically saying no matter what you do, you can only have this much money awarded against you in court.

So no matter how many people are affected, whether it is cancer or emphysema, lung disease, heart disease, no matter how much it is that the courts might allocate against you, we are going to lock down the thing in this bill, we are going to provide a limitation.

Some people don't understand. Originally, they thought this was anti-tobacco companies, and the companies are upset with them, but there are lots of things in here which are procompany and they are really anticonsumer.

Mr. INHOFE. That is interesting.

Let me ask just one more question, if I might, because I haven't heard it in this debate actually coming up. I had an experience. Over the Easter recess, I went on a missionary trip over to west Africa to Togo, Nigeria, Benin, and that area. I thought it was the appropriate thing to do, to go over and talk about Jesus on the Easter break.

The international publications I saw when I changed planes in Paris going down over the Sahara Desert and then again coming out of the Middle East, had articles—this is, what, 2 weeks ago, 3 weeks ago—articles on what a great boom our tobacco bill in this country is going to do for their tobacco industries. They were referring to both legal and illegal, I suspect. But has anybody looked at the effect that this would have on the economies of those areas where they would be direct beneficiaries of what we do here if this thing should pass?

Mr. ASHCROFT. I think it is clear that there has been inadequate examination. This bill hasn't had the kind of scoring that normally attends a bill. This bill was rushed and changed. The ink was not dry on the changes when the bill was submitted.

Virtually no one had read the entire bill when it was offered. And we are

now in this debate on the bill. And that is why I am willing to take the kind of time we are taking to discuss it.

It was suggested yesterday that this massive tax increase would be concluded, that we would know what we were going to do on it because they were going to have a motion to table, and that motion to table would end this debate.

I just do not think when you have this kind of massive Government—a 17-agency creation; \$868 billion—that you rush through. I think it is clear we need to have the kind of thorough discussion, discussion that would allow us to debate the issues.

Mr. INHOFE. I thank the Senator for yielding.

Lastly, I just ask if your office has received the same thing our office has. We count letters when they come in and we read these letters from people who have picked up notions on this thing. And they are running right now in Oklahoma to my office—this is the district offices in Oklahoma as well as the office here—about 10 to 1 against this massive takeover by the Federal Government. And one of the major concerns they say is, "What's next?" You know, it is tobacco today. Then alcohol? Then fatty foods? Or what is going to be next?

Mr. ASHCROFT. Fatty foods I am worried about. I eat so many of them and I do not want them to take away burgers.

(Mr. HAGEL assumed the chair.)

Mr. INHOFE. The last thing I mention is, I read an article in the Wall Street Journal, I think last week, that talked about the nations that have actually had this happen, causing great increases in taxes to try to stop that particular habit—Denmark, Sweden, so forth—and that the result has been they have had to repeal those tax increases in almost every case.

Are you aware of that?

Mr. ASHCROFT. Yes. The debate this morning really helped, I think, to clarify the issue, that in England, for example, it is said that half of all cigarettes are sold on the black market.

Mr. INHOFE. Yes.

Mr. ASHCROFT. Senator HUTCHINSON just asked me a very important question. If we drive things into black market sales, then States which have been relying on reasonable tobacco taxes as a funding stream—if the tobacco sales go into the black market and underground, we actually make it very difficult for those States to continue with their programs because we will deprive them of the same stream.

America has seen the kind of chaos that can come to law enforcement when we condition people to do things that are illegal because Government gets so invasive and heavyhanded.

And if we condition people to be involved in illegal activities, where we have inordinate unjustifiable taxes

that are imposed on consumers, and we prepare them and teach them to be involved in the black market, it is a lesson which we will regret having taught for a long, long time.

Mr. INHOFE. I applaud the Senator for taking the leadership to stop this from happening. And I appreciate your yielding for questions.

Mr. ASHCROFT. I thank the Senator from Oklahoma and really appreciate the questions which he propounds because they get to the heart of the matter. And I appreciate also the fact that you have relayed your experience with your town hall meetings.

No other Senator in the U.S. Senate, I would venture to say, no other public official, deals with the public as intimately and aggressively as you do. You know, five town hall meetings a day, hopping from airport to airport; of course no other Senator that I know of has flown a light plane around the world on his own. I know that JOHN GLENN has orbited the Earth. But you have stopped and talked to people most everywhere and certainly in Oklahoma.

So I thank you for bringing that particular item to our attention.

Mr. INHOFE. I would only respond by saying that I think I have told Senator GLENN, I may have more hours than he has, but he has a lot more miles.

Mr. ASHCROFT. I am sure that is the case. I thank the Senator from Oklahoma.

I just want to say this question of the black market is a very serious question.

If we aggravate the already tender situation which exists regarding the smuggling of cigarettes, we could literally create a very serious problem. And the problem not only relates to the loss of revenue to the Government, but it is also an issue that would and could be a problem which moves the black market in cigarettes from the sort of commercial area where black market cigarettes now are sold to stores and then the stores illegally sell cigarettes that have not had the right taxes paid on them. It could move it into the general population.

If we start teaching young people that they can buy cigarettes cheaply on the black market, and they start to do things like that, it is, in my judgment, a very, very, very serious problem in terms of what we have taught and what we have conditioned in this culture.

Furthermore, if we move the black market into sort of a retail situation—and I have some awareness of this because when I was Governor of my State, we had a significant cigarette tax, at least compared to neighboring States. There is some tobacco grown in Missouri, but very, very little. But we border on serious tobacco States, like Kentucky and Tennessee. And those States had very low tax rates. We had substantially higher tax rates. There

were lots of cigarettes that came across the border of our States, but they really were not sold on the retail market. They were sold to folks who would sell them in stores with phony tax stamps and the like.

But if we get to the point where we are going to have black market cigarettes sold in retail, and we condition young people to start saying that "I can break the law here," there are two consequences. One, that is a very bad thing to get young people into. Two, those who are willing to break the law, to retail market substances which are illegal to sell to youngsters, probably will be selling other substances. So they may well be selling drugs, and they may say to the youngsters, "What do you want? I have cigarettes. I have marijuana. I have drugs." And if you drive the price of cigarettes up substantially, it begins to make the price differential far less. So I have very serious reservations about what we might do in terms of a black market.

Mr. ENZI. Mr. President, would the Senator yield for a question?

Mr. ASHCROFT. I would be pleased to yield for a question to the Senator from Wyoming.

Mr. ENZI. Thank you for yielding.

I appreciate the vast amount of knowledge that you have shared. And I have actually a series of questions that I would like to have answered in regard to the bill. And like I say, I have been very impressed at all the knowledge.

Mr. ASHCROFT. I hope I can answer these questions.

Mr. ENZI. I recognize you do not have a laptop in which you can store all this vast information; you are using strictly the computer there. But I have some concerns, and I would like to know what you think on these concerns.

When I was out in Wyoming this last weekend, one of the State Senators there brought me the question—he said, "Now during the last session of the legislature, we looked at putting a 15-cent a pack"—that is 15, not 50—"cent a pack tax on cigarettes in our State. And that would raise \$8 million a year for us. And now I hear Congress talking about"—and at the time his knowledge was only on the \$1.10, not the much higher \$1.50; it was \$1.10 a pack—"and out of the \$1.10 a pack," which of course will be levied on Wyoming just the same way the 15-cent a pack would be levied, "our State will get \$6 million."

He is a little bit concerned about where all the revenue might be going. How could there be a miscalculation of that magnitude on the amount of funds that would be delivered by this? He has done extensive research into it. And I have to say that causes some concern for me, too—when 15 cents a pack will produce \$8 million and \$1.10 will only produce \$6 million.

I guess maybe you might interpret that the \$1.50 increase is to bring that

up to \$8 million for us. But that sounds like a poor way to do business.

Could it be that the \$1.50 costs so much to collect, coming back here, so much gets held by the bureaucracy, that we are only going to get \$6 million bucks out of \$1.10?

Mr. ASHCROFT. I would venture to say the State of Wyoming does not have a foreign aid program under the guise of the cigarette tax. So you will not have a program to develop an awareness overseas of the costs of smoking.

One of the things that is in the international aspect of the bill we have here is that money will be taken, hundreds of millions of dollars every year will be sent to help foreign governments trying to decide what the cost of smoking is in their culture. I just don't think it is very likely that the Wyoming House of Representatives and Senate, which you presided over at one time, would be making that kind—the answer is, that is just a small part of what we are doing here.

I admit the foreign aid is not a big part of this bill, but there are 17 new boards and commissions in the Federal Government, specific and categorical programs, and this isn't designed to provide income to the States. This is really a program that will provide income to the Federal Government. It will provide massive amounts of income to trial attorneys. It will provide serious income to tobacco farmers. If the one aspect of this bill goes through, it will give them about \$18,000 an acre for their allotments. Of course, farmers don't even own the allotments. In a lot of cases, it is owned by someone else. Most of the lands could be bought for far less than \$18,000 an acre.

We are in a situation where this is a Federal measure which is going to support everything from foreign aid to trial lawyers and Federal programs. It is no wonder it won't do Wyoming good.

Mr. ENZI. I need to ask how people would expect me to support \$1.10 a pack when the State legislature looked at 15 cents a pack totally dedicated to health and turned that down.

This one, as you mentioned, has all of these other ramifications. I know that one of the ramifications is to cut down on teen smoking. So I have addressed that in a number of trips I have made to the State. I tried to visit schools on Friday, and I am in Wyoming most of the time. I wonder how \$1.10 is going to cause any concern. After all, kids will pay \$50 for a pair of tennis shoes—I actually said \$50 to see if people were paying attention. They will pay \$150—I was in the shoe business for 28 years—\$150 for a pair of tennis shoes. The parents can't afford it, but the kids can. In talking to these kids, they seemed to think that \$1.10 a pack would be a deterrent for a few days until they realized how they were

going to raise the other \$1.10 a pack and maybe smoke one cigarette less, but probably not smoke cigarettes less.

These kids asked me, and I want to ask you, how the price of a pack of cigarettes going up will deter smoking when the cost of marijuana is extremely high and there is no indication of it going down and there is still an increase in marijuana smoking. That is all black market. So if we think we are doing an elimination of the black market, that creates a great deal of concern to me, and apparently to you. I ask the Senator to give me some kind of an indication of whether the Senator thinks that price will make a difference.

Mr. ASHCROFT. I thank the Senator from Wyoming for the question. This was the subject of a very serious set of questions that were propounded by the Senator from Utah earlier today. He literally went through the studies that have been presented by the administration and the studies that are being used to support the demand for a \$1.50-a-pack increase, the demands being made by Senator KENNEDY in his proposal. Those individuals are not satisfied with \$1.10 a pack. They want to take it up to \$1.50 a pack as a tax increase.

Frankly, when you look at all the data, you can look at part of the graph and it looks like it reinforces what is being said about smoking going down when you increase the price. Price—CBO seriously questions price in terms of whether elasticity of demand depends on price. They raise a serious question about that, and they cite studies to challenge it. Of course, there isn't any elasticity in demand when a person is addicted.

So for the poor people of America who have been smoking and are smoking, we are basically going to trap them, so that a poor person, even at the \$1.10 level which is in the bill now—Senator KENNEDY wants to move it to \$1.50 per pack—at \$1.10, that is two packs a day at \$800 a year. Poor people cannot afford to take that out of the family budget. You sit around the kitchen table and say: What are we going to be able to do this year? Can we get the new refrigerator? We need this, that, or the other.

If we walk in and say, the first thing we have to do is take \$803 out of your budget, it restricts the capacities of families to operate. So not only are we threatening to do something that could hurt governments but we will undermine the capacities of families to support themselves.

I think it is tragic when resources are consumed in smoking. I have never smoked cigarettes. I don't believe it is a good investment. But people are free to do that. I am not here to tell them what their life is and how they can operate. But for us to simply say we will hit the low-income people of America

with \$400 if they are one-pack-a-day, \$800 in new taxes if they are two-packs-a-day people, or if we are talking about what the Kennedy proposal is, to give yourself basically a 40-percent increase on that, it is an amazing bite that we will ask to take out of the disposable income of people.

Mr. ENZI. Let me ask another question that deals with this, particularly with the kids smoking, because we have been trying to get at this problem of kids smoking for some time now.

I know the Senator is as distressed as I am that 3,000 kids a day are starting this life-threatening addiction. Although I wonder if you know more about where those estimates come from, because as far as I can tell, they are estimates, as is the percentage, that this will drop. We are talking about a 60-percent drop in youth smoking, and I think that is based on Larry Summers, Deputy Treasury Summers, when he said a 10-percent increase in the pack of cigarettes would produce a 7-percent reduction in the number of children who smoke. We seem to be going with the theory that if you raise it high enough, it will get to zero. That doesn't seem to equate with anything else that is happening.

I ask the Senator if he has seen—probably not—the latest issue of the George Washington University magazine.

Mr. ASHCROFT. I have not.

Mr. ENZI. A magazine put out by a university. I am a graduate of that, so I think it is the premier university of the District.

Mr. ASHCROFT. I will not respond to that question with an affirmative, but I will respect the institution.

Mr. ENZI. The feature of this month's magazine is actually called "Smoke Signals," and it is about the terrible rise in smoking on university campuses. Now we are above the teenage level. We are talking about a group who are more educated than other people. It would seem that they ought to know more about smoking than the others. Obviously they don't, because even though the rules of the university are increasing, the amount of smoking is also increasing.

They have done a fairly extensive interview session with students from the university to find out what the causes are, why it is going up. It ranges from rebelliousness to all-out addiction, to a number of other things.

I ask if the Senator would be willing to have the article from the magazine printed in the RECORD.

Mr. ASHCROFT. I ask unanimous consent that the article be printed in the RECORD.

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

[From GW Magazine, Spring 1998]

SMOKE SIGNALS

(By Jared Sher)

When it comes to smoking, America's colleges and universities have come a long way

since 1877—the year Dartmouth forced its scholarship students to sign a pledge not to spend any money on liquor, tobacco, dancing or billiards.

Today, college students have the freedom to indulge in all of those. Increasingly, they're doing just that, especially when it comes to cigarettes and cigars. The recent rise in the number of students who say they light up has some educators and medical professionals fuming.

According to an annual survey of college freshmen conducted by researchers at UCLA, more than 16 percent of the nation's first-year students said they had smoked in the past year. While that's not quite an epidemic, there's concern because the 1998 mark is the highest in nearly 30 years. That 16 percent is a significant surge after the mid-1980s, when the percentage dipped into single digits for 4 straight years.

Not only are the numbers rising; they are doing so after decades of clear medical evidence that smoking can kill. Despite all the warning signs, America's youth are picking up the habit with little regard for the potential long-term health hazards.

Such is the case at GW as well. Although no studies have been conducted to determine the exact number of smokers, campus watchdogs believe the figure to be close to—and perhaps higher than—the national average.

Smokers remain a fixture in Foggy Bottom. Even though smoking is banned in all University buildings except residence halls, cigarettes are readily available from street vendors as well as the Marvin Center convenience store. And students—as well as faculty and staff members—can often be seen puffing away on the front steps of Gelman Library, or just while walking down the street.

So why do GW students continue a habit they know is dangerous? The reasons range from rebelliousness to an all-out addiction that is extremely difficult to overcome, especially in a high-stress academic environment. Most students acknowledge the dangers of smoking, but many say they can and will quit before the health risks become a long-term threat to them.

"It's the immortality issue. Young people don't think they're mortal," says Matthew Sokolowski, BA '97, education coordinator at the Jewish Historical Society of Greater Washington. Sokolowski started smoking when he was 10 or 11, having picked up the habit in the Boy Scouts. He thinks younger smokers often are ignorant of the risks. "It's only people who are 45 or 50 getting sick, so you think, 'Oh, I can smoke as much as I want.'" Now he admits he is addicted, and trying to quit is extremely difficult. Sokolowski has devised his own program for quitting, whereby he steadily decreases the number of cigarettes he allows himself to buy. "I knew I wasn't going to be able to quit in college," he says, because the stress levels were simply too high.

That's been a problem for a number of GW smokers, many of whom say they started smoking simply to socialize, but now are stuck with the habit. While they all recognized the health hazards that are all-too-apparent these days, "the addiction outweighs it," according to Zeid Sabella, a senior from Jordan.

"I'VE GOT TO QUIT"

"Every day you say, 'I want to quit, I've got to quit,'" he says, "but you never do." He says smoking has taken its toll on him physically already, a problem he notices every time he tries to climb a flight of stairs and has trouble breathing. "I can't even jog a mile anymore."

Some students began smoking in high school or junior high just to fit in. Federal data show that the number of high school smokers is growing dramatically.

Other GW undergraduates, like sophomore Molly Bell, from Highland, Mich., picked up the habit almost by accident. "I think it had to do with my mom. She said, 'You want to smoke, let's go get some cigarettes,'" Bell recalls. "Then I just started after that, even though her point was to get me not to smoke, like I'd smoke so much I'd puke or something. It didn't work." She was 15 at the time; she has now been smoking for four years.

Once her parents realized their plan had backfired, they tried to get her to quit. They even put her on a nicotine patch. "But every time I'd leave the house, I'd rip it off and put it on my dashboard," she says. Ultimately, she says, no physical remedy will work until the smoker is mentally ready to quit.

Still, Bell remains confident that she'll quit once she leaves school. "I'm going to stop when I'm trying to conceive. At that point I'll be able to because I won't want to screw up my kids." One motivating factor: Her aunt smoked while she was pregnant, and when the baby was born, it had to be placed on a respirator.

"I can't imagine quitting, and I don't know if I ever will," laments 21-year-old junior Danielle Marcelli from Philadelphia. Marcelli first tried a cigarette when she was 15 and hanging out with friends. Now, she too is addicted and smokes one-and-a-half packs a day. "I didn't think it was bad because my whole family did it."

Tobacco companies and Congress are discussing legislation through which the companies would pay more than \$300 billion to help gain protection from lawsuits. Speculating on the price hike that could accompany such legislation, Marcelli says, "Sometimes I say that if they really do raise it to \$4 a pack, then I'll quit." But she reflects for a moment and changes her mind. "I would probably get a job if I had to support it, if it came down to it."

Her roommate, Angel Fischer, tried her first cigarette when she was just seven years old. She says that she is not addicted, but she smokes anyway. She doesn't worry about health risks, especially since she says she can quit at any time. "I think about it with my father, I don't think about it with myself, because he's older and he's got that horrible cough," Fischer says. "I don't think I'll ever get to that stage. I just have them when I'm out late."

Fischer adds that the stress of a school environment helps explain why so many students smoke. "You can ask the same questions about drinking or drugs or sex. Especially in college with all the stress. Around midterms, it's like give me cigarettes now!" she says.

Senior Anne Henderson, 21, says she is "surprised how many young people do smoke, considering they know the dangers." Nonetheless, she has been smoking on and off for five years. "It has to do with lifestyle. I do it on a social level. A lot of social activity revolves around smoking. It does calm my nerves, especially when I'm stressed out."

She too is confident that she'll be able to quit when she graduates. "I'm not worried about when I'm 80," she says.

A SURPRISING INCREASE

"We feel like we've been seeing a lot of smoking on campus," says Susan Haney, outreach coordinator for the Student Health Service. "It's alarming to see an increase."

Experts agree that it's surprising to see increasing numbers of people taking up a habit that any doctor will tell you has a good chance of killing you. They also agree that two factors impede efforts to stop smoking before it starts among teenagers in America's junior high and high schools.

First of all, "young people see themselves as impenetrable fortresses, believing that they will live long and prosper," according to LeNorman Strong, GW's assistant vice president for Student and Academic Support Services' Special Services. "Their sense of being invulnerable is a major challenge to educating them to make safe and healthy choices of lifestyle."

Secondly, *messages regarding the dangers of smoking are not reaching enough children*. Too often, the content of a message is aimed at getting people to stop smoking once they have already started. Not enough attention is being paid to preventing people from taking up the habit in the first place.

"A lot of the education has been geared toward adults, not youngsters," says Strong, who until last August was GW's executive director of campus life.

Moreover, children continue to see television and movie personalities smoking on the screen, an activity that does not go unnoticed when children decide to take up the habit. Dr. Gigi El-Gayoumi, an associate professor of internal medicine at the GW Medical Center, cited a recent study that showed teen-icon Winona Ryder to be the actress who smokes the most on-screen, for example.

"These are very powerful images," she says, adding that the proposed tobacco deal between tobacco companies and the U.S. government has as one of its major focuses "reducing teenage smoking and the targeting of advertising on teenagers."

THE BANZHAF WAY: SUE THE BASTARDS!

These images may have contributed to the recent increase in smoking among teenagers. That, in turn, may mean more smoking on campus. "We know that smoking had previously gone down considerably among older teens, but has been rising dramatically over the past two or three years," says John Banzhaf, a GW Law School professor who founded ASH (*Action on Smoking and Health*), a public interest legal action group. "These are the people who are about to get into GW."

Banzhaf, who has long been a thorn in the side of the tobacco industry, has used legal action, instead of persuasion and lobbying techniques, to win his battles against smoking. His motto, he says, is "Sue the bastards." His actions are widely credited with leading to the ban on tobacco advertising on television and the ban on smoking on domestic airline flights.

He also was instrumental in the effort that ultimately banned smoking in every GW academic and administrative building in 1995.

At GW, Banzhaf has never hesitated to speak out. Once, he interrupted a student-sponsored movie in the Marvin Center because people in the audience were smoking in violation of law. Another time, he remembers eating lunch in the University Club, when he came across two fellow faculty members smoking in an area that did not have a sign permitting smoking. "I almost had them arrested," he says. They left the club just before the police arrived.

Each time he fought for further restrictions, he met heavy resistance. "And yet each time we've taken a step toward eliminating this thing, it's worked," he says. When the University decided to ban smoking in the vending machine area on the ground

level of the Marvin Center, "people said there'd be a riot if we did it." Suffice it to say there was no riot, and for that matter very little controversy, which only reinforces Banzhaf's argument.

"Suddenly people began to realize there isn't a requirement that you have to permit smoking," he says.

BAN SMOKING IN RESIDENCE HALLS?

Most GW student smokers support the smoking ban in buildings, claiming the health hazards are too well known to justify putting non-smokers at risk. Some, however, think the ban has gone a little too far.

"It's ridiculous," says Rany Al-Baghdadi, a senior from Syria. "There's a lot of smokers. What would it hurt non-smokers to have a smoking lounge in the library or the Marvin Center? Someone that's complaining about second-hand smoke when he's 50 meters away from me—you know, get a life."

Al-Baghdadi says that because it is so difficult to quit, GW should make some accommodation for smokers. "If it were easy to quit, there wouldn't be any smokers."

His friend Zeid Sabella, the senior from Jordan, disagrees. "One thing I am for is choice. A lot of people don't like smoking. For example, I don't like smoking in my bedroom. It stinks up the place." Sabella thinks it is entirely justified to keep smoking out of campus buildings.

Sandra Falus, a sophomore from Hungary, thinks so too. "I know people who used to work in the Marvin Center Newsstand when that area was the smoking section." She says her friends had to quit their jobs because they suffered from exposure to second-hand smoke. She adds that since most smokers know what they are doing is unhealthy, they don't feel discriminated against when they have to smoke outdoors.

Molly Bell says: "As long as they don't ban it in the dorms, there won't be an outcry."

In fact, the last bastions for GW smokers have been the residence halls, which remain islands of smokers' rights amid a sea of restrictions. GW officials say the rationale behind keeping the housing smoker-friendly is privacy, and the differing rights of people in their homes versus their workplaces.

"There is regular discussion about banning smoking in residential rooms, and it is often generated by students," says GW administrator LeNorman Strong, but "that's private space. While the University does have some rights as a landlord, we work hard to protect the privacy of students."

Banzhaf is not certain that's enough of a reason to allow the behavior to continue. "I'm sure if someone wanted to clean his bicycle with benzene in his dorm room, he wouldn't be allowed," he says.

As for the legality of a smoking ban in residence halls, Linda J. Schutjer, GW's assistant general counsel, is not confident it would survive a challenge by current residents. "It's an issue of workplace versus where you live," she says, adding that a ban in the dorms would likely do nothing to stem the tide of smoking. "It seems to me smoking is not against the law, and if people want to come here and smoke, there should be some accommodation made for that."

Student Health Service's Haney, who is also a family nurse practitioner, agrees. "I'm not really sure a ban is going to help. I don't think anybody's going to quit to come into a residence hall," she says, suggesting that students would sooner seek out off-campus housing than quit smoking.

Another area of concern to smoking opponents on campus is the Marvin Center convenience store, which sells cigarettes. Stu-

dents are allowed to purchase products from the store using their meal cards. Although Schutjer says it is against policy to sell cigarettes on the meal card, it happens anyway.

Despite all the controversy, smoking has not gone away. Even in areas where it's banned, says Schutjer, "I'm not saying people aren't smoking. They're not supposed to be. We still get occasional complaints." The University takes steps to stop violators that may range from suspension to dismissal. Recently, one employee of the GW Medical Center was dismissed when he refused to stop his workplace habit in the basement of the GW Hospital.

Smoking education lags significantly behind other areas, such as AIDS and alcohol-abuse education. Nevertheless, both educators and medical professionals at GW have committed themselves to renewed vigilance in helping smokers quit. Haney says that clinicians at the Student Health Service always make a point of asking about smoking when they take patient histories. If they come across a smoker, the clinicians make it clear that there are readily available resources—such as the patch—that can facilitate quitting.

"We try to make people aware that we're there for them. We don't want to badger them, but we don't want, by not saying anything, to let someone think we condone smoking or don't think it's a health issue," says Haney.

It's important for smokers to figure out for themselves why they smoke, Haney says. Only then can they find a successful method for quitting. She adds that Student Health is looking into reviving smoking-cessation programs here in a joint effort with the American Lung Association. Last Nov. 20, as part of the American Cancer Society's Great American Smokeout, Student Health offered "Butts for Bubbles"—an exchange of cigarette packs for bubble liquid—at a table outside J Street.

Ultimately, Haney would like to conduct a thorough survey to find how many smokers GW has and what their demographics are—in other words, "whom we should be targeting," she says.

"Smoking is something that needs to take priority."

Mr. ENZI. I was fascinated to note that one of the people interviewed in this, one of the professors at GW is the person who founded ASH, the Action on Smoking and Health group, that I know from my days as mayor of Gillette has been very active in discouraging smoking, and their advocacy has been on antismoking ads.

I ask the Senator if he reflects a little bit on what the effect of the antismoking ads might be. They went to ads; they went to billboards. I have a plastic sign in my office that thanks visitors for not smoking. They also had a number of very clever slogans. I am not sure whether the Senator might have heard them. Some of them were very disgusting and had people in disgusting situations that were smoking, all to curb, particularly, teen smoking. I think that has had some effect. It had some effect on members of my family. I think that it did help to cut down some of the teen smoking. But I would like to ask you what you think the effects on doing the antismoking would—how well those would work on particularly teenagers as opposed to, or in

conjunction with—whichever way you would care to answer it—a rise in price of tobacco?

Mr. ASHCROFT. Well, I think there are ways to discourage smoking. I think the most effective discouragement is when parents work with their children, just like with drugs. I think that is the best way for parents to make sure their children don't smoke. Obviously, there are things that we can do in government to help. A number of States and local governments have literally made it illegal for youngsters to be in possession of tobacco, just like they have made it illegal for youngsters to be in possession of alcohol in certain settings. I think those are the options.

One of the things I say in response to your question—because the Senator addresses the issue of 3,000 a day—is that the 3,000-a-day figure, in my judgment, underestimates the number of kids who try cigarettes a day. I have heard estimates as high as 6,000.

What is interesting to me is that the drug czar, Gen. McCaffrey, indicates that 8,000 youngsters a day try illegal drugs. We are here with an administration that wants to impose a tax of \$868 billion on basically low-income people in the United States to work on smoking, but there is a notable absence in this administration in terms of what it wants to do about drugs. The most eloquent thing this administration has been able to utter about drugs is, "I didn't inhale." The second most eloquent thing was on MTV where the President said, "If I had to do it over again, I would inhale."

Now, when you have the President of the United States talking about inhaling drugs, I don't think that goes very far toward stopping people from smoking cigarettes. We have to be careful that we don't get our priorities out of whack so that we drive the price of cigarettes up or drive cigarettes into a black-market situation where they will be offered as part of a menu of illegal drugs, where students and young people in the culture might not only become acclimated and accustomed to dealing with black-market figures, which would be a very bad lesson to teach, but it would also, perhaps, introduce people to drug use as much as it does with cigarette use.

I firmly believe that cigarette use is deleterious, bad for your health. Frankly, everybody knows that. King James, the guy who directed the translation of the Bible hundreds of years ago, admonished the people of England that this stuff is bad for you, that it is not good for you, it is bad for your health. We have known it, and there are a lot of things that are true about cigarette ads. I don't approve of them and I don't like them appealing to our children. But let's also understand that most young people who start with cigarettes know it is not good for their health.

Mr. ENZI. Will the Senator yield for another question?

Mr. ASHCROFT. I would be pleased to yield.

Mr. ENZI. Mr. President, I am kind of fascinated that on our desks, every day throughout the session, we get a copy of whatever bill is being debated, even if it is the same one being debated the day before; and if we take it back to our office, another one miraculously appears the next day, in spite of the amount of paper involved with that and, as a plug for a computer, don't you think it would cut down on the amount of paper if we could utilize a computer on the floor? That is not really my question. This is a 753-page bill that is appearing on our desks. I know that you are aware that this isn't even the bill we are debating.

Mr. ASHCROFT. I am aware of the fact that this is constantly in flux. As a matter of fact, we talk about the absence of dry ink on so many things that we consider here. When you are talking about a \$868 billion tax increase, I think we ought to at least see dry ink before we vote.

Mr. ENZI. Yes, I have to agree. I want to ask, since this is 753 pages, and there is another newer version that is 482 pages—

Mr. ASHCROFT. This is the newer version. This one isn't bound. I don't know how many pages we have here, but it would be a real task, and to rush through something like that would be a disservice to the American people, particularly those who would pay the huge increases in taxes.

Mr. ENZI. The bill we are debating is the 753-page one, which miraculously appears on our desks, even though the 482-page bill, which has significant revisions in it, isn't available to us without a special request, and this appears to be the official version. But whether it is 753 pages or 482 pages, it is a great deal for us to cover, even with all of the help of our staffs.

So I am curious as to whether the Senator feels that there is an adequate coverage of all types of tobacco done in this? We keep talking about cigarettes. When I was growing up, there was a period of time when my dad thought cigarettes were pretty high, so he rolled his own. It is kind of a western tradition. You get a little pack of Bull Durham and some cigarette papers. Today, people would probably think you were using illegal drugs if they saw you doing that. We are phrasing this in that form, anyway. People might go back to rolling their own. But they take this thin piece of paper and put a little dip in it—I watched him do this so many times, but I have not smoked—and then he put the tobacco in there and he had to lick the piece of paper and fold it over, and that thin paper would then stick, and it would have the semblance of a somewhat cruddy cigarette. I suspect that even

though cigarettes are not healthy, they were probably more unhealthy. The advantage was that we saved the little canvas bag that it came in, filled it with sand, and used that as a sinker on our fishing lines in the canyon near our home and fished for trout. The tobacco bag worked well for catching trout.

It was years later that I learned what it was probably doing to his lungs and eventually did to him. I wonder if you feel that this adequately covers all of the types of tobacco and places an equivalent tax on them. We talk about the black market, but what we are talking about here is a shift from one type of tobacco to another to get a lower price, and even some exclusions, apparently, for small manufacturing companies.

So is this just going to force people to "unbundle" their companies—that is one of the words we use around here—and form a whole bunch of small companies that manufacture this to avoid the tax? I watched people work loopholes on tax bills when I was the chairman of the Senate revenue committee in Wyoming. I knew when we were holding hearings that there was someone out there who, at the moment we were debating the bill, already knew the loophole and they were anxious to go out and benefit from that. They weren't going to share that with us.

So do you feel there is going to be some kind of a shift done on this to the other kinds of tobacco as well as to the black market?

Mr. ASHCROFT. The Senator from Wyoming asks a very, very important question. Frankly, it is a question to which I do not know the answer. We are still dealing with a bill that is in the process and, obviously, if you run the price up on one kind of smoking, you may be encouraging another kind of smoking—whether you are encouraging cigarettes bought on the black market, or whether you are encouraging a roll-your-own variety. I remember those slogans that used to be used, like "save your roll and roll your own." But you wouldn't make a real savings in your roll if there was a disparity in the price here. My main concern has been that this is not a bill that has much promise to be effective.

You know, the administration, as late as 1996, said they were going to cut tobacco smoking in youngsters by 50 percent in 6 years, and they weren't going to require any price increase. So they were going to be able to cut it in half. Now they don't expect to cut it in half, but they are going to get \$868 billion over the next quarter century out of Americans' pockets. I think that is particularly onerous.

You mentioned the relationship of cigarettes and the construction of them with one's own hands, and that obviously makes people think of the marijuana cigarettes that people roll on their own. Frankly, the drug problem is one that bothers me because I

think we are inordinately, and perhaps inappropriately, focused, at least to a degree not warranted, on cigarettes rather than on drugs.

As I indicated, General McCaffrey indicated that there are at least, according to his numbers—and the numbers have been tossed around—more kids are trying drugs than they are trying tobacco. I think we ought to be careful that we don't aggravate that problem.

Mr. ENZI. Mr. President, will the Senator yield for another question?

Mr. ASHCROFT. Yes.

Mr. ENZI. Mr. President, I am anxious to know and hope that the Senator from Missouri has the answer to how this 753-page bill or 482-page bill that we haven't had time to complete the review of yet—I realize the Senator may not have the answer to this and what kind of emphasis it places on the family as playing a role in reducing tobacco use. I have seen the statistics. Whether it is drugs or tobacco, the biggest influence on whether kids use them are the parents and the attitudes that the parents have to them. And the parents, even if they smoke, have a good influence on reducing teen smoking or youth smoking by saying that even though they do it, it hurts them; that it is not right, it seems to me.

The bill that is really trying to get at the heart of the problem, and if the statistics all point to the family emphasis, the family attitude, the family direction being the way to reduce smoking, it seems like this bill ought to have something in there that strengthens the family and strengthens their role in doing this. It provides a mechanism for almost everything else in the world, including things that are not health related. So it seems to me like there ought to be something in here that says something to families, "You can make a difference. How do we get you involved?" I can't find that. I want to know if the Senator from Missouri is able to find it.

Mr. ASHCROFT. Frankly, I haven't found it. I thank the Senator from Wyoming for asking the question. The impact on families here is pretty serious. But it is financial.

Basically, it is to say that for a three-pack-a-day family there is a minimum of \$100 a month that goes out of their expendable income, in addition to the taxes. That is not just the cost for smoking cigarettes. That is additional taxes, \$100 a month for three packs a day; that is, if you take the committee's \$1.10 range.

My amendment would strip that \$1.10 rate out because I don't think it is appropriate to punish people the way the tobacco companies have done. If you go with Senator KENNEDY's proposal, it is a \$1.50-a-pack rate. You get to the point of about \$1,600 a year for three packs in the family at \$1.50. I think that really makes it not only tough for the families to do something about

smoking, it makes it really tough for the family to do things about all kinds of other things, like clothing the family, feeding the family, providing shelter and transportation, health care, and other things.

Mr. KERRY. Will the Senator from Missouri yield for a question without losing his right to the floor?

Mr. ASHCROFT. I do.

Mr. KERRY. Mr. President, as the Senator knows, we have been trying to move this along in a fair-minded way. Three and a half hours ago I asked the Senator how long he thought he might be, and we were talking in terms of an hour or so. I know there have been a series of fascinating and very important questions posed in a spontaneous manner. But that said, I wonder if the Senator might be able to share with his colleagues what opportunities other people might have to debate this issue.

Mr. ASHCROFT. I thank the Senator for his question. I feel like I should be able to finish by 2 o'clock, providing I don't spend a lot of time responding to the questions of others. Most of my time on the floor has not been accorded to me to make speeches. It has been in responding to questions. I have to say it is probably better than had I been speaking because I find the questions to be very satisfying and very enlightening.

Mr. KERRY. Will the Senator further yield without losing his right to the floor?

Mr. ASHCROFT. Yes.

Mr. KERRY. Mr. President, I appreciate full well that questions, in a way, have educated the Senate, and all we are trying to do is find a way. Obviously, some other colleagues planned their day, since we tried to do this outside sort of the rigorous assertion of the rules, if you will. That said, would we be able to rely on and could we perhaps enter into an agreement now that the Senator would finish at 2 o'clock at which point we would have an opportunity on our side to be able to allow a number of people to speak for a little period of time to try to balance it out a bit?

Mr. ASHCROFT. If the Senator is talking about the opportunity to curtail debate and schedule a motion to table, that is one of the reasons I felt like I had to move to provide the kind of debate which I have provided, because without consultation, at least with me, about a timeframe for the debate suggested, there would be a motion to table. And that happened in the last issue I was seeking to discuss in the Senate. I purposely wouldn't allow individuals to cut off debate. There is a lot of interest in this measure. I will personally do what I can to wrap up my participation. I will limit the amount of questions to which I will respond and make time available for others.

Mr. KERRY. I thank the Senator. Mr. President, that is exactly what we are

trying to find out. I will accept the Senator's word, obviously, that he is going to try to wrap up around 2 o'clock and allow other people to debate. So we will afford that.

I thank the Senator from Missouri.

Mr. ASHCROFT. Mr. President, I might add that I was a part of the committee that considered this bill. The committee was interested in getting the bill out. It is no secret that I was the only member of the committee that voted against sending the bill to the floor. But I was asked not to have these kinds of discussions. The idea was that we wanted to get a bill to the floor where we could have discussion. That is what I want to have. I want to have that kind of discussion. There was an effort not to have too much happen in committee. I understand that much. My own view is if they would prefer to have the discussion of these issues on the floor, that is fine with me. But if you say you don't want a lot of discussion in committee, and you say you don't want a lot of discussion on the floor, you are trying to truncate the debate. You want this thing to go through before we actually have the complete documents on what is in it. It is a \$868 billion tax increase. It finally dawned on me that I had better stand up and speak, and I had better try to accommodate the other individuals who want to speak.

I am pleased to have the assurance that there is not an idea about a motion to table right away, that there is going to be time for other debate on this.

I will try to conclude my remarks.

Mr. ENZI. Mr. President, will the Senator yield for a couple more questions? I understand the time deadline. I understand how those motions work that lead to this kind of a need for the format for debate.

Will the Senator yield?

Mr. ASHCROFT. I will yield.

The PRESIDING OFFICER. The Chair reminds all Senators that the Senator retains the floor only for yielding for the purpose of a question, not for the purpose of a statement. And I want all Senators to understand that the Senator could lose the floor if the individual who he yields to chooses to make a statement rather than ask a question.

Does the Senator yield for that purpose?

Mr. ASHCROFT. I yield for the purpose of a question, and I would request the person to whom I am yielding to please preface your remarks. Does the Senator agree or not agree, if there is going to be a very strict approach, which, frankly, there has never been in my understanding of the Senate to that kind of question. I ask that he start his question that way. I don't want to yield the floor based on technical failure, if the Senator will begin with words of an interrogatory nature.

Mr. ENZI. Yes. Does the Senator feel that the \$1.10 or \$1.50, as it is \$1.50 right now, would have the amount of money the FDA needs to do the kind of enforcement we have been putting on them? Does the Senator think that when we talked about in the Labor Committee, which I am on, the \$34 million amount for the FDA and all of the things that would do, and that this bill has considerably more money in it than that for the FDA, does the Senator think that we are doing overkill, perhaps, with the FDA? Will they be able to adequately use the amount of money that we are talking about in this bill for that agency alone? It is a considerable expansion of that agency. Do you think that our agencies are set up in a manner that they can escalate the amount of spending that they are very good at, but can they escalate the amount of spending they are doing to meet these new amounts that are coming in, particularly with the FDA, which is critical to this?

Mr. ASHCROFT. I think that is an appropriate question. There is almost a 50-percent increase in funding for the FDA. Or did the Senator say more than that? Frankly, I have every confidence that Federal agencies will spend the money you give them.

I believe that he calls into very serious question the idea that price alone is a major factor, or a controlling factor. And he does so effectively by citing the kinds of information that the Senator has mentioned.

Mr. CRAIG. I have sat for well over an hour now this morning, listening to the colloquies, the questions, and the debates between the Senator from Missouri and the others who engaged him, concerned as we all are about teenage smoking, and concerned as we all are about what appears to have been a targeted effort on the part of some tobacco companies to increase teenage smoking. But the Senator from Missouri also cited a poll, as did the Senator from Texas, that indicates that amongst Americans the No. 1 issue with their teenage children is not smoking but drugs. Would the Senator from Missouri agree with that?

Mr. ASHCROFT. I am aware of the poll and I am aware of the concern. And I believe that is correct. I believe Americans are far more fearful that their children will be involved with illicit drugs than they are that their children might experiment with smoking.

Mr. CRAIG. That same poll said that only 3 percent of Americans recognize the use of tobacco products as a concern for their teenagers. I think their greatest concern was that the most damaging would be drugs and other activities. Would the Senator from Missouri agree with that?

Mr. ASHCROFT. I think the poll was very clear about that: 39 percent cared about drugs; 3 percent said they were worried about smoking.

Mr. CRAIG. Does the bill that the Senator from Arizona brings forward deal with the issue of drugs or the misuse of drugs by our teenage populations in this country?

Mr. ASHCROFT. Not to my knowledge.

Mr. CRAIG. A great deal of assumptions suggest that teenagers would slow their smoking, or discontinue smoking, or not start smoking as a result of this bill. Yet, all of the other studies indicate that is probably not the case. The Senator from Missouri cites a concern for elevated activities in black-market sales; is that not true?

Mr. ASHCROFT. Yes. I have pointed out that not only would elevated activities in black-market sales result in perhaps even lower prices for cigarettes, but it could, as a matter of fact, be a way in which individuals are introduced to drug use.

Mr. CRAIG. Is it not so that countries that have increased the price per pack of cigarettes dramatically, and found that those cigarettes then moved into a black market, backed away from those taxes to bring those products back into the market and away from the illicit activity of the black market?

Mr. ASHCROFT. I think that has been a very clear experience. This precipitous increase in the rates of taxes on cigarettes has been a very sad experience by promoting black markets. Great Britain, or England, is said to have a black market of about 50 percent of all of its consumption. That is obviously something we don't want to teach or institute in this country. And other countries—Canada had a serious, very, very serious, bad experience with its precipitous rise in the increase of taxes on these kinds of products.

Mr. CRAIG. This Senator from Idaho is concerned that those who would sell black-market cigarettes are also now selling marijuana and cocaine to our young people. Does the Senator from Missouri have the same fear?

Mr. ASHCROFT. Obviously, if we were to take cigarette smuggling, which is now a commercial activity—the cigarettes are largely delivered to stores and are sold in the ordinary course of business. If we were to take that out of the commercial activity arena and put it into the retail activity, so that they would be sold on street corners by drug dealers or others who would sell contraband in a retail fashion, I think we threaten substantially the young people of this country with the introduction in an array of things that would be sold. Someone might offer: Now, you can either have cigarettes here or the marijuana here or these pills here, or like that.

So, putting cigarettes into that setting may be a very evil sort of introduction of those individuals to the drug culture in a way that they would not otherwise be exposed.

Mr. CRAIG. Let me thank the Senator from Missouri for yielding. I know he said he would like to conclude by 2.

I also appreciate his stressing the need for an expanded debate of this issue. I hope the leadership, and obviously the managers of the bill, recognize that and are now recognizing the importance that we debate this fully. I appreciate the responses of the Senator from Missouri to my questions.

Mr. ASHCROFT. I thank the Senator from Idaho for his valuable questions. I will now conclude. I have given my word to fellow colleagues in the Senate that I would try to be out by 2 o'clock, and I will. I thank the Senate for its accommodation.

Frankly, I appreciate this institution because it does provide a way for individuals who really feel strongly about this measure to be able to talk about it.

We have a bill. The Senator from Wyoming pointed out that it was not the one laid on the desk, because we have changed so rapidly. But here is the bill. There it is. This bill represents a \$868 billion tax increase on the backs of America's poorest working families; 60 percent—59.4 percent. Let me not exaggerate. The estimate is 59.4 percent of the \$868 billion—59.4 percent of the \$868 billion from this measure is to be paid for by people earning less than \$30,000 a year.

I believe we should reject it. This is a massive tax increase. This is a massive expansion of Government. This is an affront to the effort of families to provide for themselves. And I believe it is something that will be counterproductive. It invites all kinds of pernicious activity, including the black market, including the potential for increased drug utilization, including the loss of revenue to States when the black market emerges and no longer do those selling cigarettes pay even State taxes.

But at the very bottom of it all, this is a \$868 billion tax to be shouldered by the hard-working families who earn less than \$30,000 a year. That is inappropriate and to me it is unacceptable. I do not believe any of the lofty pie-in-the-sky—supposedly supported by studies—objectives really justify it. We should pursue those objectives in ways that are more likely to be successful and less likely to be destructive of the capacity of hard-working families to survive.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that this side now be permitted to consume, it is 2 o'clock, maybe 1 hour 15 minutes, to be divided among Members on our side in order to have an opportunity to debate the bill.

The PRESIDING OFFICER. Is there objection to the request?

Mr. MCCAIN. Reserving the right—I do not object.

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

The Senator from Massachusetts will be recognized to control the time for 1 hour 15 minutes under his control.

Mr. MCCAIN. Will the Senator yield to me?

Mr. KERRY. I will be happy to yield to my friend from Arizona for his purpose.

Mr. MCCAIN. I just say to my colleagues that after the 1 hour 15 minutes that has just been agreed to on the other side of the aisle, I intend to offer a tabling motion at that time. No matter what happens to that motion, then we would like to proceed to an amendment on this side which would be that of Senator GREGG. And then, following disposition of that, whether that is agreed to or not, we would then go to the Senator's side, back and forth, as we have.

Also, if my friend from Massachusetts will indulge me, I ask unanimous consent that a letter from the National Association of Convenience Stores be printed in the RECORD, part of which says:

NACS, the National Association of Convenience Stores, is very pleased that we have reached an agreement with your committee and others involved in the process and NACS will not object to the Senate's passage of S. 1415.

So, obviously, the National Association of Convenience Stores have a different view of this legislation than the Senator from Missouri.

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

NACS,

Alexandria, VA, May 18, 1998.

Hon. JOHN MCCAIN, Chairman,

Hon. ERNEST F. HOLLINGS, Ranking Member, Committee on Commerce, Science, and Transportation, Dirksen Senate Office Building, Washington, DC.

DEAR SENATORS MCCAIN AND HOLLINGS: The National Association of Convenience Stores (NACS) is writing to express our thanks and appreciation for addressing our primary concerns surrounding the "National Tobacco Policy Youth Smoking Reduction Act," (S. 1415) which is being considered this week.

As you know, NACS first expressed opposition to S. 1415 because it would have given FDA expansive authority to prohibit tobacco sales by specific categories of stores. This authority was so broad, that many small businesses, who have themselves had no record or history of unlawful sales to minors, could lose the ability to sell a legal product. Our second concern was that the legislation would exempt certain tobacco retailers from all point-of-sale restrictions thereby placing traditional retailers, such as convenience stores, at a serious competitive disadvantage.

Over the last several weeks we have had an opportunity to meet with your respective staffs and discuss alternatives to these issues while also ensuring that we reach our common goal—reducing underage consumption of tobacco by minors. NACS is very pleased that we have reached an agreement with

your committee and others involved in the process and NACS will not object to the Senate's passage of S. 1415. NACS will also communicate this message to all our members as well as allied trade associations that have expressed similar concerns.

Thank you again for your willingness to work with our industry on these very critical issues.

Sincerely,

MARC KATZ,

Vice President, Government Relations.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 2422

Mr. KERRY. Mr. President, we have now been listening for a number of hours to the fundamental arguments in opposition to the amendment by the senior Senator from Massachusetts. Before yielding to colleagues who are not at this moment here, let me take a moment to say a few words about it.

I think any individuals listening to this debate, if they are not aware of some of the history of the Senate or the history of how issues fall on either side here, might say, gee, that is a pretty good point.

The Senator from Missouri suggested that this is a big price increase, and it is going to hurt the poor. I simply ask those listening to this debate who measure these things to think about the history of who has defended the poor people and who has defended the interests of the working families of this country.

It would be absurd to suggest that the senior Senator from Massachusetts, who has been the champion of the minimum wage, the champion of health care for children, the champion of education for people who don't have access to it, who has consistently fought to protect the interests of working families and of the poor, is somehow now doing something that is totally contrary to those years of commitment and record.

Yesterday evening, the Senator from Missouri held up a chart of all of the tax increases that have passed in recent years in the Senate. It is interesting, because if you look at every one of those tax increases, there was an enormous difference, like night and day, between who was protected by Senator KENNEDY and the Democrats on this side of the aisle and who was protected by the Republicans.

That is not the debate today. I don't want to go back through that entirely, except to say that the record is absolutely clear that in every one of the tax proposals of our friends on the other side of the aisle, people at the upper-income level made out better, and it was Senator KENNEDY and Democrats and others who fought to protect the working American. It was only after our efforts in the major budget agreement of last year that a single mother earning \$40,000 managed to get even some tax benefit, and that tax benefit went from zero to \$1,000 because we stood up and fought for that person.

That is not the fight today, except, Mr. President, to the degree that we are talking about where some people are coming from. We are talking about the lives of children. That has been lost in all of the debate over the last 3½ hours. We are talking about the lives of America's children. We know to a certainty that 6,000 kids will try cigarettes every single day, 3,000 of those kids will continue to smoke, and 1,000 of those children will die early as a consequence of a tobacco-related disease. That is what we are talking about on the floor of the U.S. Senate.

It is an insult to suggest that the parents of working families or the parents of the poorest people in America don't care as much about their kids having access to tobacco as other families. It is an insult to suggest that they are happy with the charts that show over the last years, there has been an 80-percent increase among black and Hispanic, people of color, an 80.2-percent increase in their use of cigarettes in 1991, and in non-Hispanic and nonblack, it has only been 22 percent. Why is that? I will tell you one of the reasons why, because the tobacco companies specifically targeted low-income communities. They went after them.

It is a sad part of the history of this entire effort that we now know, as a result of courageous attorneys general around the country who have sued the tobacco companies, who have gotten documents from the tobacco companies, we now know specifically about this targeting. We know that they targeted young people. They specifically set out to create addicts. What this debate is about is how you stop that. How do you get kids to stop smoking? How do you keep them away from cigarettes?

Again and again, in the last 3½ hours, we have heard Senators say, "Oh, all it is going to do is raise the price. Why aren't they doing" this; "Why aren't they doing" that; "No cessation programs, no research." That is not true. That is just not true, Mr. President.

The fact is that in this legislation, there are a number of things that take place—cessation, research, counter-advertisements, penalties, licensing to restrict youth access. It is unlawful for kids to buy the cigarettes, to possess the cigarettes. There is a lot of the strengthening of the law with respect to those things that will make a difference in kids' lives.

One other thing also makes a difference, Mr. President—how much it costs. Sure, kids spend 100 bucks, 150 bucks sometimes on a pair of sneakers, whatever, but it is usually not a cash transaction. It is usually a very specific transaction where parents have helped them to be able to do that. It is the cash they have in their pocket. It is the pocket change, pocket money, whatever they can scrounge up that

they spend on something like a cigarette that they are not allowed to buy, and most of their parents don't want them buying. If the price goes up, their disposable income is less available to buy cigarettes.

We know this. This is not conjecture, as has been alleged. This is known as a matter of a number of studies, all of which show that for every 10-percent increase in the price of a pack of cigarettes, youth smoking will drop by about 7 percent.

So the 40-cent difference that we are talking about in Senator KENNEDY's amendment is not just 40 cents. It is not just money. It means that 2.7 million fewer kids will become regular smokers, and that about 800,000 or so over a period of years will not die as a result of that. That is what we are talking about. We are talking about lives here.

It is a matter of fact, also, that Dr. Koop and the Koop-Kessler commission and the Institute of Medicine have actually recommended an immediate \$2 increase. I just ask anybody in America: Who do you believe? Do you believe Dr. Koop, the former Surgeon General of the United States, who had the courage to talk about these issues to the Nation, or do you believe the advertisements of people who have an interest of making millions and millions of dollars in the same way they have over the years, people who were willing to lie and lie and lie to the American people about what the impact was, even when they knew what the impact was; people who are willing to target our children and say, "This is the next generation of smokers. We have got to suck them in. We have got to get them addicted."

That is the fight on the floor of the U.S. Senate—who is going to protect our children and who is willing to let the companies off the hook?

The fact is the studies show that if you raise the price—now, is raising that price a little bit tough on some working folks who buy the cigarettes? The answer is yes. I am going to be honest about that. But you know, it is a lot tougher when their kid gets cancer, and it is a lot tougher when the country has to pick up the costs of 400,000 people a year dying as a result of this addictive substance.

It is a known fact that 86 percent of all of the people who smoke started when they were young, they started as kids. So if you want to reduce the cost of our pulmonary sections of our hospitals, if you want to reduce the cost of kidney-related tobacco diseases, or heart diseases, emphysema, cancer, the way you reduce the cost is by reducing the number of people who have access to it.

Now, isn't it strange, in Europe, even after we raise the price, it will still cost more for a pack of cigarettes in European countries than here? What do they know that we do not know? It

seems to me that we ought to be responsible in this effort.

I know my colleagues are here now and want to speak. There is more to say. But I will reserve that time. I want to give them ample opportunity to be able to speak.

I yield 10 minutes to the Senator from Rhode Island and after that, portion it out.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Rhode Island.

Mr. REED. Thank you, Mr. President.

I thank the Senator from Massachusetts for yielding me time.

Yesterday, I had the privilege of attending a meeting, along with my colleagues, Senator KENNEDY, Senator CONRAD and Senator LAUTENBERG, with C. Everett Koop. And Dr. Koop had the right prescription for this aspect of the legislation. His prescription was quite simple: raise the price per pack by \$1.50. As the preeminent public health official in this country, indeed in some respects America's family doctor, I believe his advice should be taken to heart by this body and we should move to support this amendment by Senator KENNEDY.

I am a very proud sponsor of this amendment. Indeed, this is not a radical departure. Two committees of the Senate have already passed this amendment—the Senate Finance Committee and the Senate Budget Committee. They have done so on a bipartisan basis.

So what is at stake here is reaffirming and confirming what has been done already, what has been advocated by public health officials; and that is to raise the price per pack by \$1.50.

Study after study has confirmed the fact that this will make an important impact on the rate of teenage smoking. But these studies are less dramatic than the words of people who probably know best the effect of price and consumption with respect to tobacco products—the wards of the industry itself.

In 1981, a Philip Morris internal document stated, and I quote:

In any event, and for whatever reason, it is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the Federal excise tax on cigarettes.

That is not Dr. Koop. That is not the proponents of this amendment. That is the tobacco industry, coolly, carefully assessing what price does to teenage smoking. And it reduces it.

In 1987, another Philip Morris internal document lamented a decline in youth smoking caused by price increases, their price increases. The document stated:

We don't need to have that happen again. So if the industry understands what will be affected by a price increase, we should understand also. But as I have indicated, research

findings from various sources confirm the fact that a price increase will affect dramatically, decisively, and positively the decline of teenage smoking.

In listening to this debate, one is struck by the different approaches one could take to the goal of reducing teenage smoking. I think there are just two basic ways you can do that. First, if we are really sincere about reducing teenage smoking, we can create an elaborate regulatory bureaucratic structure with agents in every community who would monitor teen smoking, with reports that would go back and forth about teen smoking, with supervision of the distribution network, and all sorts of ways to do it. Or we could use the market—the most efficient device created by humanity to allocate goods and services—we could use the market.

That is what this amendment proposes to do. It simply says, if we raise the price of cigarettes, we will cause a decline in teenage smoking—efficiently, dramatically, and effectively.

So I argue, if anyone is a believer in the affect of the market on behavior, if anyone believes that price makes a difference—and I think that is the credo of both parties, but certainly the Republican Party—you would be in favor of a market-oriented approach like this to curtail teen smoking.

The only other alternative is that we are really not talking about curtailing teen smoking on the floor today; we are talking about something else. But if you believe that we are here to reduce teenage smoking, and you believe that the market can work wonders in terms of allocated goods and services, you should be supporting this amendment.

Now, as I indicated, the evidence is replete from many different sources of this effect. Reports from the Institute of Medicine's National Academy of Sciences, the National Cancer Institute, the Department of the Treasury, the Surgeon General—all these indicate the correlation between price increases and reduced teenage smoking.

A National Bureau of Economic Research study in 1996 found that young people were three times as sensitive to cigarette prices as older smokers.

A 1997 study in Tobacco Control found a strong relationship between cigarette prices and youth smoking, with each 10-percent increase in price resulting in a 9-percent reduction in youth smoking.

In its 1998 report, "Taking Action to Reduce Tobacco Use," the Institute of Medicine of the National Academy of Sciences concluded that:

*** the single most direct and reliable method for reducing consumption is to increase the price of tobacco products, thus encouraging the cessation and reducing the level of initiation of tobacco use.

A National Cancer Institute expert panel in 1993 reported that "a substantial increase in tobacco excise taxes

may be the single most effective measure for decreasing tobacco consumption," and they also concluded that "an excise tax reduces consumption by children and teenagers at least as much as it reduces consumption by adults."

The 1994 Surgeon General's report, likewise, indicated a real price increase would significantly reduce cigarette smoking.

All of this data, all of these studies, come to the same conclusion: If we want to reduce teenage smoking, if we want to use the efficient allocation mechanism of the market, we should raise the price to a significant level—\$1.50 per pack.

Now, all of these experiences are academic. We can have a battle of reports and analysis back and forth here. But we have a real-life example:

In Canada, between 1979 and 1991, when real prices increased from \$2.09 to \$5.42, smoking rates among young people 15 to 19 years old fell from 42 percent to 16 percent while overall consumption of tobacco products also declined—a huge decrease.

Now, this was a big sample, the country of Canada. Real price increases and real dramatic results in decreasing teenage smoking. And we have to do this because we all know and we all recite repeatedly the statistics: 50 million Americans addicted to tobacco; 1 out of every 3 of these individuals will die prematurely from tobacco-related diseases; three-quarters of them want to quit smoking, but they cannot because it is an addictive substance.

The conclusion they have come to and we should is it is better that they never start. It is better that we take steps to curtail teenage smoking when there is a chance to divert a young person away from this addiction. We know that over 90 percent of smokers started before they were 18—again, a clarion call to us to take action to protect the youth of this country.

Each year, 1 million children become regular smokers. And, as I said, one-third of them will die prematurely. There are 5 million kids under 18 currently alive today who will die from tobacco-related diseases across the country.

It is disturbing, in my home State of Rhode Island, while smoking levels have flattened out with respect to the overall population, high school students seem to be smoking 25 percent more than they were just a few years ago.

We have to act now. We have to use the most decisive tool we have, and that is price increases, to affect the behavior of young people so that we will not see them needlessly die from tobacco-related diseases.

I support wholeheartedly and enthusiastically the effort by my colleagues to ensure that we have an increase that will do the job, that will have an effective way to curtail teen smoking.

With that, I yield back my time to the Senator from Massachusetts.

Mr. KERRY. How much time did the Senator from Rhode Island consume?

The PRESIDING OFFICER. There is a total time of 54 minutes 20 seconds remaining.

Mr. KERRY. I yield 10 minutes to the Senator from Florida.

Mr. GRAHAM. Thank you, Mr. President.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent Miss Susan Goodman of my staff be accorded floor privileges during the consideration of S. 1415.

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

Mr. GRAHAM. Mr. President, we have just been subjected in the U.S. Senate to what I think could appropriately be described as a filibuster—4 hours of wandering discussion on an amendment that is now before the Senate.

During those 4 hours of that filibuster, 500 American youth under the age of 18 commenced their first use of tobacco products. One-third of those 500 American youth during that 4-hour filibuster who started to use tobacco will die, die prematurely of a tobacco-related affliction.

I have heard as I walked through the Chamber during this 4 hours mocking comments: Does anybody believe that we are really here to try to reduce teenage smoking? Does anybody really feel we are here to reduce teenage smoking? The answer is yes, we are here to reduce teenage smoking. That is the only legitimate reason that we can be here. Anyone who does not start their debate by a clear statement of their commitment to that objective has debased this national debate about the future of tobacco and the youth of America.

In 4 hours, 500 American youth have taken up smoking. Since May 20 of 1997, 1 year ago, the number is 1,095,000 American youth under the age of 18 have taken up the use of tobacco, and 365,000 of those American youth who have taken up tobacco in the last 1 year will die prematurely of a tobacco-related affliction. It is to them that this debate is directed.

Mr. President, the best public health advisers available to us have recommended that we set as a goal a 65-percent reduction in teenage smoking over the next 10 years. That is a challenging goal, but it is an attainable goal. It is a goal which is going to stretch us in the political community. It is going to stretch those in the health, the education, and especially the families of America to their best in terms of beginning to attack this scourge which, as my colleague from Rhode Island has just indicated, is a growing scourge of teenage smoking.

I believe that an important part of achieving that goal of a 65-percent re-

duction is to raise the price of cigarettes to as high a level as can be achieved without inducing other negative consequences, and to do that as quickly as possible. For that reason, I am a cosponsor of this amendment which would raise the price to what has been recommended by the public health community, \$1.50 per pack, and to do so in 3 years. This is consistent with legislation which I have cosponsored with Senators CHAFEE and HARKIN.

It is not the only thing we need to do. We also need to have a comprehensive attack against teenage smoking. That comprehensive attack needs to include weapons such as restrictions on marketing and promotion—no more Marlboro Man, no more Joe Camel, appealing to our young people. It needs to include effective cessation efforts in the schools through public methods of communication. It needs to include look-back provisions which will surcharge the industry and individual companies if they fail to meet the nationally established goals for reduction of teenage smoking. All of those are important.

But the reality is that the single most important part of achieving the goal of a 65-percent reduction in teenage smoking is to get the price to as high a level as reasonable as quickly as possible. The best estimates are that 85 percent of the effectiveness in terms of reducing teenage smoking will come through monetary means. The other 15 percent will be the softer, more psychological efforts at education and restraint on promotion and advertising.

It is appropriate that we should be using the monetary means as the principal force to achieve the goal of a 65-percent reduction. Some of those who have spoken, either spoken directly or spoken through the form of very elongated questions, have inferred that there is something wrong with inserting the economic component into this debate. The fact is, there already is a substantial economic component.

As Members know, four States, including my own, have reached very significant settlements with the tobacco industry, in which the industry essentially admitted that their costs in terms of cost to treat people with addictions related to their use of tobacco are in the billions of dollars. This is not a cost-free decision if we do nothing. If we do nothing, we accept the fact that we will continue having the American taxpayers pay these enormous annual costs to treat the illnesses of people who have been induced to smoke tobacco.

It is also appropriate in this era of free-market economies, where we are looking to laws such as supply and demand rather than laws of regulation as a mean of affecting human behavior, that we insert as the cornerstone of this legislation a significant economic

disincentive for people to utilize to-bacco products, a disincentive which we know will have its primary effect on younger smokers, smokers to whom discretionary income is more limited, smokers who are less physically addicted to the use of tobacco.

Mr. President, for those who will oppose this amendment, I issue this challenge. If you are not prepared to accept the goal of a 65-percent reduction in teenage smoking, then what is your goal and why are you prepared to support a lessened goal, recognizing that every percentage point below 65 percent means that you are consigning thousands of American young people each year to the scourge, the cost, the social issues related to the use of tobacco, and one-third of those who start the process will end up dying prematurely because of a tobacco-related affliction?

If you are not prepared to accept the 65-percent goal, defend an alternative. If you accept the 65-percent goal but are unwilling to accept those things which are necessary to achieve it, then what is your alternative? What will be the additional items that you will substitute for what the best experts in the public health community say is required to achieve that 65-percent goal?

We know that some of those non-economic factors are already under assault, such as the promotion in advertising. So it becomes even more important that we adopt the amendment, as offered by Senator KENNEDY and others, which will raise the price to the \$1.50 level.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. GRAHAM. Also having expired during that 10 minutes I have been speaking, have been 41 American youth who have taken up smoking during the time I have been speaking; 14 of those will expire prematurely because of tobacco-related affliction. It is to them that this debate and this issue is dedicated.

Mr. KERRY. Mr. President, I yield 7 minutes to the Senator from North Dakota.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I have heard a lot of misinformation on the floor of the Senate this morning. I heard the Senator from Texas talk about an opinion piece in the Washington Post this morning saying that if this \$1.50 a pack were passed, we would have a massive black market. The Senator failed to point out who wrote the opinion piece. That opinion piece, which I cited as being written by a Mr. Nick Brookes, was in fact written by Mr. Nick Brookes. But who is he? He is the chairman and chief executive officer of the Brown & Williamson Tobacco Corporation. Well, there is a credible source on this issue.

It didn't end there. I heard another of my colleagues suggest this morning that what has happened here is going to lead to a \$3 increase in the price of a pack of cigarettes, even though the proposal is to add \$1.50. How does that turn into \$3? It is magical. They don't really explain it, but they say that the \$1.50 that would be imposed by this Chamber all of a sudden turns into \$3. Do you know whom they cite as an expert? It is fascinating whom they cite as an expert. They cite Salomon SMITH Barney. They cite their analyst.

It is very interesting to check the records on Salomon Smith Barney and see what they might have in the way of tobacco holdings. Do you know what you would find out? Salomon Smith Barney and the other source they have talked about this morning, Sanford Bernstein, together, own over 50 million shares of stock in the two top tobacco firms. Salomon Smith Barney owns 16 million shares of Philip Morris, 3 million shares of RJR. Sanford Bernstein, the other analyst quoted here, owns 30 million shares of Philip Morris, and they own 13 million shares of RJR. Do you think they are an objective observer here? I don't think so. I think they have a lot at stake financially in the outcome of this debate, and they are trying to influence that debate with this hocus pocus analysis—hocus pocus that turns a \$1.50 price increase magically into a \$3 price increase. It is nonsense.

The Treasury Department says that a \$1.50 price increase translates into—surprise of all surprises—a \$1.50 price increase. The FTC says a \$1.50 price increase translates into a \$1.50 price increase. Dr. Harris at MIT, perhaps the most objective independent observer—out of Government, out of industry—says that a \$1.50 price increase translates into a \$1.50 price increase.

Mr. President, the question of whether or not raising prices will reduce consumption is a very simple matter. There isn't an economist in America who would tell you that if you raise the price of something, the consumption won't fall. Every economist understands that basic rule of economics. The experts all agree that youth smoking will decline as prices increase. Dr. Chaloupka, who has done perhaps the most thorough study of all of the studies, concluded that a \$1.10 price increase would lead to a 32-percent reduction. Dr. Chaloupka's work says that it will lead to a 33-percent decline in usage, and the \$1.50 will lead to a 51-percent decline in usage. Those are estimates by economists.

We don't need to just look to economists, we can look to the public health community. Here I have a letter from Dr. Koop and Dr. Kessler, perhaps the two most credible sources on these questions. Dr. Koop, of course, is a former Surgeon General of the United States who served under a Republican

administration, and Dr. Kessler is a former head of the FDA who served under a Republican administration and a Democratic administration. They say \$1.50 a pack. The American Lung Association says \$1.50 a pack. The American Heart Association says \$1.50 a pack. The American College of Cardiology says \$1.50 a pack. The American Academy of Pediatrics says \$1.50 a pack. Those are the public health groups. They have weighed in and they have made clear that is what we ought to do.

But if you don't believe the economists, if you don't believe the public health community, maybe you ought to listen to the New York Times, what they have said. They have said in an editorial this morning that you ought to go to \$1.50 a pack. It is right here. The New York Times of this morning:

The bill, drafted by Senator McCain and approved by the Senate Commerce Committee, would raise cigarette prices by \$1.10 * * * That amount should be increased to at least \$1.50 per pack, which public health experts estimate is needed to cut youth smoking * * *

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CONRAD. I ask for an additional 2 minutes.

Mr. KERRY. I ask unanimous consent to add 5 minutes total time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. KERRY. I yield 2 more minutes to the Senator from North Dakota.

Mr. CONRAD. Mr. President, if you don't want to listen to any of those folks, how about listening to the industry itself. This, I think, is dispositive on the debate. This is exhibit 11591 from the Minnesota trial. Myron Johnston, Philip Morris. Subject: Handling and excise tax. These are the industry's own words:

The 1982-83 round of price increases prevented 500,000 teenagers from starting to smoke * * * those teenagers are now 18 to 21 years old. This means that 420,000 of the non-starters would have been Philip Morris smokers. We were hit hard. We don't need that to happen again.

Mr. President, if there is any question in any Senator's mind as to whether or not increasing prices will reduce youth smoking, here is what the industry says, based on history. They say in 1982-83 when excise taxes were increased, 500,000 teenagers were prevented from starting to smoke. Those are the industry's own words. If you don't believe any of that, Mr. President, here is the experience in Canada. The price went up, youth smoking went down. The relationship is as clear as a bell.

So the question before this body is, Whom are we going to protect? Are we going to protect the lives of kids, or are we going to protect the profits of the industry? This analysis shows that if we go to \$1.50, 2.7 million kids are

going to be prevented from smoking. That means 800,000 lives will be extended and perhaps saved.

The industry says, well, it will bankrupt them. Here are the facts. If we go to a \$1.10-per-pack price increase, their profits in 2003 will be \$5 billion, according to the Treasury Department. If, instead, we go to a \$1.50, their profits will be \$4.3 billion. So the choice is clear—800,000 lives or \$700 million in industry profits. That is the question before this Chamber. Do we save 800,000 lives of kids, or do we protect \$700 million of industry profits?

Mr. KERRY. Mr. President, I thank the Senator from North Dakota. I particularly thank him for his leadership on this issue.

I yield 5 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I am delighted to be here today to support this important amendment offered by Senators KENNEDY, GRAHAM, HARKIN, and others. I have worked closely with Senators BOB GRAHAM and TOM HARKIN for the past several months on the issue of a comprehensive tobacco bill. We came to one inescapable conclusion, which has been voiced by the Senator from North Dakota and a host of others this afternoon: A steep increase in the price of tobacco products over a short time is the single most important thing we can do to reduce tobacco use among children, or to deter them from taking up smoking.

How did we come to this conclusion? Well, Mr. President, we listened to the experts. Who are the experts? They are economists, public health researchers, and even tobacco industry officials. They have all concluded that price increases dramatically reduce smoking among children.

When I say experts, who am I talking about? Mr. President, there are plenty to choose from. The Institute of Medicine, the National Academy of Sciences, the National Cancer Institute, U.S. Department of Treasury, and U.S. Surgeon General have all documented the fact that increases in tobacco prices have been shown to decrease tobacco use among children.

Furthermore, Mr. President, economists from the Massachusetts Institute of Technology, University of Illinois at Chicago, University of Michigan, among others, have found a strong relationship between cigarette prices and youth smoking. Cigarette prices go up, youth smoking declines; cigarette prices go down, youth smoking increases. These institutions that I ticked off are hardly fly-by-night institutions.

If we doubt the expertise of these groups, why don't we take a look and see what the tobacco industry has said. I know the Senator from North Dakota has some quotes from the tobacco in-

dustry. I would like to supplement those with others.

In 1981, the Philip Morris documents show that company officials said the following:

"Since youth and young adult price elasticity are much larger than adult price elasticity"—in other words, the relationship between price going up, consumption down; price down, consumption up; those are what we call elasticities—"while adult smokers account for the bulk of cigarette sales, a substantial excise increase would substantially reduce smoking participation by young new smokers, but leave industry sales largely unchanged."

In other words, it is the young people who decline. The old people, it does not affect them. That is a Philip Morris official saying that.

Mr. President, the evidence is clear. The most effective thing we can do to prevent our children from taking that first deadly cigarette is to increase the price quickly and steeply.

I urge my colleagues to join me in supporting the Kennedy amendment.

I thank the Chair. I thank the floor managers.

Mr. KERRY. Mr. President, I thank the Senator from Rhode Island. He has worked on these issues for a long time. I think his voice is one of both reason and enormous credibility.

I yield 6 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President. I thank our friend for yielding this time. I thank the Senator from Massachusetts for his leadership on this, and the senior Senator from Massachusetts for offering this important amendment.

For those of you following this debate who are wondering what is happened here, we are 4 hours behind where we were supposed to be. There was a minifilibuster on the floor here when the Senator from Missouri took the floor and slowed us down. So we will have a backlog of amendments with the Memorial Day weekend coming in the hopes that we will not finish this bill. This is a time-honored Senate tradition. You have seen it earlier on the floor. We are now 4 hours late.

I have an important amendment to offer, and I hope to offer it today. And others want to do the same. I say to those who are joining in the minifilibusters that the clock may be on their side but history is not. They are on the wrong side of history in supporting the positions of the tobacco companies.

Pick up the morning paper and take a look at what the tobacco companies are telling Americans about why they oppose the McCain bill, and why they believe the legislation we are considering on this floor, which would increase the cost of a pack of cigarettes

to reduce the number of children smoking, the tobacco companies say that is wrong. Are the tobacco companies credible?

Exhibit A, photograph A, eight tobacco company executives, 4 years ago standing before a House committee, under oath swearing that tobacco is not addictive. I rest my case about their credibility.

There are three issues for us to consider here in this debate.

The first, will price increase reduce teen smoking? It has been shown and needs to be shown again. We have a living example in Canada. As the price of the product went up, children smoking went down. We know that kids have less disposable income. You raise the price of the product, a few of them will say, "I don't think I can afford this habit."

That is what we are driving at. The experts come along and tell us that is right.

We have a statement from Frank Chaloupka, Associate Professor of Economics at the University of Illinois at Chicago who says: "Based on this research, I estimate that a \$1.50 increase in the federal cigarette tax"—Senator KENNEDY's bill, which I support—"implemented over 3 years and maintained in real, inflation-adjusted terms, will cut the prevalence of youth smoking in half."

Will price increases reduce teen smoking? Clearly they will.

Second is a \$1.50 price increase better than \$1.10? It is a reasonable question to ask. I think we can see what happens when we deal with an increase of \$1.50 over \$1.10.

Take a look at this chart. If we had no change in the cigarette tax, this is basically what would occur. We would expect the same prevalence of smoking. If we had a change of a \$1.10 increase in the cost of cigarettes, we can see a 34-percent reduction in the number of young people who are smoking. Now, take a look at \$1.50. The conclusion is obvious; a 56-percent reduction.

So as we increase the price of the product, children stop using it, not only in economic models, but in our historical experience in Canada.

The third question is this taxpayer. That is a legitimate question.

I will concede that the opponents of this tobacco legislation say that this tax will necessarily hit lower-income Americans the hardest because they smoke the most. There are a lot of explanations for that, not the least of which is the tobacco industry, which over the years has really targeted those folks. Go into any inner-city area in America and take a look at the billboards and you will see block after block of alcohol and tobacco advertising. They believe that these folks and that income category are more vulnerable to become addicted to tobacco products. They have been successful in luring them.

So we can tax the product and it will necessarily hit those in the lower-income category. Is it fair for us to tax it? We generally asked Americans what they thought of this idea. I think you might be interested in the results. When a poll was done, this poll was done by a national organization paid for by the American Cancer Society and released a few days ago. The results are that a majority, 59 percent of Americans, favor a \$1.50-per-pack increase, Senator KENNEDY's proposed increase, while only 39 percent oppose.

When they were asked what would you do with the money that is raised, what do you think is a reasonable thing to do with these new tobacco revenues, they said additional health research on cancer, heart disease, and other tobacco-related illness.

That is in this bill. That is exactly what we are setting out to do: 82 percent to fund antitobacco education programs—they think that is a good idea—81 percent, programs that are directed toward children to get them to stop smoking.

So you see what we have here is an attempt to slow down the debate on an important piece of legislation that is literally historic.

Eleven years ago, the Senator from New Jersey, FRANK LAUTENBERG, and I embarked on a little project. I was a Member of the House at the time and he was here in the Senate. The two of us introduced and successfully passed legislation to ban smoking on airplanes. It was the first time the tobacco lobby lost on the floor of the House and the Senate in history. I was proud to be a part of that partnership with Senator LAUTENBERG, and am happy to serve with him today and to be part of this debate as well.

How far we have come. Let us not miss this historic opportunity to pass the Kennedy amendment to make certain that the \$1.50 increase will truly reduce the number of kids smoking to make certain that the goal of this legislation to protect our children is one that is served. The tobacco companies have spent billions of dollars to lure and addict these children. Do we have the courage on the floor of the Senate to beat back the filibuster and to muster the votes to protect those children and their families? I think we do.

I rise in strong support of this legislation. I hope my colleagues will join me in voting for it.

I yield the remainder of my time.

Mr. KERRY. Mr. President, I thank the Senator from Illinois for his extremely articulate and compacted comments. I think it is the House training that permits him to come over and do that.

Mr. President, I yield 8 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Thank you, Mr. President. I thank the distinguished

Senator from Massachusetts for allowing me part of the time in the remaining minutes for the debate on this amendment.

Mr. President, I want to say, first, just a quick note to my colleague now in the Senate, formerly in the House, Senator RICHARD DURBIN from Illinois, that at the time we worked on the smoking ban in airplanes, it looked like a hopeless quest. Everyone said, "You will never get it by." We worked, we pleaded, we cajoled, and we tried everything that we knew.

But the odds on the other side were formidable against us. And finally we were able, through consensus, to develop a bill that took a 2-hour ban on smoking in airplanes with the promise that after a study of about 18 months we would reconsider and look at what the consequences were.

Well, it was overwhelmingly popular across the country. People began to demand that we stop smoking in airplanes altogether. Some said, "How can you suggest that a 2-hour ban is all right but a 4-hour plane ride is full of smoke?"

And so it was by popular demand that we were able to get that kind of a ban in place. And I remind my friend and colleague, Senator DURBIN, in April, the month just closed, we had the 10th anniversary of the implementation of the smoking ban in airplanes. I can tell you, if there is one thing that gets you an applause line when you are doing a town meeting or meet in front of a group, when you say you were part of the authorship of the smoke ban in airplanes, people say thank you, thank you, thank you, and tell you tales about not being able to fly before, having respiratory problems, asthma, you name it, could not get in an airplane, and today they feel as if they have been freed.

Well, it is the same thing here. This debate, frankly, I must tell you, Mr. President, borders at times on the silly. We have to make a decision here about what we are going to do about protecting the health of our people from the ills caused by tobacco and nicotine. And we have come to a conclusion, a sad conclusion, that we cannot change the course of action. I say this, and I say it with terrible regret. We cannot change the habits of some 40 million-plus Americans who are addicted to tobacco and nicotine.

How they got started is a debate of and by itself, whether it was like it was with me in the Army when they used to give us in our emergency rations, in case we got separated from our units or had to depend on that for our sustenance—you always had a four-cigarette pack that you could call on in the event of an emergency when you needed a smoke. People were always waiting for the smoking lamp to go on so that they could smoke. It was encouraged. It was part of our psyche.

I can tell you also, as one who smoked for 20-some years, that stopping was no easy chore. It is not easy for the 40-plus million Americans who are hooked, stuck, can't get out of the tobacco habit. I haven't yet met anyone who smokes who hasn't said to me: You know, I stopped a dozen times. I once stopped for 3 weeks. I once stopped for 4 weeks. And then my brother had the car accident. Or, my team lost on the baseball diamond and we all started smoking and sitting around and moaning—here we are, can't get away.

But we can get away from it if we help our children not to start smoking in the first place, if we can stop them before they take the first puff, the second puff, or the 20th puff on a cigarette, because we know that the hook takes like that, like a fish after bait. And that is what the tobacco companies are doing. They are trolling. They are fishing with bait for more smokers.

They now have a campaign on, a campaign to deceive the American people, a campaign to say that they are just another business and that all these jobs of the people who work in the tobacco industry will be lost and the taxes will be lost. And meanwhile, what they do we wouldn't accept from anybody offshore who wanted to attack our America, kill 400,000 people a year, maim lots of others, render them at times unable to conduct their normal activities, lost productivity from their jobs, et cetera, and get a tax deduction besides—besides all other things, to be able to deduct the cost of addicting people, seducing children. It is an outrage.

Part of the campaign now is very interesting. I get mail, as we all do, from constituents. I have a letter here from a fellow named Jack McDonnell, Rutherford, NJ, which, by the way, is also the home of Tom Pickering, Deputy Secretary of State, a great diplomat.

Mr. McDonnell writes:

My family received a letter today from the RJ Reynolds Tobacco Company. The letter was addressed to my mother, and requested that she write to you protesting the proposed tobacco legislation . . . Unfortunately, she could not respond herself. She died this February after a long and horrible struggle against emphysema. My father, another ex-smoker, has been diagnosed with terminal lung cancer. My family understands the real costs involved here, and the cost of smoking far exceeds the costs of this legislation.

Now, what happened is the tobacco companies—and the companies I will read off here include Brown & Williamson Tobacco Company, Lorillard, Philip Morris, Inc., RJ Reynolds Tobacco Company, United States Tobacco Company. They send a letter out to people and they write:

Dear Mr.—

In this case, Robert Martin—

Since you registered your support for the proposed resolution reached last year between the tobacco industry and Government

officials, private plaintiffs' lawyers, and members of the public health community, Washington has decided to press an agenda based on politics.

Politics, not reason.

Washington has been overtaken by politicians' insatiable desire to tax and spend.

Not by the insatiable desire of a mother and father to save the well-being of their child, not in terms of families who want to keep the family together and do not want to see grandpa with emphysema when he gets to be an age when he could still be functioning normally. No; they describe the insatiable appetite of the politician.

Well, Mr. Martin writes to me. They gave him a postcard to which he could affix a signature and send it to my office. And it says:

DEAR SENATOR LAUTENBERG: I strongly urge you to oppose any tobacco legislation that raises taxes, produces a black market in cigarettes, threatens nearly 2 million American jobs and expands the Federal bureaucracy.

Reject these things. And it is signed with his name. He wrote underneath that postcard. He sent me a sample of the postcard.

DEAR SENATOR LAUTENBERG: I received this item in the mail. As you can see, I was polled over the telephone by a machine. The material given over the phone was very misleading the way that it was presented. I am against smoking and like to see it abolished. I am a lung cancer survivor. Keep up the good work.

And it carries the signature of Bob Martin. He says:

If there is anything that I can do to be of help, please call.

And he lists his phone number.

So that is the kind of campaign that is going on with these tobacco companies, designed to deceive the public that this is a major kind of public interest campaign that the citizens are rising up against. Let them tell the real story. Let them talk about the 400,000 deaths. Let them talk about the lung disease.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LAUTENBERG. If I could have 1 more minute, please.

Mr. KERRY. Mr. President, I yield to the Senator an additional minute.

Mr. LAUTENBERG. We have to get on with the task of passing the \$1.50-per-pack fee. I point out to you, Mr. President, and those who can see it, that the price of cigarettes in major industrial nations is quite a bit different than we have here in the United States: Norway, \$6.82 a pack; Denmark, \$5.10 a pack; United Kingdom, \$4.40. Down we get to the U.S.A., with a current price of about \$1.94.

We know one thing, Mr. President. We have heard it in testimony and statements given by colleagues in the Chamber that the way to stop teen smoking most abruptly, to give them a jolt so that they will bolt, is to raise

that price and raise it quickly and sufficiently. And \$1.50 a pack will do it. With the \$1.50 a pack, we can see substantial reductions in the number of those who start smoking. And I hope that when the votes are counted here, people will look and see how their Senators voted to see whether or not they are going to stay with the tobacco companies or whether they are going to stay with the families and protect the children who will be dependent upon tobacco in the future.

The PRESIDING OFFICER (Ms. COLLINS). The Senator's time has expired.

Mr. LAUTENBERG. I yield the floor.

Mr. KERRY. Madam President, I believe I have about 20 minutes left; is that correct?

The PRESIDING OFFICER. There are 18 minutes 16 seconds remaining.

Mr. KERRY. I appreciate that. I yield 5 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. CONRAD. Madam President, one of the key issues before this Chamber is the credibility of the industry. The industry has a long history here of telling us things that just aren't so. I think we can all remember when the industry executives came before Congress, and, under oath, told the U.S. Congress a series of things. One of the things they told us is: "Tobacco has no ill health effects."

This is from the industry's own documents, which is a reflection on that claim. This is a 1950s Hill & Knowlton memo quoting an unnamed tobacco company research director who said:

Boy, won't it be wonderful if our company was the first to produce a cancer-free cigarette. What we could do to the competition.

The second claim by the industry has been that nicotine is not addictive. Again, looking at their own documents, this is a 1992 memo from Barbara Heuter, director of Portfolio Management for Philip Morris' domestic tobacco business.

Different people smoke cigarettes for different reasons. But, the primary reason is to deliver nicotine into their bodies. . . . Similar organic chemicals include nicotine, quinine, cocaine, atropine, and morphine.

These are not my words. These are not the words of the public health community. These are the industry's words. And it doesn't stop there.

Tall tale No 3: "Tobacco companies don't market to children."

This is from a 1978 memo from a Lorillard tobacco executive. He said, "The base of our business are high school students."

High school students are the base of their business. Is there any wonder why we are here on the floor, talking about trying to raise prices to deter teen smoking to save lives? We have the evidence from the industry itself. And it doesn't stop there.

Tall tale No. 4 in this presentation: "Tobacco companies don't market to children."

This is from a 1975 report from Philip Morris researcher, Myron Johnston:

Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data . . . shows even higher Marlboro market penetration among 15-17 year olds.

In this morning's New York Times we got more confirmation of where this industry stands:

Last year they estimated that the price increase in the June plan would cause sales to drop by nearly 43 percent among all smokers over a decade. But now that Congress is considering raising prices by twice that much, producers have turned around and said that higher prices would undermine, rather than help, efforts to reduce youth smoking.

This is a question of lives versus profits—lives versus profits. That is what the evidence shows. Madam President, 800,000 children will not suffer premature death if we go to \$1.50-a-pack price increase. The question is, lives, 800,000 lives, versus profits of the industry, \$700 million of profits. Because that is what the experts at Treasury tell us is the difference between \$1.10 and \$1.50-a-pack price increase. If it is \$1.10, their profits in 2003 will be \$5 billion. If it is \$1.50, their profits are \$4.3 billion—a difference of \$700 million in profits to the tobacco industry in 2003 versus the question of the lives of 800,000 kids. This is the question before the Chamber, the lives of kids or the profits of the tobacco industry. I hope and expect my colleagues will vote to protect the lives of the kids over the profits of the tobacco industry.

I yield the floor and yield the remainder of my time.

Mr. KERRY. I thank the Senator from North Dakota again. How much time remains?

The PRESIDING OFFICER. The Senator has 13 minutes 9 seconds.

Mr. KERRY. I yield myself 3 minutes and then I will yield the rest to my colleague from Massachusetts.

We heard an argument here today that the price is too high and that we should not have this increase on the price of cigarettes because it is unfair to working people. I talked earlier about the impact on working people of not having this increase. But we heard quoted during the course of the monolog this morning a statement by the CBO. I would like to put in the RECORD the "Congressional Budget Office Proposed Tobacco Settlement," a statement of April 1998, in which they say:

Based on a review of the empirical evidence, CBO concludes that price increases would have a significant negative effect on consumers' demand for cigarettes and, depending on the ultimate increase in price, could be a highly effective way of reducing smoking in the United States.

That is the Congressional Budget Office. Every single independent analysis—and I am talking independent

analysis, not hidden analyses that are really one of the tobacco companies under some pseudonym. We are talking about the health experts of America, the people who do these under peer-reviewed and appropriate methods of independent study. They all suggest if you raise that price you will reduce teen smoking. I think every parent in America understands it. Every kid in America understands it. It is fundamental common sense as well as economics. If the price of something goes up and you have only so much money in your pocket, you decide differently how you are going to spend it. That is why we need to heed the advice of Dr. Koop, Dr. Kessler, all of these experts, and do this.

In addition to that, we have heard if you raise the price it will, in fact, increase smuggling. But the truth here again is something different. The Deputy Secretary Treasury, who is responsible for Customs and much of our anti-smuggling effort, said:

The creation of a sound regulatory system, one that will close the distribution chain for tobacco products, will ensure that the diversion and smuggling of tobacco can be effectively controlled, and will not defeat the purposes of comprehensive tobacco legislation.

Madam President, that is precisely what the Senator from Arizona and the others who have worked on this bill have done. There is an effective regime in here for antismuggling. There is additional money for enforcement. There are additional requirements of markings on cigarette boxes. There is a licensing of company requirements throughout the distribution chain. There is accountability in the system. And there is the ability to enforce.

Moreover, most of the problem of smuggling recently has been American cigarettes going to Europe, because they have the higher price and we have the lower price. So this will, in effect, reduce that and create an equilibrium. I think most of those arguments have, frankly, been misplaced.

In the final analysis, this is a vote about our children. We all know the realities. The statistics have been thrown out again and again. We know how many kids start smoking every day. We know how many will die. We know to a certainty how many Americans are dying every year as a result of the habit they gained when they were kids.

If people want a tax cut, the greatest tax cut you could get is to reduce the burden of their health insurance, the burden—I yield myself 1 additional minute—the burden of all of the costs of our society as a consequence of this addiction, of this narcotic substance. It is incomprehensible that we should not make it fit into a comprehensive plan of control, which is precisely what is in this legislation.

So the vote here is very simple. You can vote to try to save the lives of chil-

dren or you can vote on the side of all the money that is being spent in those advertisements to protect tobacco companies and keep their profits at the rate they are now at the expense of our children. That is exactly what the vote is on the Senate floor. Every expert says: Raise the price, you reduce smoking of kids. If you don't do that, then you wind up allowing those kids to continue to smoke, to continue to die, to continue to be addicted.

I think the choice is very, very clear. I yield the remainder of my time to the sponsor of this amendment, the senior Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I thank my friend. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 8 minutes 20 seconds.

Mr. KENNEDY. I yield myself 7½ minutes, if I could, please.

Madam President, I, first of all, thank our leader, Senator DASCHLE, who has been a strong supporter of this particular amendment, a strong defender of the health of the young people of this country and their families, and my colleagues who have all spoken here, and spoken very eloquently and compellingly.

I thank my friend from Massachusetts, our floor manager, JOHN KERRY, KENT CONRAD, the chairman of our task force, and FRANK LAUTENBERG, who is one of the great leaders on the issue of tobacco.

I am enormously grateful for Senator DURBIN's comments as a leader not only in the Senate now but also in the House of Representatives. And the eloquence of BOB GRAHAM earlier today and the compelling arguments that he made, I thought, were enormously convincing.

JACK REED of Rhode Island has been a strong member of our task force and a strong defender of public health.

TOM HARKIN, who has been in and out and has spoken frequently on this issue at different times, and many others, I can go down the list of so many in our caucus. I also thank our friend and colleague from Rhode Island, Senator CHAFEE, for his very strong support on this issue. I commend him for making his statement. He is someone who has been strongly committed to children on different health matters over the years. I thank him for his leadership, and I thank others of our Republican friends who voted for this in the Budget Committee, as well as in the Finance Committee.

We are very hopeful that in just about 20 minutes or so, when the roll is called, that a majority of the Members on both sides of the aisle, Republicans and Democrats alike, are going to vote with the American people, with the families of America and for the children of America.

There will not be a single vote in the U.S. Senate this year that will be more important to 275,000 children than the vote that we are going to have 20 minutes from now. We have the opportunity to make a major difference, a lifesaving difference for those 275,000 children.

The overwhelming, uncontroverted evidence that has been demonstrated during the afternoon of yesterday, last night and in the course of today is the fact that this kind of amendment that we are offering today that will have bipartisan support can make the greatest difference in the public health of the people of this Nation than any other action that we will take in the course of this year. That is a fact, Madam President. It is the most important vote that we will have this year on public health for the families of this country, and we will have it in just a few moments.

We don't have to go over the facts. We know what will happen if this amendment is successful. More than 750,000 young people will not involve themselves in smoking; 250,000 will not develop cancer of the lungs; 250,000 will not develop heart disease because of smoking; 250,000 of them will not develop emphysema, and the list goes on with diseases that result from smoking in this country.

Who are we talking about? We talk about children in this country, but let's be very clear about who those children are. We are talking about children who are as young as 12 years of age. Sixteen percent get started at 12 years of age; 37 percent are 14 and younger; 62 percent are 16 years of age and younger.

These are the individuals who are targeted by the tobacco industry. I listened to those crocodile tears of our colleagues on the other side of the aisle about how distressed they are about what is happening to working families. I give them reassurance, they will have a nice chance to vote for an increase in the minimum wage later on, and we will see how distressed they are about all those working families that they are agonizing about and so distressed about because this is a regressive tax.

The reason it is a regressive tax is because it is the tobacco industry that has targeted the needy and the poor and the working families of this country. It is the tobacco industry that is to blame. It isn't these families. How elite and arrogant it is for those on the other side of the aisle to cry these crocodile tears for working families and their children who are going to get cancer and they don't want to pay those taxes. Those working families care about their children. They care about them no less than those who come from a different socioeconomic background. How arrogant can you be? How insulting can you be to make that argument on the floor of the U.S. Senate.

Finally, Madam President, there can be no argument about what has happened over recent times, the explosion—the explosion—of use of tobacco by teenagers. It is a national disgrace. It is a national disgrace, and we are faced with these facts.

You can talk about smuggling all you want. You can talk about it all you want. These are the facts. This is the issue. Public health is the issue, the fact that it is an 80-percent increase among the black youths in this country, 35 percent by Hispanic youths, 28 percent of the white youths of this country, 32 percent year after year after year after year because of the policies of the tobacco industry. And we can do something about it on the floor of the U.S. Senate. The question is, Will we do so?

The question comes back, If we have to defend ourselves again, all you have to do is—there is one simple chart. We all had our statements and our charts. This one says it all. What this chart says very simply and is expressed very clearly by Philip Morris in a memo of 1987—listen to this:

The 1982-1983 round of price increases prevented 500,000 teenagers from starting to smoke. This means that 420,000 of the non-starters would have been Philip Morris smokers. We were hit hard. We don't need that to happen again.

There it is on the chart. There it is in 1982. This is the spike in the increase of price, and that is the drop in terms of teenage smoking.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I will take 1 more minute.

I say this is demonstrated right here as clear as can be. What we have seen is, as the price has gone up over a period of years, teenage smoking has gone down, except in 1982 when we had the wars, then we had the drop, and we see that incredible spike and the leveling years with \$5 billion a year in tobacco advertising, getting those children, holding those children, addicting those children in this country.

Madam President, now is the time. Now is the time to speak up for the children of this country. Now is the time to speak out about public health. We have not heard all morning long, all last night, all yesterday, we have not heard the opposition give the name of one notable, credible public health official who denies what we have stated hour after hour about the dangers for the children of this country—not one. They can't answer it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. That is why this amendment should be accepted.

Mr. ROBB. Madam President, I rise in opposition to the amendment offered by the Senator from Massachusetts. I do so fully supporting what the authors of the amendment seek to achieve—a reduction in teen smoking.

I, too, want to keep tobacco out of the hands of children. And I'm convinced that the best way to achieve that goal is to pass a reasonable, comprehensive tobacco bill. I have not abandoned hope that such a reasonable bill can still be achieved. But I am convinced that this amendment will make it more difficult to pass comprehensive legislation, and I therefore will vote against it.

For over a year, I have been saying that I believe a resolution of these issues that have dogged the tobacco industry are in the best interests of all concerned, including children, public health advocates, tobacco farmers, workers and their communities, the states and yes, the companies. To achieve the delicate balance that is a prerequisite to enacting such a complex bill, however, we need to remain centered. If the bill becomes too punitive in the one direction, or too protective in the other, we will fail ultimately to take advantage of this historic opportunity to resolve these issues.

In that same spirit, I intend to oppose other amendments which would, if adopted, make final passage of a reasonable bill much less likely.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

AMENDMENT NO. 2427

Mr. KERRY. Madam President, I move to table the Ashcroft second-degree amendment No. 2427, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GRAMM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. To ascertain the presence of a quorum, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Madam President, I ask unanimous consent that at the conclusion of the vote on the tabling of the Ashcroft amendment, the Senator from Texas be afforded 10 minutes to speak, at which point the vote on whatever might occur.

Mr. KENNEDY. Reserving the right to object, will the Senator restate that please?

Mr. KERRY. Madam President, the request is that we would vote on the tabling of the Ashcroft amendment now, at the conclusion of that there would be 10 minutes for the Senator from Texas to speak, at which point the manager for the majority, Senator MCCAIN, would be recognized. That is my request.

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

Mr. KERRY. I thank the Chair.

Mr. MCCAIN. The yeas and nays have been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question now occurs on agreeing to the motion to lay on the table the amendment offered by the Senator from Missouri, Senator ASHCROFT. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—72

Abraham	Feingold	Lugar
Akaka	Feinstein	Mack
Baucus	Ford	McCain
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Boxer	Grassley	Murray
Breaux	Gregg	Reed
Brownback	Harkin	Reid
Bryan	Hatch	Robb
Bumpers	Hollings	Roberts
Byrd	Inouye	Rockefeller
Campbell	Jeffords	Roth
Chafee	Johnson	Santorum
Cleland	Kennedy	Sarbanes
Collins	Kerrey	Smith (OR)
Conrad	Kerry	Snowe
D'Amato	Kohl	Specter
Daschle	Landrieu	Stevens
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Dorgan	Levin	Wellstone
Durbin	Lieberman	Wyden

NAYS—26

Allard	Faircloth	Kyl
Ashcroft	Gramm	McConnell
Burns	Grams	Nickles
Coats	Hagel	Sessions
Cochran	Helms	Shelby
Coverdell	Hutchinson	Thomas
Craig	Hutchison	Thompson
Domenici	Inhofe	Warner
Enzi	Kempthorne	

ANSWERED "PRESENT"—1

Lott

NOT VOTING—1

Smith (NH)

The motion to lay on the table the amendment (No. 2427) was agreed to.

Mr. KERRY. Madam President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized to speak for 10 minutes.

AMENDMENT NO. 2422

Mr. GRAMM. Madam President, we have had over a dozen Senators who

have stood up and said that while the Kennedy amendment raises the effective tax on a pack of cigarettes to \$1.50 per pack, it has absolutely nothing to do with money. Over and over, our colleagues have said this is not about money, it is about children. They say they don't want the money, they want the impact of higher cigarette prices to discourage children from smoking.

It seems to me, Madam President, that if that is in fact what they want, that there is a simple way to give it to them, and that is, we should attach to the Kennedy amendment a tax cut aimed at the very people who are paying this increase in the price of cigarettes. In doing that—may I have order?

Mr. KERRY. Madam President, I make a point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. We will not proceed until the Senate is in order. The Senator from Texas is entitled to be heard. The Senator's time will not begin until there is order.

The Senator from Texas.

Mr. GRAMM. Madam President, I thank the Presiding Officer.

Madam President, we have a dilemma in that our colleagues assure us that while this amendment raises hundreds of billions of dollars, that it is not about money. They say they don't want the money, they want the impact of higher cigarette prices. But yet the cold reality is, those prices are going to be paid in higher out-of-pocket costs by blue-collar workers all over America. Thirty-four percent of the cost of this tax increase that is now pending as an amendment here in the Senate will be borne by Americans who make less than \$15,000 a year. Forty-seven percent of it will be borne by Americans who make less than \$22,000 a year. And 60 percent of it will be borne by Americans who make less than \$30,000 a year. None of this tax increase will be paid for by tobacco companies. Sixty percent of the tax increase will be paid for by Americans who make less than \$30,000 a year.

So if the motion to table the Kennedy amendment fails and the Kennedy amendment remains pending, it would be my objective to offer, along with Senator DOMENICI, a second-degree amendment that will repeal the marriage penalty for working Americans in families that earn less than \$50,000 a year. In doing so, Senator KENNEDY would have the higher cost of tobacco, but the same people who are paying that tax, while seeing the cost of cigarettes rise would, by having the marriage penalty eliminated, where Americans who fall in love and work at the same time and get married now end up paying higher taxes for the privilege of being married, have that penalty eliminated, so that we would still get the impact of a higher price on inducing children not to smoke.

But blue-collar working Americans, a waitress and a truck driver who are married and who both smoke, under this bill will pay an estimated \$712 in new taxes, new excise taxes. We should give that money back to them in a tax cut so that we don't dramatically lower the living standards of blue-collar workers.

I want to remind my colleagues of the incredible fact that the amendment before us, the Kennedy amendment, will mean that Americans who make less than \$10,000 a year will see their Federal taxes rise by 53 percent.

So I urge my colleagues, in this rush to tax tobacco companies, to remember that the Kennedy amendment does not tax tobacco companies, it taxes Americans who basically make less than \$30,000 a year. It will drive up the Federal tax burden of those who make less than \$10,000 a year by over 50 percent.

So I hope my colleagues will table the amendment. But if they don't table the amendment, Senator DOMENICI and I will offer an amendment which lets the tax increase stand but simply takes the money and gives it back to blue-collar working families who are, I have to remind my colleagues, the victims in this debate.

There is a terrible paradox that, instead of taxing the tobacco companies, we are taxing the very people who have been induced to smoke, and therefore the victims are being punished with an excruciating, bone-crushing tax increase so that a working couple will pay \$712 in taxes a year as a result of the Kennedy amendment.

If, in fact, our colleagues are only interested in the impact on teenage smoking, then they won't object to the amendment that Senator DOMENICI and I are offering because we don't take the tax off, we simply say take that money, eliminate a discrimination in the Tax Code against married, working people, blue-collar families making less than \$50,000 a year, and give them the money back. Also under our provision, we would adjust for the marriage penalty before you calculate the earned income tax credit so that the substantial amount of the benefits would go directly to those Americans who are making less than \$10,000 a year who are going to see their Federal tax burden grow by over 50 percent under this bill.

I would like to first ask my colleagues to remember, this is not Joe Camel that this bullet is getting ready to hit. This is not a big tobacco company. This is Joe and Sara Brown, two hard-working Americans who have been induced to smoke. They are the victims in this whole process. And, yet, we are getting ready to take \$712 a year out of their pockets. If we don't table this amendment—and I hope we do table it—Senator DOMENICI and I will offer an amendment that will take the money that is raised from this tax increase and we will give it back to the

very people who are going to pay these higher taxes. But we will give it back to them by eliminating the marriage penalty, so that they will have to pay more for tobacco, and hopefully they will stop smoking. But they won't be poorer. They won't see their Federal tax burden go up by 50 percent. They won't be crushed by an oppressive and very, very punitive and regressive tax.

Let's remember, it is the victim of the process who is being assaulted by this amendment. I hope my colleagues will vote for the McCain motion to table it. But if they don't, Senator DOMENICI and I will try to give our colleagues what they claim they want. That is, they want the tax; they don't want the money. Well, let's give the money back to blue-collar working families in West Virginia, in Texas, in New Mexico and across the country who make less than \$50,000 a year and who need every penny they get. They are the people who are outraged about the fact that they have been exploited by being induced to smoke and in many cases have become addicted to nicotine. They are the ones who are being harmed by the amendment we have before us.

I think the issue is clear. I hope my colleagues will not impose this massive tax increase of \$712 on a blue-collar working family where both the husband and the wife smoke. I hope they will not crush them with this tax. But if they decide to, if they decide to do it, then Senator DOMENICI and I will have an amendment to give the money back to married taxpayers by eliminating the marriage penalty for American families that earn less than \$50,000 a year, and we will make the adjustment above the line so that those who receive the earned income tax credit, the poorest people in America who work, will receive the benefit of our tax cut.

I yield the remainder of my time.

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

Mr. McCAIN. Madam President, I am going to make a motion to table the Kennedy amendment. Before I do, I would like to, for the benefit of my colleagues who would like to know what is going on here, say our intention is—and none of this is by unanimous consent—but our intention is to move to the Senator from New Hampshire, Senator GREGG, who has an amendment concerning immunity.

In our custom of going back and forth, since Senator GRAMM was the last speaker, I would like to have Senator KERREY of Nebraska be able to speak for about 15 minutes. Then we would move to Senator GREGG.

I would like to have a vote on that tonight. But I also urge my colleagues to come and talk on the bill as well as its amendment, because I have been told by Members on both sides of the aisle that there is great frustration

that they have not been able to address the entire bill, much less amendments.

I intend to stay tonight as long as is necessary. I will force the Senator from Massachusetts to do the same thing, and we will try to get as much debate and discussion of this very important bill before we leave tonight.

Madam President, at this time I move to table the Kennedy amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT (When his name was called). Present.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. SMITH) is necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 144 Leg.]

YEAS—58

Abraham	Feingold	McCain
Allard	Feinstein	McConnell
Ashcroft	Ford	Mikulski
Bennett	Frist	Murkowski
Bond	Gorton	Nickles
Breaux	Gramm	Reid
Brownback	Grams	Robb
Burns	Gregg	Roberts
Byrd	Hagel	Roth
Campbell	Hatch	Santorum
Cleland	Helms	Sessions
Coats	Hollings	Shelby
Cochran	Hutchinson	Stevens
Collins	Hutchison	Thomas
Coverdell	Inhofe	Thompson
Craig	Inouye	Thurmond
DeWine	Kempthorne	Torricelli
Domenici	Kerrey	Warner
Enzi	Kyl	
Faircloth	Mack	

NAYS—40

Akaka	Glenn	Lugar
Baucus	Graham	Moseley-Braun
Biden	Grassley	Moynihan
Bingaman	Harkin	Murray
Boxer	Jeffords	Reed
Bryan	Johnson	Rockefeller
Bumpers	Kennedy	Sarbanes
Chafee	Kerry	Smith (OR)
Conrad	Kohl	Snowe
D'Amato	Landrieu	Specter
Daschle	Lautenberg	Wellstone
Dodd	Leahy	Wyden
Dorgan	Levin	
Durbin	Lieberman	

ANSWERED "PRESENT"—1

Lott

NOT VOTING—1

Smith (NH)

Mr. MCCAIN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. KERRY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENT—VETO MESSAGE ON S. 1502

Mr. LOTT. Mr. President, we have cleared this with all concerned parties, including the Democratic leadership.

I ask unanimous consent that the veto message to accompany S. 1502 be considered as read, printed in the RECORD, and spread in full upon the Journal, and further, that it be set aside to be called up by the majority leader after consultation with the Democratic leader.

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

The message of the President is as follows:

To the Senate of the United States:

I am returning herewith without my approval S. 1502, the "District of Columbia Student Opportunity Scholarship Act of 1998."

If we are to prepare our children for the 21st Century by providing them with the best education in the world, we must strengthen our public schools, not abandon them. My agenda for accomplishing this includes raising academic standards; strengthening accountability; providing more public school choice, including public charter schools; and providing additional help to students who need it through tutors, mentors, and after-school programs. My education agenda also calls for reducing class size, modernizing our schools and linking them to the Internet, making our schools safe by removing guns and drugs, and instilling greater discipline.

This bill would create a program of federally funded vouchers that would divert critical Federal resources to private schools instead of investing in fundamental improvements in public schools. The voucher program established by S. 1502 would pay for a few selected students to attend private schools, with little or no public accountability for how those funds are used, and would draw resources and attention away from the essential work of reforming the public schools that serve the overwhelming majority of the District's students. In short, S. 1502 would do nothing to improve public education in the District of Columbia. The bill won't hire one new teacher, purchase one more computer, or open one after-school program.

Although I appreciate the interest of the Congress in the educational needs of the children in our Nation's Capital, this bill is fundamentally misguided and a disservice to those children.

The way to improve education for all our children is to increase standards, accountability, and choice within the public schools. I urge the Congress to send me legislation I have proposed to reduce class size, modernize our schools, end social promotions, raise academic standards for all students, and hold school systems, schools, and staff accountable for results.

WILLIAM J. CLINTON.

THE WHITE HOUSE, May 20, 1998.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, we have had a good bit of discussion today and two very important votes. I hope that we can move on now to some other amendments that really are important and will determine how this legislation is eventually written.

I thank Senators again for keeping calm and working through this. The managers are working very diligently. I emphasize again to my colleagues, while I think every Senator obviously needs to have the time and will have the time he or she needs to make a statement, I do think it would be wise if you can say what you have to say and we can move on. To go for an extended period of time on an amendment 2, 3, 4, 5 hours is going to make it very difficult to ever get a satisfactory result.

I hope Senators will agree to some reasonable time limits. I am not going to ask for a unanimous consent agreement now. I don't think it is necessary, but I will suggest the form that we might take in a consent agreement as to how to proceed.

It is my hope that Senator GREGG from New Hampshire will be recognized next to offer his amendment, with Senator LEAHY, regarding immunity. Senator GREGG and Senator LEAHY have been circling the area since we started. They are ready to go. The debate should last the rest of this session today. It is my hope that the vote on, or in relation to, that amendment can be scheduled to occur first thing on Thursday morning—I mean early—so we can move to the next amendment, which will come from the Democratic side. Senator DASCHLE and Senator KERRY will have to decide what amendment that will be.

Following the disposition of that amendment offered by the Democrats, then I hope the Senate will consider the farmers' protection issue and debate it, have a vote on that issue or issues in a way, hopefully, that is agreeable and as fair as possible to both sides of that issue. Then we will really have a feel for where we are and can make an assessment about time and where to go from there.

I hope that Senators are comfortable with that. I think that it is a fair way to proceed alternating back and forth. We are not ducking the tough issues. This last amendment was a key amendment. This next amendment is a key amendment. The farmers' amendment is critical to all concerned. So I hope this will be acceptable and we can move in this way. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, that is, I think, a superb way to proceed. It is the way we have been trying to proceed. I thank the majority leader for trying to structure it that way.

There was an understanding prior to that that the Senator from Nebraska will proceed for 15 minutes, at which point Senators GREGG and LEAHY will be recognized for their amendment.

Mr. LEAHY. Mr. President, I have no objection to that.

Mr. KERRY. I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I thank both the Senator from Arizona and the Senator from Massachusetts for allowing me to speak.

I have come to the floor to speak about the tobacco bill. I began several months ago to have conversations with Nebraskans about this legislation. The first question I was asked is, Why do we need it? What has happened here? All of a sudden we have a \$368 billion to a \$516 billion piece of legislation being introduced and people want to know how we got to where we are today.

I would like to describe, at least as I see it, how we got to where we are today in May of 1998, from a point just as recently as 2 years ago when there was no piece of legislation on the floor even remotely approaching something like this. "Why all of a sudden is Congress taking on something like this," is the question I get asked. I will try to give Nebraskans an answer.

The second question I get asked is, "What are we going to do? What is the purpose here?" On behalf of 1,600,000 Nebraskans, I will describe what this law is attempting to do, what is the piece of legislation which Senator MCCAIN and Senator KERRY have brought before this body all about.

The short answer to the question "How did we get to this point?" is that there was a potential lawsuit. There was litigation that was being proposed by States' attorneys general against tobacco companies. There was an attempt through the discovery process to get internal tobacco industry documents, and one of the tobacco companies said, "We'll provide you the information you need to proceed with your case because we are concerned that what we know is going to be discovered anyway, that there was an effort to withhold information from the American people."

What happened, in addition to some changes in State law, is that on the 20th of June, 1997, there was an agreement—it was not even a year ago—with 40 attorneys general in the United States and the tobacco industry.

What they agreed to, Mr. President, on the 20th of June 1997, is very important, especially now that the tobacco

companies have broken off from the settlement and are now advertising against this legislation in our States.

Again, I emphasize that the reason we are debating this tobacco bill today is not because the tobacco industry is afraid of Congress, and what we may do to them. Rather, they are afraid of 12 faceless men and women of a jury. They are worried about the evidence being introduced and now stipulated in court, showing that the tobacco industry knew nicotine was addictive and lied about it. They were, and still are worried about what a jury would do with this evidence. They were, and still are scared that a jury will end up costing them a whole lot of money. That was the power that produced this offer to settle at \$368 billion.

That begs a question that Nebraskans need to try to answer. What was in that initial offer to settle? What were the tobacco companies willing to do back on the 20th of June 1997?

First of all, they agreed to pay \$368 billion over 25 years. They said they would make annual payments starting at \$10 billion, going up to \$15 billion by year 5, and every year thereafter.

Although they do not spell it out in terms of a per-pack price increase like you hear them advertising against today, to make the \$15 billion-per-year payment, the tobacco industry would have raised the price of cigarettes by approximately 62 cents a pack. Less than a year ago, they, not Congress, were going to raise the price of cigarettes by 62 cents a pack. Yet now, less than a year later, they have launched this huge advertising campaign trying to convince you that Congress is the bad guy trying to raise your taxes. They did this to settle lawsuits that they were afraid of.

Indeed, the next amendment that we are going to talk about is their liability. They were concerned about future liability, and they were willing to pay out \$15 billion a year, costing smokers about 62 cents a pack, so they would not have to worry about it anymore.

They also agreed to pay \$50 billion up front in punitive damages, meaning for all their past wrongs that they knew they were guilty of about misleading the American people, about nicotine's addictiveness, and marketing to our children.

Next, they agreed to let the FDA regulate nicotine as a drug. Next, they agreed to pay huge fines if goals of reducing teen smoking were not met. And, finally, they agreed to restrict their advertising and marketing to youth.

I say, Mr. President, that almost all of what I have just described is in this tobacco bill. That is what the Commerce Committee has voted out of Committee, and that is what we are debating on the floor today. Yet, less than a year after the tobacco settlement, the tobacco industry is spending

millions of dollars trying to convince the American people that they had nothing to do with any of this and that Congress is the bad guy. This is the message they have paid lots of money to convince the people of. I have seen it in their television ads, on postcards that are being mailed in to my office, and from the thousands of phone calls that I have received. Everything that they are objecting to, and convincing others to object to, they agreed to back on the 20th of June 1997.

A lot has happened since that settlement, Mr. President, that has caused significant change to this legislation. First, the tobacco industry settled a suit in Florida for \$11 billion, they settled a suit in Texas for \$15.3 billion—but the settlement that really changed the level of the playing field that we are on today was the one that happened 12 days ago in Minnesota on the 8th of May. After 3 months of a closely watched trial, just hours before the jury was going to get the case, Attorney General Hubert Humphrey III and the tobacco industry settled the case for \$6.5 billion.

There were lots of firsts in this settlement. This was the first settlement with a health insurance provider, in this case Blue Cross and Blue Shield, getting \$469 million of the \$6.5 billion.

This was the first settlement where the tobacco industry signed a consent promising not to misrepresent the health hazards of smoking.

And perhaps most significantly, this was the first settlement where the State received more money than it would have collected under the \$368 billion settlement last June.

The \$6.1 billion they settled on 12 days ago is 50 percent more than the \$4 billion they would have received under last summer's settlement. This is significant. This is the justification for going from 62 cents to \$1.10 per pack. This is the justification for increasing the total amount that we are asking the tobacco industry to pay into the tobacco trust.

Already, the tobacco industries have said they will raise prices to help defray some of their legal expenses. Indeed, in the past 9 months cigarette prices have been raised about 20 percent to help offset the tobacco industry's legal bills.

Again, Mr. President, I tell you the history of this bill because it is important to understand how we got to where we are today. A single tobacco company broke away from the rest and disclosed information that enabled us to get a settlement on the 20th of June 1997. There has been additional settlements in Texas, in Florida, and most significantly in Minnesota that increased the dollar amounts from the base level agreement that was formed on the 20th of June 1997.

Mr. President, the next issue to discuss, this bill and the goals of this bill,

is a bit more difficult because things are changing at such a rapid pace. The way I see it, from talking to Nebraskans about this, is that the goal of this legislation is clear. We need to prevent teenagers from starting to smoke and to help those Americans who do smoke and want to quit.

Why, Mr. President? Well, there are a couple of reasons why. The most important one of which is that we now know, stipulated in court documents, that nicotine is addictive. It is not habit forming, Mr. President. It is addictive. And the qualities of the addictive property of nicotine, taken together with the toxins that are contained in the tobacco itself, create a tremendous public health problem.

I have 352,000 Nebraskans who smoke. I do not just want to raise the prices on those Nebraskans to try to decrease the amount of consumption, along with FDA regulation and advertising and other sorts of things, I want to make certain that the money in this bill helps them stop smoking.

Now, that should be our crusade. That should be our cause. Tobacco kills prematurely nearly 400,000 people every year. Approximately 2,700 of these are Nebraskans.

Tobacco consumption produces tremendous health problems for the 352,000 Nebraskans who smoke. And the best way for me to mitigate the problem associated with an increased price is to give them a tax cut by helping them stop smoking so their medical costs and lost wages from missed work will be lower. My belief is, as we examine not only what this legislation does in terms of regulation, in terms of advertising, in terms of restrictions on smoking in public places to make sure that we reduce the number of people who become involuntary smokers as a result of inhaling secondhand smoke, is that we pay attention to how the money is spent. This is so we have some confidence that in our individual States those citizens out there who are currently smoking, who are addicted to nicotine as a consequence, that those individuals have a chance to get off this addiction that is reducing the quality of their health and decreasing their life spans.

Mr. President, I examined the numbers in Nebraska. And 25 percent of the men in Nebraska smoke; 19 percent of women smoke; 39 percent of all my teenagers smoke. Nebraskans without a college degree are nearly twice as likely to smoke as those with a college degree. A third of Nebraskans with an income of \$15,000 or less smoke compared to only 15 percent of those who earn \$50,000 or more.

Again, Mr. President, tobacco is killing my people. And 2,700 of the people who prematurely die every single year in the United States of America are Nebraskans. It is addictive. It causes a physical compulsion, a physical need.

Taken in small doses, nicotine produces pleasurable feelings that make the smoker want to smoke more. A majority of smokers who become dependent on nicotine will suffer both physical and psychological withdrawal symptoms when they stop smoking.

Their symptoms are going to include nervousness, headaches, irritability and difficulty in sleeping, among other things.

Mr. President, a couple of weeks ago I met with 10 or 12 high school students in Burke High School in Omaha, NE. And I talked to them about this problem of addiction. I think about 7 of the 12 were smokers. One of the students explained to me that "A cigarette," she said, "is my friend." She is 16 years old. "A cigarette," she said, "is my friend . . . it is always there for me: When I'm driving in my car, when I'm stressed out, when I'm going through a crisis . . . cigarettes don't go out of town, I can count on them no matter what."

I asked about 100 students to fill out a questionnaire about tobacco. And one of the more disturbing results in their answers was that the overwhelming majority of the current smokers said that although they smoked today at age 16, and though some may continue smoking until they are 18, the overwhelming majority of these students said, "We're going to quit."

Well, Mr. President, because unbeknownst to them—and until recently the tobacco companies were not stipulating that nicotine is addictive; now it is universally recognized that it is—unbeknownst to these students, they are addicted. They have a physical craving for something and it is going to be very difficult for them to stop. Unbeknownst to them, 90 percent of the 352,000 Nebraskans who smoke started smoking when they were teenagers. That is when it began.

So unbeknownst to them, they may think they are going to quit, but unless we intervene, and unless we help them—and hopefully through this legislation we can help them—they are going to have a heck of a time kicking this addiction.

Mr. President, cigarette smoking is harmful. Cigarette smoking, we now know, is not only addictive, but taken as directed it is likely to decrease your life span, likely to shorten not only your ability to work, but shorten your time on Earth as well.

Mr. President, I intend during the course of the debate on this legislation to focus my attention on a number of things.

One, this legislation must prevent teen smoking. It must reduce the amount of teen smoking. I think perhaps one of the most important things we are doing is giving FDA the authority to regulate.

I was practicing pharmacy back when dinosaurs roamed the Earth in 1965,

when Congress was debating whether or not to regulate Dexedrine, 15 milligrams. This was a weight loss pill. It was the most rapidly moving pharmaceutical in my drugstore in 1965. You could get a prescription from a doctor and refill it every other day if you wanted to for 500 Dexedrine. And the pharmaceutical industry was saying, "No. It is habit forming; it is not addictive." Today, through FDA regulation, Dexedrine 15 milligrams is available only for narcolepsy, and only small amounts are sold. I think the most likely reduction of teen smoking is going to occur not through the price increase, but through FDA regulation.

In addition, Mr. President, I intend to bring amendments to the floor to say that we have to make certain that we have community-based efforts in our States to reduce smoking of the adults out there who are also addicted. It has to do that. It cannot be a top-down effort. It has to be a community-based effort. The citizens are more likely to know what needs to be done. I believe every single State needs to have some kind of a research scholar connected to NIH to lead us in this effort.

This is a tremendous public health problem. It has come upon us, the history of the bill and the seriousness of this problem, relatively quickly. I am hopeful we can make certain this legislation gives us a fighting chance in my State, at least not just of increasing prices and increasing the regulatory action, but of engaging the citizens themselves and the smokers themselves in a serious challenge of trying to break themselves from this habit.

Finally, I know we are going to be debating on this floor the provisions relating to the tobacco farmers. I am of the opinion that tobacco farmers need some assistance. It was not in the original settlement. I praise Senator FORD and Senator HOLLINGS for their work in trying to get provisions in there, but I believe these provisions are too generous and we need to scale them back. It is difficult for me in a State that grows corn, soybeans, wheat, barley, and lots of other products—under the Freedom to Farm Act they are getting substantially less than what tobacco farmers will be getting out of the program. I can make a case tobacco farmers ought to get more, but I cannot make a case they ought to be given all that is in this bill.

It is my hope that during the course of this constructive debate we are able to pass a piece of legislation that will increase regulation, that will increase the price, will increase our involvement in our community and decrease the consumption and the addiction to a substance which is killing our people.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 2433 TO MODIFIED COMMITTEE
SUBSTITUTE

(Purpose: To modify provisions relating to civil liability for tobacco manufacturers)

Mr. GREGG. Mr. President, I send an amendment to the desk on behalf of myself and Senator LEAHY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself and Mr. LEAHY, proposes an amendment numbered 2433 to the modified committee substitute.

Mr. GREGG. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall

permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later than 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano

Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

Mr. GREGG. Mr. President, this amendment has received a fair amount of attention and I believe is fairly well understood by most of the membership, but it is important that we have a substantive discussion of it and an open debate of it over the next couple of hours. As I understand, Senator MCCAIN has allotted that type of a time window. I very much appreciate that.

I want to thank Senator MCCAIN for his courtesy in allowing us to put this amendment in order at this time, and certainly I appreciate the manner in which he has managed this bill in such a fair way.

The immunity issue is really at the essence of this bill and the public policy which this bill addresses. What we

have here is an industry which produced a product which it knew killed people. It is an industry that produced a product which it knew addicted people. In fact, it created additives to that product so it would addict people at a higher rate than were the product sold in its natural state. Then, knowing that it had a product that killed people, and knowing that it had a product that addicted people, it then targeted the sales of that product on our kids.

That is an industry which deserves very little in the way of courtesy or support or protection—and that is what this amendment is about, “or protection”—from the U.S. Congress. Yet, within this bill there is proposed language which would give a historic, unprecedented protection to the tobacco industry from liability on their lawsuits.

Now, we have addressed this issue before in this body. In fact, not too long ago there was a sense of the Senate which said there shall be no immunity for the tobacco industry. That sense of the Senate passed the Senate by a 79 to 19 vote. This amendment is the real thing. It is calling to account that sense of the Senate.

Now, the question here goes to the manner in which we, as a country, sell products. We are inherently the most capitalist, market-oriented economy in the world. As a result, we have been the most prosperous society in the world economically. What this amendment is about is maintaining a capitalist marketplace approach to the issue of the sale of a product in our society.

What this bill does in its present form is institute an antimarket, anti-capitalist approach into the process of producing and selling a product in this society. It gives an artificial, inappropriate, legislative protection to an industry from what has been the traditional way in which consumers have a right of redress against that industry.

Remember, in our society when a consumer, when John and Mary Jones from Epping, NH, are sold a product that doesn't work, they have a variety of different avenues to address the failure of that product. Should that product harm them, one of their most appropriate avenues is to go to court to bring an action against the producer of that product and to get a recovery. That has been basically one of the essential elements for disciplining the marketplace in our capitalist society. We have not, as has been pursued in other nations, especially those that use a Socialist form of management of their marketplace, we have not had the Federal Government or any government come in and tell a consumer what they can and cannot buy, except in very limited instances. And we have certainly not limited that consumer's ability to recover should they be sold a product that doesn't work or that harms them.

The right of redress in the court system, the right of redress for a consumer, is at the essence of having a competitive marketplace and a disciplined marketplace. When you eliminate that right of redress, which this bill does, when you take away the ability of the consumer, of the person who has been damaged, of John and Mary Jones of Epping, NH, to get a recovery for an injury they have received, you have artificially preserved the marketplace. But more importantly, you have given a unique, historic, and totally inappropriate protection to an industry.

Now, let's think about this for a minute. Why would the Federal Government at any point in its history want to step in and bar the ability of the consumer to use the judicial method of protecting themselves in the marketplace? There might be instances where that would happen—national defenses might be an example. Under our law, once we did that in the area of people working at nuclear weapons factories. There was a national defense issue.

Or it might occur if a product was deemed so beneficial that it was important to protect it. In those instances, of course, we have a situation where the Government raises the visibility of the need to protect the society as a whole over the individual. That has never happened. We have never found a product that was so beneficial. Or if we have, it has only occurred in the rarest of instances, so beneficial that we give that sort of protection. So that is a very unusual protection, to say the least.

But what we have here is the granting of a significant, unusual protection of immunity to an industry that produces tobacco, which, as I mentioned in my opening statement, is a product that kills people, that addicts kids, and addicts people and is targeted at kids. It is very strange that we should pick that industry for which to give this sort of protection.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2434 TO AMENDMENT NO. 2433

(Purpose: To modify provisions relating to civil liability for tobacco manufacturers)

Mr. GREGG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 2434 to amendment No. 2433.

Mr. GREGG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In lieu of the language proposed to be inserted, insert the following:

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later than 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration be-

fore one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

Mr. GREGG. Mr. President, the amendment is a second-degree amendment, which simply perfects the amendment I offered, the underlying amendment. I will give a copy of the changes to the other side. I don't think they will find that they change the basic thrust of the original amendment.

As I was discussing, the amendment goes to the question of immunity and why we would choose, for the first time in the history of this country, to grant immunity to an industry from lawsuits, which basically changes the whole concept of the marketplace system in our country—why we would choose the tobacco industry to which to give that immunity. It is just beyond comprehension that an industry that produces a product that kills people, which they designed to addict kids, would be chosen as the industry to which we are going to give immunity protection. It makes absolutely no sense. It skews the marketplace. I simply point out to those who might be of a conservative philosophy and may be following this argument that to have done this is an absolute affront to the concept of capitalism and a free market society.

Now, there is an attempt in the bill to address the liability that tobacco companies generate as a result of their action—an \$8 billion cap. Some will tell us that is a lot of money and that should satisfy everyone as a manner in which to redress the concerns of the consumer, of the individuals, of the kids, of the parents, the mom and pops, who have been damaged by the tobacco companies. And \$8 billion is a huge amount of money on an annual cap for recovery on the loss. But it obviously isn't what the market sees as the potential liability here. Otherwise, there would not be a cap in the first place. So by its very definition it is an affront to the concept of a market-type approach to the selling of products in this country.

Equally important is the way this cap works. It gives a disproportionate amount of power to the tobacco companies to decide who the winners and losers are, because it is essentially a race to the courthouse. The tobacco companies, under the proposal in this bill, would control who gets to the courthouse first. If they decided the XYZ lawsuit was more amenable to them to settle than the ABC lawsuit, or Mary Smith's lawsuit was less desirable to them, for some reason, than Hank Jones', they can settle the ABC lawsuit, the XYZ lawsuit, and the Mary Smith lawsuit, but they cannot settle the Hank Jones lawsuit, they can make him litigate. And, by the time he is finished, they have settled these other ones and, poof, the \$8 billion is gone. So not only does it have the total irony of perverting the marketplace, it has the irony of giving the tobacco industry the capacity to choose who the winners and losers are in the process of determining people who are suing them for being caused physical damage.

Can you think of anything more ironic? You have been damaged, your health has been destroyed, or maybe someone in your family has died as a result of the tobacco industry's actions, or some child was addicted and that child dies and the tobacco company gets to choose whether or not that person is going to be a winner under the lawsuit process. How unbelievably ironic and absurd that is. But that is the way this cap works. This is just one of the many, many technical problems with the concept of a cap, because what I think it reflects is the idea that when you put an artificial cap into a huge, dynamic economy like the United States', you are basically creating all sorts of unintended consequences that don't flow naturally in a capitalist system. Much more appropriate is that you allow the capitalist system to proceed in its usual and orderly course.

Now, others will say, well, if you don't have immunity, then you inevitably drive these companies into bankruptcy. To begin with, we don't have

any idea that that is true. What we know is that these industries are extraordinarily profitable. We know that, right now, they are pursuing major buy-backs. Philip Morris, an \$8 million buy-back; RJR, a buy-back of its stock. When you start buying back your stock as a corporate leader, you are saying your stock is undervalued. If your stock is undervalued, it is the ultimate test that in the future you have a better chance of progressive sales and a strong market force for your industry.

So the concept that if they don't have immunity, they are going to end up going bankrupt, I think the marketplace has discounted and rejected that and said that is not going to happen. In fact, there is a tremendous earning capacity out there, and we already know there is a tremendous capacity to pass on to the consumer, because that is the theme of this bill—to pass on to the consumer a significant part of the cost. As long as they can pass through that cost, it doesn't impact them at all, doesn't impact their capacity at all.

So from a substantive standpoint, bankruptcy doesn't make any sense as a defensive argument to this. But just from a purely logical standpoint, it even makes less sense. Think about it this way. We are saying that to save the industry from bankruptcy we have to put on this cap. But at the same time, we have to tax it. The reason we are taxing it is to discourage people from consuming the product. And the logical extension of that is that if you are successful in taxing people and managing to discourage them from using the product, you are going to reduce utilization, which one presumes would inevitably lead to the collapse of the industry and potentially bankruptcy.

So the bill, by its very nature, is inherently saying that the options of bankruptcy are there, but they are going to do it on a different system—through the tax system. Yet, they won't allow the marketplace to make that decision. They won't allow the marketplace to decide whether or not this industry survives, which is the way, traditionally, we have done it in this country. We don't traditionally say to an industry, well, you are about to go bankrupt, which is something that this industry can't say, certainly in light of what it is doing with stock values—so we, the Federal Government, are going to step in and give you unique protection; we are going to give you liability protection. And we certainly don't say it to an industry that has produced a product that kills people and has addicted them.

For those people who don't believe this industry knew their product was addictive, I will cite a few quotes. We have here quotes from the Brown & Williamson documents, disclosed as a result of the Minnesota case, and from documents of RJR. Brown &

Williamson in 1978—that is a long time ago; this wasn't just yesterday:

Very few consumers are aware of the effects of nicotine, i.e., its addictive nature, and that nicotine is a poison.

These folks knew a long time ago that they were selling an addictive product that killed people. This is a quote from RJR:

Tobacco companies are basically in the nicotine business. . . Effective control of nicotine in our products should equate to a significant product performance and cost advantages.

That is a pretty cynical statement. It reflects the fact that the tobacco industry knew they were selling an addictive product.

Nicotine is the addicting agent in cigarettes.

The evidence is beyond question. They knew that it was a poison, that it killed people, and they knew it was addictive.

Second, there are some who may say, "Well, they don't really target kids." That is very hard to defend also because the facts speak for themselves from their own documentation. They look on kids as their source of future revenues.

This is from the RJR documents of 1974:

Let's look at the growing importance of the young adult in the cigarette market. In 1960, this young adult market, the 14-24 group, represented 21 percent of the population . . . they will represent 27 percent of the population in 1975. They are tomorrow's cigarette business.

How cynical could you be? Let's first produce a product that kills you, let's make it addictive, and then let's target it at kids.

Mr. KERRY. Will the Senator be willing to yield for a question?

Mr. GREGG. I would like to complete my statement, and then I will yield.

In 1974, "Marlboro dominates in the 17 and younger age category, capturing over 50 percent of the market."

Obviously, Philip Morris knew that Marlboro was making money in that area.

I will not read the next statement, but it has the same context. Kids were the target.

So we have here, as I mentioned earlier, the concept that we are going to be giving immunity, for the first time in our history, to an industry. What industry do we pick? Do we pick the people who are making heart valves so you can live longer? Do we pick an industry that makes hip joints to make you live longer? Do we pick the industry that is making a drug that will maybe make your life easier? Do we pick an industry that makes cars so you can get places faster? No. We pick an industry which targets kids with a poisonous product that they made addictive. And they knew it all along.

The last argument that we hear is, we can't do this bill unless we have the

tobacco companies cooperate, and we can't have cooperation unless we have some sort of immunity for the tobacco companies, unless we give them this historic new authority and protection.

First off, that is not true. The vast majority of the advertising controls that we think are needed can be done without the tobacco companies' participation. Yes, there are some issues of the first amendment that we can't step over. But for the most part, we can do a great deal to limit their access, especially to kids.

Second, we can compete with them. We can produce our own advertising programs, which compete much more aggressively than they can in the marketplace. Of course, that is the traditional American way: Make the point, make it effectively, that tobacco kills.

But, most importantly, I think it ought to be pointed out here that we are making a deal with the Devil and the Devil walked away from the table. There is no tobacco company participation in this process any longer. Here we are offering them the most significant legal protection probably in the history of the country in exchange for them being willing to give us some limited ability to limit their advertising activities, and they are not even at the table to accept the offer. In fact, they have walked away from the table. They said they don't want to have anything more to do with this process.

The quote from the head of RJR is:

The extraordinary settlement, reached on June 20th last year, that could have set the Nation on a dramatically new and constructive direction regarding tobacco, is dead. And there is no process which is even more remotely likely to lead to an acceptable comprehensive solution this year.

With that statement, he walked out. He said, I am not going to participate in this and tobacco is not participating in this anymore.

So you have this almost pathetic situation where the U.S. Congress is passing immunity and giving this outrageous new authority to the tobacco companies to protect them from lawsuits. The tobacco companies have walked away, and the U.S. Congress is sort of chasing after them on bended knee, saying, "Please, tobacco companies, please, tobacco companies, please take our offer."

My goodness. First, we make a deal with the Devil, and then we chase after him asking for him to take our deal. I mean it is just ridiculous, it is inappropriate, it is not becoming of the Congress, and it is wrong.

The language which Senator LEAHY and I have proposed here is essentially the same language which was in the original HEALTHY Kids bill, which was endorsed by the White House. I regret that we have not received White House support for reinserting this language. I regret that the leadership within this Congress has not supported

the insertion, although on the House side I note, I believe that the Speaker supports no immunity language, although I don't want to speak for him. I have read reports to that effect.

But the point is that this is not dramatic language, it is not outrageous language, it is the language that was in the original HEALTHY Kids bill, and it essentially says no immunity. It says what this Senate said back when we passed the sense of the Senate 79 to 19: No immunity for the tobacco industry, because they don't deserve it, it is wrong, and it is inconsistent with the capitalist system.

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

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

Mr. GREGG. I yield to the Senator for a question. The Senator from Massachusetts had a question. And then I will yield to the Senator from Vermont.

Mr. KERRY. I thank the Senator. I know the Senator from Vermont has to go somewhere.

I want to ask the Senator if he is aware that there is a real distinction between the notion that he has been using called "immunity" and a limit on the exposure of liability. In fact, in this bill there is no immunity. They are liable for up to \$8 billion on an annual basis. So that is not immunity.

Will the Senator not agree that the use of the word "immunity" is, in fact, an exaggeration?

Mr. GREGG. No, I would not. I happen to think the use of the word "immunity" is correct. The fact is that we are setting up a new structure here where, for the first time, we are giving product liability protection to an industry which clearly doesn't deserve it. The term "immunity" has become a term of art relative to that discussion. From my standpoint, the term of "immunity" properly defines that. If the Senator from Massachusetts wishes to define it in a more narrow sense and say, "We are giving them product liability protection but we are not giving them immunity," that is the Senator from Massachusetts's definitional approach, and that is fine. But the point is the same. We are creating a unique, unusual, significant action which changes the jurisprudence that has dominated the marketplace in this country for 200 years.

Mr. KERRY. Will the Senator yield for a further question?

Mr. GREGG. Certainly.

Mr. KERRY. The Senator is aware, obviously, that Minnesota settled a lawsuit. Minnesota settled a lawsuit, and other States have settled lawsuits, and in those settlements there is, in fact, the same kind of structure contemplated in this bill. That is part of the system of jurisprudence, is it not? It is a normal part of how you arrive at a settlement of a dispute?

Mr. GREGG. First off, there is no lawsuit against the Federal Government. So that I don't think is applicable. I don't serve in the legislature of Minnesota. If I did, I certainly would not have agreed, and I would change the law of Minnesota to not allow that settlement to have gone forward should that decision be found to be constitutional, which I don't know whether it will be or not.

At this time, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Arizona.

Mr. MCCAIN. I will be brief. I want to say to the Senator that I will be very brief.

Mr. President, I yield the floor.

Mr. SESSIONS. Mr. President, is there an order of procedure, informal or otherwise?

Mr. LEAHY. Mr. President, I note that my good friend from Arizona, who is managing the bill, sought recognition, and I will be perfectly willing to yield to him for that.

Mr. MCCAIN. I thank my friend.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I rise in strong support of this amendment of my friend and my neighbor from New Hampshire. I was thinking about this. I thought to myself, why should we give big tobacco any special legal protections? My friend from New Hampshire said that we are not doing this for a medical company because they build some new kind of heart valve, and to get it out, we will give them special protection; or somebody else comes up with a new cancer drug and we want to give them special protection. We are being asked to give this special protection to tobacco. I have to tell you, Mr. President, I don't have a whole lot of people in Vermont rushing up to me and saying, "Oh, please, please, please, give immunity to the tobacco companies. This is our No. 1 priority."

In fact, this is whom they are asking to give immunity to. Mr. President, look at this stellar group standing, raising their hand, swearing to tell the truth, the whole truth, nothing but the truth, and then they sat down and lied. I remember my days as a prosecutor. We used to see lineups like that, but they were usually a different type of lineup and you had numbers across the front.

These are not the people I want to give immunity to. These are not the people I want to go back home to Vermont and say, "I voted to give them immunity." In fact, yesterday the former Surgeon General, Everett Koop, and the former FDA Commissioner, Dr. Kessler, endorsed the Gregg-Leahy amendment because they know Congress can protect the public health without having to protect big tobacco.

This really comes down to the issue of, Do you have to protect big tobacco in order to protect public health? I say no. What we should be doing is protecting public health, that is it, not protecting big tobacco.

Now, the Senator from Arizona, Mr. MCCAIN, the Senator from South Carolina, Mr. HOLLINGS, and the White House have done a great job in narrowing the list of special legal protections in the managers' amendment, and I compliment Senator MCCAIN, Senator HOLLINGS, and the White House for what they have done. But now that the Senate begins floor debate on this revised bill, we have to go beyond that. We have to take the great work that my neighbor from Massachusetts, Senator KERRY, and the others I have named have done. Then we have to say, once and for all, we are rejecting the tobacco industry's siren song for unprecedented legal protections.

I applaud Senator KERRY and Senator MCCAIN and Senator HOLLINGS and the White House for going as far as they did, but I want to now go further, lock the door, close the door once and for all, and allow us all to go back home to our States and say we stood up to big tobacco, we voted against immunity. It is time for Congress, and especially the Senate, to scrap the last remnants of the original sweetheart deal of immunity for the tobacco industry. That was the sweetheart deal that was in the proposed national settlement.

In theory, the tobacco industry will restrict its future advertising in exchange for legal protections from past punitive damages and other past and future damages. I reject this mirage of a deal because it will evaporate in a court of law. Any affected industry that is or is not part of the deal, such as a retailer or distributor or even a tobacco company, might sue to block these restrictions as being in violation of the first amendment.

Many advertising experts, including the head of the Federal Trade Commission, predict such a suit will succeed in throwing out the advertising restrictions as unconstitutional. In the end, Congress will have been duped again by the tobacco industry. They will have given unprecedented legal protections in exchange for empty promises. They will have said, "You guys fooled us before when you testified under oath, but we know you have now found religion and you are going to be fined this time and you haven't fooled us again." It reminds me of Charlie Brown and the football: "Don't worry, Charlie Brown, I won't pull the ball out this time." And we see that, of course, every year. Out goes the football, and flat on his back goes Charlie Brown.

Well, let's not do that to the people of this country. We have learned a lot more about the industry's schemes. We have seen what Attorney General Skip Humphrey in Minnesota has pried loose

from the hundreds of thousands of internal tobacco documents. Let's take a look at some of these things.

Let's look at some of these things that came out of Minnesota, the released tobacco documents. Now, this is just marketing that is aimed at children. Look at this one:

To ensure increased and longer-term growth of Camel Filter, the brand must increase its share penetration among the 14-24 age group which represents tomorrow's cigarette business.

Mr. President, this is not a typographical error. They are talking about how they will increase—not just to start people at 14 years old but how they will increase the market among 14-year-olds.

Philip Morris starts off being a little bit more responsible by saying:

Marlboro dominates in the 17—

But then we see—

and younger age category.

RJR "Product Research Report":

Salem King shows encouraging growth by posting a four point gain in the 14-17 market.

You wonder if whoever wrote this about encouraging growth, do they have children of their own? Do they have children of their own that they would brag about that?

Or look at Brown & Williamson:

At the present rate a smoker in the 16-25 year age group will soon be three times as important to Kool as a prospect in any other broad age category.

Again, Mr. President, as a parent, I find this reprehensible. To them this was just marketing, and is that the kind of conduct that we should reward with unprecedented legal protection, that we should reward people who target 14-year-olds? To use the language of the same 14-year-olds, get real. We can't do it. If we grant immunity to this special rogue industry, we have lost all our common sense.

But if we go with the bill as now written, we will establish an \$8 billion annual cap on damages for tobacco claims. That is about \$20,000 per family for the 400,000 Americans who die from tobacco-related diseases each year. These are special provisions. They are unnecessary. Why should the industry stop marketing to children? Why should they stop manipulating nicotine? Why should they stop cutting health research when they know this liability cannot exceed a certain amount? If they know the liability is capped, then it just becomes a marketing ploy.

Some might say, "Well, they would not do that because they promised us." This is like saying the check is in the mail, I gave at the office, or a few other versions of that. Why should anybody trust them? I do not. A liability cap eliminates the incentive for the tobacco industry to change its corporate culture. It is kind of like having two warehouses side by side and one has

got locks on the doors and one doesn't. And you have somebody who is inclined toward burglarizing a place, and they say, "Oh, I promised not to burgle those places." Well, they are not telling us the truth. We know which one they are going to go into. They are going to go into the warehouse without the lock. Let's put some locks on it.

I think, if you don't have the incentive of real liability facing them, the promises they make to get the Congress off their backs today are the promises that will be forgotten tomorrow. If big tobacco could turn its liability exposure to fixed costs which they could pass on to consumers and taxpayers, then they can keep on doing business as usual without the risk of litigation.

How will the liability cap work? Will it reward today's plaintiffs at the expense of future injured parties? Because most lawsuits settle, I believe the tobacco industry will have a unique negotiating edge if they have a liability cap. The industry will have every incentive to do sweetheart deals with favorite plaintiffs—do that first, then use the prospect of delayed payments in the future to force smaller settlements. A payment delayed will result in justice denied for thousands of tobacco victims.

I said earlier, each week, when I go back home, I don't have a lot of my fellow Vermonters coming up to me and saying, "Hey, PAT, give immunity to the tobacco industry." We Vermonters are known for our common sense. My fellow Vermonters are telling me that immunity for big tobacco makes no sense. In fact, the Vermont legislature overwhelmingly, Republicans and Democrats alike, passed a resolution condemning any immunity for the tobacco industry in Federal legislation. I think that is because the American people outside the beltway understand that big tobacco does not deserve any special legal protections.

I take seriously the admonition of Mississippi Attorney General Michael Moore, whom I respect greatly, who told the Senate Judiciary Committee last year that the proposed settlement offers Congress a historic opportunity to seize the moment and protect the health of future generations. But I believe that we can seize this historic opportunity to curb teenage smoking without giving big tobacco any special legal protection. Under our amendment, a State may resolve its attorney general's suit or take on the tobacco industry in court, as Minnesota did. It is up to the people of that State, instead of Washington. That is the same approach used in the Conrad bill that has, I think, 32 cosponsors.

I am confident in my State of Vermont, Attorney General William Sorrell knows the facts in his lawsuit against big tobacco. He is going to weigh the interest of Vermonters in de-

termining to opt out of the bill's settlement provisions. As one Vermonter, I am perfectly willing to put that decision in the hands of our elected officials in our State.

Our approach puts the interests of the children ahead of the interests of the tobacco lobby. The public health community agrees that immunity for the tobacco industry makes no sense. The Advisory Committee on Tobacco Policy and Public Health, headed by Drs. Koop and Kessler, wrote to Congress:

We oppose granting the tobacco industry immunity against liability for past, present or future misdeeds. Congress should focus its efforts on public health, not on the concessions the tobacco industry seeks.

I agree. I agree. Dr. Koop called a liability cap a huge corporate giveaway. He is right. I agree. After all, the only reason we are here—and it is really a credit to it—is our civil justice system. In fact, without the use of class actions, without the likelihood of punitive damage recoveries, we all know tobacco companies never would have come to the negotiating table. So let's not change our successful State-based tort system as it involves tobacco legislation. It has served us well. After all, the same people who were in the picture I showed earlier, raising their hands, swearing they will tell the truth, the whole truth, nothing but the truth so help me—and I think they were swearing on a tobacco leaf because now the Department of Justice is currently investigating them for criminal conspiracy and perjury. I would say, if I can move that metaphor a little bit further, strip away the tobacco leaf and see what is hidden behind it. I am not going to give legal immunity to the same people who appeared here and lied to Congress while under oath.

Why in the world do we want to give big tobacco such legal protections? Rely on common sense. Rely on the things I hear from my fellow Vermonters as I am in the grocery stores back home. Rely on what I hear, as I am walking down the street, from Vermonters of all political persuasions. Rely on the common sense I hear from my neighbors and friends of a lifetime back home. Then we will reject the unprecedented legal protections for the tobacco industry, and we will vote for the Gregg-Leahy amendment.

I believe it makes sense. I certainly find myself in total agreement with what the distinguished Senator from New Hampshire, Mr. GREGG, said. That is the way I feel about it.

I understand from earlier discussions with the distinguished leader we may not vote on this today; we may vote on it tomorrow. But whenever we do, think what is in the best interests of the country. Think what is in the best interests of the people. And think, every Senator, how you would answer this question when you go home if you

are asked: Are you willing to give immunity, even limited immunity, to the tobacco companies or not? If you are not, then you vote for this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have listened very carefully to both of the proponents of this measure, for both of whom I have respect. But I must say this amendment is really not connected to the reality of what is in this bill or the reality of what we are trying to achieve with this bill. And I say that respectfully.

You might dub this amendment the "kick the tobacco companies hard no matter what the consequences" amendment. This is the amendment if all you want to do is hate the tobacco companies, all you want to do is come here and show photographs of children or show us how terrible the companies have been. Nobody is going to argue. We all know that. We know the companies have lied. We know they have been egregious in their behavior. We know they targeted young people in this country. We know they have come to the Congress, raised their hands, and not told the truth. We understand all of that.

The question is, What are we going to be able to achieve here in the U.S. Senate in terms of conditioning their behavior, within the limits of our Constitution, within the limits of our ability to do so. We have heard the words said that the tobacco companies "do not deserve immunity." That is correct. They do not deserve immunity. And they are not receiving immunity under this bill. There is no immunity. They are liable. There are simply two choices as to how they are liable.

They can be liable by paying the annual payments that will now come from the \$1.10 that appears to be at least settled for the time being. They will pay from that. And they will, in addition to that, have very, very rigorous so-called look-back assessments. They will have to live up to those look-back assessments. Where, if they do not achieve a specific level of reducing smoking among teenagers, then they get hit harder. They pay more. They pay more as an industry, up to \$4 billion on any year, and they pay more per child that is deemed not to be meeting that level of reduction—\$1,000.

That is a pretty steep penalty, \$4 billion plus the assessment per child if they don't meet the reduction levels; that is, if the companies do not decide to be part of the solution. If all they do is get assessed the \$1.10 assessment, and all they do is meet the standards of the look-back, they are subject to suit forever—forever. There is no immunity. They are liable. They are liable—not even under the cap. There is no cap under those circumstances. I ask my colleagues to focus on that in this bill.

This is a two-part bill. One part offers the companies the opportunity to be part of the solution. Only if they become part of the solution does there then apply a so-called cap on annual payments.

Even if there is a cap on annual payments, there is no immunity; there is no avoidance of liability. We heard my colleagues stand here and say—let me quote it: "The liability cap permits them to avoid changing the corporate structure."

Not true, Mr. President. The liability cap does not permit them to change to avoid it. In fact, they only get a liability cap if they agree to change the corporate structure. That is the way it works now. The incentive of the cap is the commitment to change the corporate structure. If they change the corporate structure by agreeing to live by the FDA rules, by agreeing to live by the advertising restrictions, by agreeing to a whole set of requirements, that is the only way they qualify for the so-called cap.

The cap is annual. That is not immunity. That means they can be charged up to \$8 billion in the industry for every year on into the future, and it is indexed, incidentally, for inflation. That is immunity? That is why so many people are on the floor saying, "Hey, wait a minute, what are you folks doing in the U.S. Senate?" because there are some people here who think that is too tough.

The fact is, and I emphasize this again and again, there are two choices for the companies: They can either take the assessment, be assessed the \$1.10 and have the look-back provisions hanging over their heads and be sued and sued and sued by a State or an individual on into the future, or they can decide they are going to sign up.

What are they going to sign up to? Each company will sign up to a whole set of restrictions—FDA advertising restrictions, they would make a substantial up-front payment, they would abide by the far broader advertising restrictions that were in the June 1997 settlement, they would create a document depository, and they would agree not to challenge provisions in the bill and to abide by these provisions, notwithstanding any future decision from the court on constitutionality.

That is really critical, Mr. President. We are asking these companies to do a whole bunch of things that we can't get them to do unless they agree. We can't mandate that they give up their constitutional rights. No matter what we pass here, these companies have constitutional rights under the first amendment. They have to come in and sign a consent decree and sign an agreement, and they have to agree, among other things, that there will be no billboards within 1,000 feet of a school; that all advertising will be black and white text unless in adult-

only stores; that all advertising in the text must be in black and white, unless in magazines with 15 percent or less youth readership; it prohibits the sale or give-away of any products with tobacco logos; it prohibits brand name sponsorship of sporting and entertainment events.

We can't do those things, unless the tobacco companies agree. What they agree to is that they will do that. Even if the court decided later that it is unconstitutional, they will abide by it. How are we going to get them to do that? How are we possibly going to get these tobacco companies to become part of the solution of keeping our kids from doing things unless they agree to do it, and the fastest way to keep them from agreeing to do it is to say to them, "We're just going to kick you around forever and forever, be subject to lawsuits forever and forever" and not offer some incentive to come on board.

I reiterate, that is not immunity, it is a deal. It is a deal just like the attorney general of Minnesota made, the attorney general of Mississippi and the attorney general of Florida. That is what happens in the courtrooms of our country every single day. If you bring a lawsuit, as 44 attorneys general have done, then you go to court. But many of these cases come to some kind of settlement before they ultimately go to a jury verdict.

I remind my colleagues, the Senator from New Hampshire and the Senator from Vermont, in all of the years of bashing tobacco, in all of the years of hating tobacco, in all of the years of summoning up these speeches that whack them apart and say what they have done, not one lawsuit has been won in a courtroom. Not one.

What my colleagues are suggesting is that somehow the country is going to be better off by allowing that status quo to continue; that all we are going to do is have a bunch of lawsuits rather than trying to bring the companies into the process of helping to resolve this issue.

Again I say, if you want to have a document depository which, incidentally, helps people continue to sue and they are able to continue to sue up to the level of the \$8 billion per year, that is not immunity. The best of my judgment is that is a limitation on the exposure of immunity. It is a limitation on the degree to which you are going to have to pay out in a given year, and that is precisely the kind of certainty that the tobacco companies and the attorneys general were trying to achieve in the agreement they came to last year.

Here we have in front of the U.S. Senate the opportunity to raise the price and the opportunity to have very stiff look-back provisions that will hang over the heads of the company. Let me just cite what those are, Mr.

President, if you don't think those aren't tough. There are two look-back assessments. There is an industry-wide assessment and there is an individual assessment.

Under the industry-wide assessment, the industry is going to have to reduce youth smoking 15 percent in years 3 and 4, 30 percent in years 5 and 6, 50 percent in years 7 and 9, and 60 percent in years 10 and beyond.

If the industry fails to meet these targets, then there will be a graduated industry-wide assessment of the following amounts: \$80 million per point for missing the goals by 1 to 5 percentage points, \$160 million per point for missing the goals by 6 to 9 percentage points, and \$240 million per point for missing the goals by 10 or more percentage points.

The total industry assessment will be capped at \$4 billion per year, which is about 22 percentage points, and this will not be tax deductible. If the industry fails to meet the youth smoking targets, they will have to pay about 27 percent per pack. In addition to that, there will be a company-specific amount of an assessment annually—\$1,000 for each child who uses tobacco beyond the youth smoking reduction targets.

Mr. President, there is no way to suggest that that is immunity. You can't be required to engage in that if you, in fact, have immunity. If you have immunity, you walk away free. Immunity means you are not going to be prosecuted. Immunity means you don't pay. Immunity means there is no price. There is clear liability here and the liability, I think, is serious.

A final comment I will make is that participating manufacturers—and this is very important—must agree to comply with all of the provisions in the act, including the provisions in look-back and in the annual assessments. They must also agree not to bring any court challenges to any provision in the act.

I ask the Senator from New Hampshire rhetorically, we can't get them to agree not to go to court. They are already challenging the FDA rule. They are clearly going to challenge the constitutionality of the look-back provision. The only way we can get them to participate is by offering something, and the something is that you are going to settle the lawsuits and you are going to have the ability to give them certainty as to how much their liability is on an annual basis.

Also, they will agree to abide by the provisions in the act, including the annual payment in the look-back provision, even if a third party challenges that provision and it is declared void by a court.

I emphasize that. Even if a third party challenges it, the tobacco companies that sign the protocol and agree to get the \$8 billion limitation on their

annual liability will still have to agree to live by it. If any of them break any component of this act, they have no cap at all. They are subject to exactly what the Senator wants.

Here is the choice for the U.S. Senate: It is a choice of whether we are going to have a piece of legislation that makes sense, that is built on common sense, that tries to bring the companies into the fold, that tries to create a solution for this problem, or you just come out here and feel happier bashing the companies.

And I think the choice is very, very clear for the Senate. I think the Senator from Arizona, and Senator HOLLINGS, and the others who have worked on this particular effort to create this structure have struck a balance of that common sense and of a way of achieving the goals of the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I will be brief, because I do not want to take the time from the Senator from Alabama who is going to speak next.

So I just mention administratively that, after discussion with the Senator from Massachusetts and with the majority leader, it would be our intention to have either a tabling motion or an up-or-down vote on this amendment and the second-degree amendment around 10 o'clock tomorrow. It is my understanding that we will be in at about 9:30, and that would give a half-hour tomorrow morning. So whether we have the unanimous consent agreement or not, that would be the intention of the Senator from Massachusetts and myself.

Second, the majority leader has asked me to announce that there will be no further rollcall votes tonight.

I would like to say, and point out to my colleagues, that I have heard all day today that some of my colleagues have felt that they have not been able to speak on the bill. There are others who want to speak on the amendment. I encourage you to come over. As I mentioned earlier, the Senator from Massachusetts and I will remain here until such time as everyone is heard both on the bill and on the amendment.

So finally, Mr. President, I just received a letter from the President addressed to Senator LOTT expressing President Clinton's opposition to the Gregg-Leahy amendment. I ask unanimous consent that that letter be printed in the RECORD.

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

THE WHITE HOUSE,
Washington, DC, May 20, 1998.

HON. TRENT LOTT,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR MR. LEADER: I applaud the Senate for taking up comprehensive, bipartisan legisla-

tion to dramatically reduce teen smoking. Every day, 3000 teenagers start smoking regularly, and 1000 will die prematurely of smoking-related diseases as a result. I urge the Senate to move swiftly to pass comprehensive legislation that could save those children's lives.

Last September, and in my budget plan, I set forth five principles for comprehensive tobacco legislation: Raising the price of cigarettes by \$1.10 a pack over 5 years with additional surcharges on companies that continue to sell to kids; affirming the FDA's full authority to regulate tobacco products; getting companies out of the business of marketing and selling tobacco to minors; promoting public health research and public health goals; and protecting our tobacco farmers and their communities.

I have made protecting tobacco farmers and farming communities a top priority for this legislation, and I believe Senator Ford's LEAF Act fully meets this standard. I am deeply troubled by the Senate Leadership's recent attempt to undermine protection for tobacco farmers and their communities. I urge the Senate to work through this impasse and ensure that small, family farmers are protected.

If that issue can be resolved to my satisfaction, the bill before the Senate, as amended by Senator McCain's Manager's Amendment, is a good, strong bill that will make a real dent in teen smoking. Congress should pass it without delay.

I applaud Senator McCain and others in both parties who have worked hard to strengthen this legislation. I am particularly pleased that the bill contains significant improvements which will help reduce youth smoking and protect the public health.

Tough industry-wide and company-specific lookback surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;

Protection for all Americans from the health hazards of secondhand smoke;

No antitrust exemption for the tobacco industry;

Strong licensing and anti-smuggling provisions to prevent the emergence of contraband markets and to prosecute violators;

A dedicated fund to provide for a substantial increase in health research funding, a demonstration to test promising new cancer treatments, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and cessation, law enforcement efforts to prevent smuggling and crackdown on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and

The elimination of immunity for parent companies of tobacco manufacturers, an increase in the cap on legal damages to \$8 billion per year, and changes to ensure that the cap will be available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than challenging it in court. Because the First Amendment limits what we can do to stop the tobacco companies' harmful advertising

practices—which lure so many young people to start smoking—we can do far more to achieve our goal of reducing youth smoking if the companies cooperate instead of tying us up in court for decades. If a cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to stop marketing cigarettes to kids, it is well worth it for the American people. I, therefore, oppose the Gregg Amendment to strike the liability cap.

I strongly support these improvements, and I urge the Senate to pass this legislation without delay.

Sincerely,

BILL CLINTON.

Mr. MCCAIN. Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I know the Senator from Alabama has been waiting. I just misspoke on one thing, and I want to, if I may, correct it, take 2 minutes, and then I will yield the floor.

When I talked about the things that the advertising is going to require, that was the components of the FDA rule itself. I want to just share with my colleagues how, by bringing the companies in, it goes way beyond the FDA rule, because they would then be agreeing to have a ban on human images, animal images, and cartoon characters. They would agree to a ban on outdoor advertising, including stadia and mass transit, they would agree to a ban on Internet ads accessible to minors, and they would agree to severe restrictions on point-of-sale advertising of tobacco products. All of those things are what you get for having the companies agree to be part of the process.

The final comments I would make is, I began the process very much feeling that there should not be sort of a restraint liability, in a sense. When we sent this bill out of committee, there was a great deal more restraint with respect to liability. And since the Commerce Committee effort in putting the managers' amendment together, we have taken out an extraordinary number of those restraints. I will not go into detail now, but all of them were taken away, so that there was considerable increased exposure of the companies, which is one of the reasons why the companies are spending so much money now advertising and trying to refocus America on what this bill is not. And I think that is a critical thing for us to keep in mind.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. KERRY. I thank my colleague for his courtesy.

Mr. SESSIONS. I thank the Senator from Massachusetts for summarizing many of the very significant restrictions that will be placed on the tobacco companies if they participate in the settlement.

But I really do believe, and can say with great confidence, that we are not dealing with a question of immunity when an industry agrees to pay \$750—\$70 billion in payments to subject itself to many other controls and limitations. That is not immunity. And in fact, they have agreed, in addition, to pay \$8 billion into a fund that would be available for individual liability lawsuits—each year, \$8 billion. It goes up according to the cost of living index.

So I just say, this is a remarkable settlement. And it reminds me of the case in which the client sues and gets everything he wants but he still wants to keep suing because he wants to get a drop of blood.

Now, let me say this. I am not a defender of tobacco. I do not take any money from the tobacco industry. I believe it is a very damaging product to people's health. I know that as certainly as I am able to know anything. I oppose its use. I believe anything we can do particularly to keep youngsters from getting involved in tobacco is good, because it is more difficult for them to quit once they start, and they become addicted quicker at a younger age. It is a very insidious product, and we ought not to do anything that would undermine our effort, that I think has bipartisan support, to deal with smoking in America.

Let me talk about this subject on a broader basis. And I think our Members ought to consider this on both sides of the aisle. It is above partisan politics. In my view, the law is too much with us late and soon. We have too much litigation. Courts are clogged all over America with more and more lawsuits every day. People cannot get speedy justice. Cases are backed up. Costs have increased. And it is not a pretty sight.

As policy-setting Members of this Government of the United States, it ought to be our goal to reduce that litigation, to do what we can to obtain justice in ways that do not require citizens of this country to expend extraordinary sums of money over long periods of time for only modest gain at the end of it. That is a principle in which I believe deeply.

I have been a practicing lawyer all my career. I served as a U.S. attorney for almost 12 years, and I practiced law in private practice.

Let me just mention the asbestos litigation situation. Asbestos caused a number of different diseases that have resulted in large payments by the asbestos companies. This was handled, in the normal litigation of America, in the torts lawsuits that have been filed. Over 200,000 of those lawsuits have been filed and concluded, 200,000 more are pending, and it is estimated there may be another 200,000 filed.

Now think about that. That is 600,000 lawsuits, perhaps more, having to wind their way through the court system,

with lawyers, and fees, and costs, and expenses. According to testimony we had before the Judiciary Committee by one expert who studied this matter, less than 40 percent of the money paid by these asbestos companies actually got to the victims, the people who were suffering disease because of their exposure to asbestos. Just think about that. Less than 40 percent of the money they paid actually got to the victims of asbestos disease.

I think that is unacceptable. That is an unjustifiable event. It does not reflect credit on the legal system, and it does not, even more so, reflect credit on the Congress and the Senate of the United States, because we should have legislation that can deal with that in a more efficient way.

So I just say, I am troubled by the prospect that we will allow litigation to spring up all over America, that we can have a fund there to pay it, that we will have not 200,000 smoking suits, as they had in asbestos, but perhaps 500,000, 800,000, a million, several million lawsuits filed—tens of hundreds, maybe thousands in every community in America, large and small, where lawsuits will be filed, clogging the dockets of the courts, taking up weeks to try, and incurring great expense. It seems to me we can do better than that. I am certain that we can do better than that.

What happens when a lawsuit of this nature is filed? And I have to agree with Senator GREGG from New Hampshire: This bill is not effective in what it intends to do. It needs to be amended. And Senator JEFFORDS from Vermont and I will be introducing legislation on this bill, an amendment, that will distribute moneys that are paid in a fair and equitable manner, with the minimum of cost and the quickest possible turnaround time, so the people who are ill can receive compensation which they deserve, receive it quickly, without even having a lawyer.

Under the court system approach, just turning over tobacco lawsuits to litigation throughout America, we are talking about individuals having to hire attorneys. The Wall Street Journal has already noted that attorneys—I believe, in Detroit or Chicago—are advertising for tobacco clients now. They are already advertising for clients so they can file lawsuits. Traditionally, they will charge at least one-third, probably more of them will charge 40 percent of the recovery on a contingent fee basis. That means 40 percent of the money paid out by the tobacco company won't go to the victim, but will go to the attorneys. In addition to that, there will have to be trials, court costs, jury costs, deposition costs, medical costs, expert witness costs, and great delays.

Before you can get any money out of this bill, you have to have a final judgment. Normally that would mean a

judgment by the supreme court of the State, which may be 2 years or more in the offing. The result of that, I suggest, for people who are suffering from lung cancer is that many of them, unfortunately, would not live to see any recovery.

The Senator from New Hampshire is also correct that it appears under this bill the tobacco companies decide who gets paid. I don't know how that came about, but it indicates they pay whoever they want to pay and that counts toward their payment into this fund. That is not a rational way to see that injured people get paid. They should not be required to do that. It will also cause a race to the courthouse because you don't get any money until you have a final affirmation of your judgment, and only then can you come to the tobacco company and get your payment.

We should not be put in a situation in which two equally deserving claimants have filed a lawsuit and one wins and he has a fast court system and he gets into the fund and gets his money first and another one takes a long time before he ever gets his final judgment, before he gets money. We are creating a system that will be aberrational.

It will be aberrational in a number of other ways. Some States will be favorable to these kind of lawsuits. Some States will not. Maryland has already changed its law to make lawsuits against tobacco companies easier to file. Other States may do that. Traditional defenses such as assumption of the risk and contributory negligence may be vitiated by legislation or court rulings, and lawsuits will move faster and more successfully in one State, whereas another State that adheres to traditional rules of law may not allow cases to move forward at all. It may be unsuccessful wholly in one State. Indeed, we could have one or more States virtually bankrupting the tobacco industry themselves if they were to have unfettered litigation cases of this kind.

As a person who has practiced law for a long time, who has been in court on a consistent basis, I can tell you that the prospect of hundreds of thousands, maybe a million tobacco lawsuits being filed, burdening the judges and courts to a degree they have never known before is not a good thing. The taxpayers pay for that. Some will say it is a free-market deal. Just let people file their lawsuits and the government is not involved in it. The courts are the government. Courts are the government. The taxpayers are paying for the judges, the jurors, the clerks, the court reporters and everybody that manages a courtroom, and the courtrooms in which these cases are tried. The taxpayers are intimately involved in that.

We can do a lot better than this. I just say we cannot allow a repeat of the asbestos litigation situation. We cannot, as Members of this body, allow

a situation to occur in which less than 40 percent of the money paid out actually gets to the people who are victims of the crime. They will say, well, in this bill they have arbitration over attorney's fees. I have heard that. So I have gone back and read the legislation. This is the arbitration: If you are unhappy with the agreement you have with your attorney, you can go to an arbitrator. The attorney gets to name one member of the panel, you get to name one, and those two select a third. But if you have a standard agreement with them on a one-third or 40 percent contingent fee basis, 40 percent of what you recover goes to the lawyer if you have that kind of an agreement. That is what the arbitrators are going to affirm. They are not going to undercut written contracts between attorneys and clients the way this thing is written.

So there is no protection here to substantial fees being paid to attorneys in all of these cases. We know it will take years for them to be concluded. There will be a race to the courthouse to get judgment. Some States will allow suits to proceed. Others will not. Some people will draw a favorable jury, win a big verdict, \$100 million; somebody else will have a jury that is more conservative and renders no verdict, zero verdict. This is not the way we ought to do it.

On this legislation, we begin the process of establishing a sane and rational method of distributing the funds that ought to go to those who have been injured by tobacco. However, the problem with it is it does not go nearly far enough. This is a classic mass tort situation. The greatest mass tort situation, perhaps, in the history of mankind in which millions of Americans have smoked for a long time and they have hurt and damaged their health because of it, and as a result of that they now want to seek compensation.

First, let me say something. I have to be very frank. No individual person has succeeded in a lawsuit against a tobacco company, primarily because of the traditional rules of law that say if you undertake a dangerous activity and you are injured in that, you cannot sue somebody and ask for compensation because of it. The way this bill is written, I believe the likelihood is we will have more States like Maryland amending their law, more pressure on judges and juries to get around the traditional defenses to these kind of activities, which is somewhat dangerous, because what about the liquor companies and cirrhosis of the liver or other kinds of diseases that come from other kinds of products. Is there no barrier to that anymore?

I will say we have a major mass tort situation. We ought to deal with it in a comprehensive manner. We should not allow an unfettered lawsuit flood to dominate the American court system,

resulting in some people winning large verdicts, others getting nothing, delay, people dying before they have any recovery.

Senator JEFFORDS and I will be introducing a bill that will say if you have a serious disease and have been disabled because of your smoking, you can file a claim and within 90 days you can be paid. You will not even have to have an attorney. We will limit the cost to 10 percent and we will dispense the moneys based on the seriousness of your disease, the seriousness of your disability and whether or not it is connected to smoking. That is the kind of thing we can do. We can use this money that the tobacco companies in this litigation demand that they pay—\$8 billion a year—and we can use that to compensate in a prompt and fair way those who have been injured. To do otherwise is just not a good way to do business. It will enrich lawyers, it will burden the courts, and it will guarantee an irrational distribution of funds to those who have been injured and minimize the amount of money actually getting to those who deserve to be compensated.

I will say that I do believe that this amendment should not be passed, that the payment of \$755 billion, the agreement to give up certain constitutional rights such as free speech and advertising is the kind of settlement that is justifiable and proper under the circumstances. We would make a historic step forward for America if we can develop a way to ensure that those who are injured in a mass injury-type situation such as this are compensated in a realistic and prompt way. I believe we can do that. For these reasons, I must ask my fellow Senators to vote no on the Gregg amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I come to the floor to make a general statement about the legislation.

Let me say this to begin with: I am very concerned by the speed with which this bill has come to the floor. It has really foreclosed any real financial analysis—no joint tax figures that are adequate, no CRS analysis, no CBO study.

For me, who represents California, there is a certain irony in passing a bill under these conditions. That irony is what we do that we believe is right for people may turn out to be very harmful for those very people. And I want to say what I mean by this. I want us to pass a good bill. What is a good bill? It is one that deters smoking; it doesn't create a huge black market; it is constitutional; it would give the FDA full authority to regulate the contents of nicotine; it would prohibit all advertising, which to me is very important, not the kind of crimped regulations, but a prohibition on all advertising;

and it would have some strong anti-smuggling provisions, both domestic and international.

We have heard Senators state the facts. Forty million Americans smoke today. Most of them are addicted. I don't think we have heard the California facts. Earlier, I was listening to the distinguished Senator from Nebraska say he was speaking on behalf of 1.6 million Nebraskans. My goodness, in California alone, three times the population of the State of Nebraska smokes. We have 4.6 million smokers in California who are adults; that is, 19 percent of the population of the State of California smokes. You can figure how many of those people you believe are truly addicted, who would like to quit but can't.

Ten percent of our youngsters smoke; that is, 890,000 young people in California smoke. Let me give you a really chilling figure. One out of every four high school senior is addicted to nicotine. One out of every four high school senior in the largest State in the Union is addicted to nicotine. That is why I say an express prohibition on all advertising is important to the success of any antismoking effort.

Mr. President, 1.8 billion packs of cigarettes are sold in California each year. On a per capita basis, 54 packs of cigarettes are consumed in California each year by every man, woman, and child in the State. And there are more than 32 million of us in that State. We already have a 37-cent State tax. We have a 24-cent Federal tax. And on the ballot in November is an initiative placed there by Rob Reiner, which would put on 50 cents additional. So we will be over a dollar in tobacco taxes in the State of California before this body and the other body do anything at all.

In California, 300 young people under the age of 18 begin smoking daily. We all know the health consequences. Just yesterday, my closest and oldest friend called. She had just been diagnosed with lung cancer. She quit smoking 30 years ago. Just the day before, I learned of the husband of a very close friend of mine who just had a tumor, stage 4, the size of a softball diagnosed in his lungs. So we all see this happening to us every day. A good friend of mine just died from lung cancer—a lifetime smoker.

The hard part is not that we don't want to do something, but whether what we do is right. What really will turn around the teenage trap of smoking and addiction? What is the right balance of penalties, pressures, regulations, and health research for the next 25 years? If the goal of this legislation is to reduce and limit youth smoking, and not just creating a spending bill, we must address the link between price of cigarette packs, the ratcheting down of nicotine, if the FDA has full regulatory authority, a black market, and the availability of cigarettes to chil-

dren. We need to make certain that we don't increase the price of cigarettes so high that it becomes lucrative for smugglers and for organized crime to become involved in cigarette smuggling so that, like cocaine, cheap black-market cigarettes will be available on street corners in cities all over our country.

Mr. President, there is already a black market in California. It is a substantial black market, and it is based on just the taxes I have mentioned so far—a 37-cent State tax and a 24-cent Federal tax. The State estimates they lose between \$20 million and \$50 million a year in revenues.

We have all heard in the Judiciary Committee commentary that when the per-pack price increases beyond \$3.60 to \$4 a pack—this takes into consideration what the public health people said could be added to a pack—about \$2—and what the industry analysts said, anything over \$3 to \$3.50—at that point we would create a black market in this country, unmatched by what happened in Canada in the 1980s.

I believe that, as I understand the MCCAIN bill, within 5 years in the State of California, with the item on the ballot, you will have a black market in cigarettes unmatched by anything in history. According to an independent industry analyst, the price per pack in 1997 dollar terms, under the Commerce bill, would be \$4.61. In California, with what is on the ballot in June, that will make it \$5 a pack. If you include inflation, the MCCAIN legislation would be \$4.61, and that becomes \$5.11 if you add the 50 cents that is on the ballot in my State in November. That is above anything that anyone has said would be the trigger point to create a black market in the State. This is a 25-year prospect, so the numbers only go up from there.

At the Judiciary Committee hearing 2 weeks ago, John Hugh, the senior assistant attorney general of the State of Washington stated:

As tax rates have risen generally across the United States, a new trend is emerging. Increasingly, tobacco products manufactured outside the United States are being smuggled into the United States and are sold on the contraband market. In 1988, California increased its tobacco tax from 18 percent to 35 percent per pack. Today, the contraband market is estimated to be between 17 and 23 percent of the cigarettes sold.

The impact of cigarette smuggling is enormous for this country and most particularly for my State. First, there is, obviously, the loss of State excise tax revenues, which I said were \$20 million to \$50 million annually now.

Second, we have no control over the safety of cigarettes that are smuggled in from overseas. For example, tobacco from China is much harsher, and the cigarettes are much more carcinogenic. And that is a very likely contraband potential black market today. Even though all 50 States have laws prohib-

iting the sale of tobacco to people under 18, Federal sting operations show that four in ten teen smokers nationwide today succeed in evading such laws.

Individuals, including teens, find ways to buy available cheaper cigarettes. In Canada, when they increased tobacco prices by 150 percent in the 1980s, it is estimated that 40 percent of the cigarettes in Canada may have been contraband U.S. cigarettes, where a carton of Canadian cigarettes was \$37 compared to \$14 for U.S. cigarettes.

We also heard testimony about how a smugglers' ally developed in an area between Cornwall, ON, and Messina, NY, the epicenter of the Canadian contraband cigarette crisis.

It goes on and on and on with testimony.

There is a very real probability that within 5 years in California there will be a major black market, if the McCain per pack tax plus what happens on the ballot in California in June all go into law.

With almost 890,000 youngsters smoking, with one out of every four high school seniors addicted to nicotine, what prospects do we have, then, of really reducing teenage smoking unless we can get full regulatory FDA authority, and unless we can prohibit all advertising, which I don't believe we will be able to constitutionally do unless the tobacco companies will agree to ban all advertising. To me, a ban of all advertising is really going to be important if we want to help youngsters to not smoke.

Let me tell you two things about the McCain bill that I cannot live with.

I will shortly be introducing an amendment, along with Senators BOXER and DURBIN, to cure an injustice in the McCain bill's treatment of local government. As presently drafted, the bill would wipe out the suits that several local governments have filed against the tobacco industry without providing a dime of compensation. That is simply unfair. The McCain bill currently would prevent local governments from sharing in any of the settlement funds now being provided for in the United States. San Francisco was the first local government to sue. It sued in June of 1996. The suit was joined in by 17 other California cities and counties representing over half of the population of the State of California. Local governments in three other States have also sued the tobacco industry. New York City; Erie County, NY; Cook County, IL; the City of Birmingham, AL; and Los Angeles County brought their own suits. These local governments have been litigating against the tobacco industry for 2 years. As a matter of fact, it was the California cities and counties which resolved the Joe Camel case in California. And as a result of that case R.J. Reynolds agreed to pull the infamous

Joe Camel campaign. R.J. Reynolds was required to disclose its confidential marketing documents. The release of those documents was front-page news across the country.

The California county lawsuit is set for trial early next year. In the absence of Federal legislation, the California counties and other local governments would expect to recover appropriate compensation as a result of the trial or the settlement of these cases. The legislation coming out of the Commerce Committee jettisoned all of these suits.

That is my first major point of a grievance with the McCain legislation, in addition to it moving so fast and the cost such that I believe it creates a major black market.

The second objection is that the formula for distribution in the State disadvantages 26 States because it is based on an agreement among the Attorney Generals and not on general population census figures. For example, in California, if you use the population percentage as a formula mix, what happens is California's share of revenues is increased 4 percent. And that is 9 percent to 12 percent, and that is a third net additional cost for 26 other States to which we have sent a Dear Colleague letter out today letting them know about this.

It is no secret that I have been working with the distinguished chairman of the Senate Judiciary Committee, the distinguished Senator from Utah, on a bill that might well avoid some of these problems—avoid the black market for California, cover local suits and county suits, provide a formula which is really based on what we are trying to do, which is to stop youth smoking, and it makes sense in many other ways.

Particularly, let me stress again that unless whatever we do here has some encouragement for the tobacco industry to agree not to advertise, the only prohibition we can probably impose, or perhaps—I say perhaps—some of those in the FDA rules, and even that will be litigated and even that will hold up the legislation probably for 5 to 10 years.

I notice the distinguished Senator from Utah is on the floor. I wonder if I might ask him this question. I have had the privilege of serving with him on the Judiciary Committee for 5½ years now. I regard him as a strong and positive constitutional expert.

Based on what the Senator from Utah knows of the Commerce Committee bill, does the Senator believe it will be contested in court, and does he believe that it will withstand a constitutional test?

Mr. HATCH. I thank the distinguished Senator for her kind remarks. I have listened very carefully to her.

There is no question in my mind—not only from my own personal evaluation and study of these issues, but also from conferring with the top constitutional

experts in the country, that both the original Commerce bill and the managers' amendment we are now discussing, are unconstitutional in scope and intent. This is especially true with regard to the FDA provisions where it would appear that the advertising restrictions are too broadly conceived to be enforced. Both Larry Tribe, a constitutional expert on the left, and Robert Bork a renowned scholar on the right, have concluded these provisions are problematic and raise constitutional concerns.

With regard to any other advertising ban, as embodied in the new title XIV of this managers' amendment, the only way they can go into effect will be if the tobacco companies actually voluntarily consent to these restrictions on advertising. As the distinguished Senator knows, they have not voluntarily consented. Far from it.

The companies have said they will fight this bill. This means that if the McCain bill passes in its current form, and thus there is no voluntary consent to the advertising provisions, we will have up to at least 10 years of litigation. During that time, we face the possibility of having no money for our stated purpose of helping reduce youth smoking, no money for smoking cessation, nor for any of the other stated purposes such as biomedical research, settling the state suits, and farmer transition payments.

And at the end of 10 years, it will be entirely likely that the tobacco companies will have won their suits because of the constitutional infirmities within this bill.

I am just talking about advertising.

Then we go to the look-back provisions. There are at least two major constitutional problems with the look-back provisions as written in this bill.

One is that they are going to punish these companies even though they don't show fault on the part of the companies when the projected youth smoking reduction targets are not attained.

The constitutional experts have said that may constitute a bill of attainder which is expressly prohibited by the Constitution.

There are other constitutional infirmities with regard to the look-back provisions. So it doesn't take anybody on the side of tobacco companies 3 minutes to know that if they face the Commerce bill, in which they had no part in drafting, during which they were not even allowed to provide input, for which they gave no consent to waive their constitutional rights, then it is a lot cheaper for them to litigate the matter with a good prospect of winning than to pay over \$800 billion in the next 25 years.

I might add just parenthetically that by some estimates there could be 1 million young children whose lives will be cut short prematurely because Con-

gress has failed to write a constitutionally sound bill.

So the Senator raises very important issues; she raises very important considerations here and very important criticisms of this particular piece of legislation.

It really bothers me that many in this body are rushing to "pile on" this legislation without trying to bring the tobacco companies onboard, albeit screaming and kicking.

Let me state for the record. I have no respect whatsoever for the tobacco companies.

I think that their record shows clearly they have lied to the American people for decades. They knew their products were addictive. They knew they caused cancer. They deliberately marketed their products to young children, and then denied it.

I would like nothing more than for them to pay a trillion dollars a year.

But what I would like even more is for us to endorse a workable, constitutionally-sound new War on Tobacco, and we are not going to do it by writing a bill which fails the constitutional test. Such an approach is destined for failure.

I remember clearly when Mississippi Attorney General Mike Moore testified before our committee, not once, but twice. He related that the attorneys general knew all these evil things about the tobacco companies when they were negotiating the settlement last year, they waded through all the relevant documents, and they concluded that the far greater goal was to help a generation of youth from becoming addicted to tobacco than to continue to focus on the companies misdeeds.

If the companies broke the law, if anyone in the companies broke any law, they should be punished to the fullest extent possible. Nothing here would preclude that. Nor should it.

But I get upset when some suggest that we can help children by thinking up literally every measure we can to punish the tobacco companies and then loading them into one constitutionally-infirm bill.

It seems to me it is possible to punish the companies, but at the same time compel them to underwrite financially a new public health program that can do future generations more good than anything we have ever envisioned. We simply can't develop that comprehensive public health approach without the industry's consent, again, however reluctant.

I can go on and on. Tomorrow, I plan to go into greater detail on the constitutional infirmities of both the original Commerce Committee bill, which everybody knew was just a vehicle for amendment, and the bill as now amended with the managers' amendment, which is just as bad as the original Commerce bill with regard to constitutional concerns.

So I thank the distinguished Senator from California for bringing this out. I also appreciate her working with me to try to resolve these difficulties. And, as my dear friend from California knows, the original settlement on June 20 of last year was for \$368.5 billion.

All of us gasped for breath when we heard that. We thought, "Why in the world would the tobacco companies agree to pay \$368.5 billion?"

The reason is because they want some limits of liability, even though they will still have abundant liability; they want some finality to the litigation that they face, a predictability that will allow them to make the large payments we envision to underwrite the new public health program we are trying to develop.

And so, if we take away even the few aspects of limited liability that are there, there is no chance at all of ever getting the tobacco companies to come on even a modest bill.

I thank the distinguished Senator from California for being willing to help cosponsor the bill that we are working on that would require \$428.5 billion in payments over 25 years, or \$60 billion more than the June 20, 1997 settlement.

I believe that if we can limit it to somewhere between \$400 billion and \$430 billion, and if we can include reasonable limited liability provisions for the companies—limited liability provisions that restrict class actions but do not stop individuals from suing—than I am hopeful we can get the companies to come back on board.

I am not sure if this is possible, but I think we ought to try, or the whole program will be lost. And if we get them back on, then this whole matter can work and work to the best interests of children and society as a whole.

So I thank my colleague for being willing to work together on this and, of course, for bringing up the points she is raising here today. I hope that at least cursorily answers her questions, and I will be glad to go into much greater detail later.

Mrs. FEINSTEIN. I thank the Senator for that excellent answer and the discussion of the constitutional infirmities and what is apt to happen in the litigation which would really hold up a remedy for smokers, probably for 10 years.

I would like to ask another question. Is it not correct, I ask the Senator, that you also are a member of the Finance Committee in addition to being chairman of the Judiciary Committee?

Mr. HATCH. In response to my colleague from California, it is correct. I am a member of the Finance Committee and, of course, on that committee voted against the \$1.50 increase at the manufacturers level, not because I would not like to punish the tobacco companies, but because that amount is excessive and in the process will not

lead to a bill which can stop youth tobacco use.

Mrs. FEINSTEIN. I have been troubled by the absence of sound analytical data. I just sent my staff to the Joint Tax Committee, and as of May 18, there is a small report which shows the distributional effects of S. 1415 as reported by the Senate committee, but that is just the distribution of how the taxes would fall on the income groups.

To the Senator's knowledge, is there any sound analysis by a governmental entity such as CRS, CBO, or Joint Tax on the actual per-pack costs of this bill out 25 years?

Mr. HATCH. As the Senator knows, we held extensive hearings on this issue in the Judiciary Committee. The Treasury Department sent up Deputy Secretary Larry Summers, who gave us a five-line piece of paper as the basis for their analysis. When we asked him about whether they had a model, he wasn't able to respond very carefully.

There is apparently not much of a model backing up the Treasury Department's assertions in this area. But, on the other hand, we had three of the top analysts from Wall Street who spend all of their time working on tobacco-related issues trying to be able to be accurate in informing their customers, and they had extensive economic modeling done that showed the retail cost per pack of tobacco under the \$1.10 bill that we have before us would be somewhere between, as I recall, \$4.50 and \$5.50 per pack. And if that is so, then the distinguished Senator's concerns about the black market are certainly legitimate and justified.

I might add that the Finance Committee last week did not view it as a precedent for the future. But I cannot believe that it is good for the Finance Committee, good for the full Senate, and good for the American people to consider what one Wall Street analyst has projected to be an \$861 billion program without the Finance Committee having a meaningful opportunity to study the Treasury Department's estimates of the costs of the program.

As chairman of the Judiciary Committee, I tried to get a full explanation of the Treasury model before a hearing that we held on April 30.

But, the administration failed to provide us with their model together with a full explanation of their assumptions. And what I can only conclude from that is they did not have a model; perhaps they were just hypothesizing. I hope this is not so.

Late the night before the hearing, I succeeded in getting only a one-page summary table that some Treasury and White House staff insisted on calling a model.

Let me just say that I hope we could all agree we should not launch a huge new, multi-billion Federal program, with such far-ranging implications, on the strength of a one-page chart.

It is also important for me to note that many Wall Street analysts have been calling for a full explanation of the Treasury projections for a few months. Several Wall Street experts have participated in meetings with administration officials and Commerce Committee staff and explained their own models and their own assumptions so this should have been a very open process.

In fairness to the Treasury Department, I must say that finally, late on May 12, but only after our hearing that same day where two financial analysts testified—and this was 2 weeks after our hearing in which Deputy Secretary Summers testified—Treasury did provide our Committee with an additional 11 pages of information.

For the record, I must note that this still is not everything I have asked them for. For example, Treasury's one-page summary table that they insist on calling a model assumes a 23 percent reduction in cigarette sales from 1998 to 2003, based upon a semilogarithmic demand function with an initial elasticity of minus 0.45.

I might not know the difference between a semilogarithmic function and a hole in the ground, but there are experts who know how to assess this information. These experts deserve a chance to analyze this data on something this important. And the fact is, on the evening of April 28, Treasury and the White House staff said they would send over the formula for this function, that they would send it right over.

At this meeting, it was explained to my staff that this function gradually reduced the price elasticity as the price climbed. Frankly, this makes sense, because you would expect that as price goes up, there would be fewer and fewer people left who are willing to pay the higher and higher prices.

But the administration officials also said that in year 5, for some statistical reason, the Treasury elasticity function would actually increase, under the Commerce bill assumptions.

So, while they are saying that as a general matter the elasticity would get slightly lower as price climbed, they were also saying that in year 5, at least, this elasticity would actually grow higher.

You can see why anyone would want to study the underlying assumptions for these conclusions very carefully, since elasticity of demand—that is, the responsiveness of individual consumption due to an increase in price—is so important to the writing of this law.

Our debate on the floor over the Kennedy amendment calling for a price increase of \$1.50 per pack centered on this price elasticity issue. But the formula that was going to come right over from the Treasury never came on April 28, as they said it would.

At the April 30 hearing, I renewed this request by asking Deputy Secretary Summers to provide this information with the details of the so-called Treasury model. And, as I said earlier, the Treasury Department did finally send us additional information after our hearing on May 12, but we are still waiting for their semilogarithmic demand function.

I have no reason to believe there is anything magical about this information and cannot imagine why it has not been provided. Certainly, it is not like I am asking for some sensitive top-secret security information.

We are asking for information to help us understand how to write properly a bill that is being touted as having a \$516 billion revenue impact, but in reality which is probably \$861 billion, according to those who have developed full, detailed models with assumptions which they are willing to make public in at least two open hearings.

So, I have to say the testimony we heard from these financial analysts just completely blows away the Treasury Department testimony that was given, and certainly the 1-page so-called model that they presented to the Committee, and even the 11 additional pages that they gave us which really weren't very helpful.

And I have to say I take exception about remarks made earlier today suggesting that these financial analysts had a vested interest in killing the McCain legislation because it would help their investors. We did, in fact, discuss this issue with the analysts at our recent hearing. They advised the Committee, and I believe they had no reason to mislead us, that their only vested interest was in providing accurate information to their clients. They have both recommended buying and selling tobacco stocks, depending on the company and the time.

The companies they represent do not own tobacco stocks, as was alleged here earlier, at least not in the traditional sense. It is clear that they may hold tobacco stocks for their clients who have purchased them, just as they hold stocks in a myriad of publicly-traded companies, but it is hard to argue that this is ownership of those stocks.

That was a little lengthy, but I don't know how else to explain it.

Mrs. FEINSTEIN. I thank the Senator. I think that was an excellent explanation, if we all understood it. I don't know a lot about logarithms. I do know about per-pack cost. And I do know we have 5 million smokers, and almost a million juvenile smokers, in the State of California. And I do know that by all the testimony we had in the Judiciary Committee, Senator HATCH, that if the price in 5 years is over \$5 a pack, we have a whopping black market on our hands.

Would you agree with that?

Mr. HATCH. There is no question in my mind about it. If we pass this legislation the way it is currently written, we are going to have a black market like you have never seen before.

When Canada raised its taxes so dramatically, they found this to be the case. Remember the mayor of Cornwall, Canada—

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Who came in and testified about how they threatened him, his life, his family's life, how the city become inundated in organized crime, until they finally had to reduce the size of the excise tax in order to prevent further black marketeering?

Remember how he told us his family had to be removed to a safe house? How ordinary citizens could not even go out at night because they were afraid of random gunfire?

The distinguished Senator from Massachusetts also showed a chart here today—

Mr. MCCAIN. Mr. President, regular order here.

Mr. HATCH. That only went up to 1991.

Mrs. FEINSTEIN. Mr. President, I believe I asked—

The PRESIDING OFFICER. Regular order is the Senator from California has the floor. She has yielded for a question to Senator HATCH.

Mr. HATCH. I am trying to answer that question.

Mrs. FEINSTEIN. Yes, I am asking the chairman—

Mr. MCCAIN. Further parliamentary inquiry. Will the Parliamentarian describe the procedures here in the Senate called for as a result of a question, and that the Senate is not supposed to be abused by long, lengthy discussion of a question. This is clearly what is going on. It is not in keeping with the spirit of the Senate. There is another speaker waiting to speak, and that is why I am concerned about it. Otherwise, I would not care.

I ask a parliamentary inquiry, to describe the procedures of the Senate in this case.

The PRESIDING OFFICER. The Senator who has the floor may yield for a question. And the precedent prohibits statements in the guise of a question.

Mr. MCCAIN. Would the Chair repeat that, please?

The PRESIDING OFFICER. Under the precedents, statements in the guise of a question are not permitted.

Mr. MCCAIN. Statements in the guise of a question are not permitted. I thank the President. I made my point. If the Senators want to continue to abuse it, that is fine.

Mrs. FEINSTEIN. And I would make my point to the Senator in return. I have asked no question in the guise of a statement. I believe, if you read the RECORD, the RECORD will reflect that. I have asked a question.

Mr. MCCAIN. It is very clear what is going on.

Mr. HATCH. Mr. President, could I ask the distinguished Senator from California a question? Do I have the right to do that, under the parliamentary rules here today? If she will—

The PRESIDING OFFICER. The Senator from California has the floor—

Mr. HATCH. May I ask her a question?

The PRESIDING OFFICER. And the Senator from Utah may ask her a question if she permits it.

Mr. HATCH. I think that is what I will do, because it seems to me that some of the people around here are afraid to get the facts on this matter.

And I have to say that it is highly offensive to have someone come here and suggest that the distinguished Senator from California and I are not trying to get to the bottom of the facts, especially since the facts are so complex here.

So I will ask the distinguished Senator from California, isn't it true that you are trying to get to the facts of this matter? Is that right?

Mrs. FEINSTEIN. Yes. It is true.

Mr. HATCH. May I also ask the Senator from California, are you aware of the fact that we have had extensive testimony on this very issue before our Judiciary Committee? I hope this question is fair. I hope that I will be permitted to ask it, under the Senate rules. I surely hope that the manager of the bill will recognize we are going to abide by the rules, if he wants to be a stickler on them. Is it not true that we have had literally hours of testimony on this very issue?

Mrs. FEINSTEIN. Yes, it is true. And I believe I was present at most of the hearings on this subject in the Judiciary Committee.

Mr. HATCH. And I would like to ask, isn't it true that the distinguished Senator from California heard the testimony of witnesses saying that if the per-pack price under the Commerce bill goes to \$4.50 to \$5.50 per pack, there is going to be an extensive black market? Isn't that true?

Mrs. FEINSTEIN. That is true. The independent Wall Street analysts said they believed it would happen at \$3 to \$3.50 a pack. Mr. Myers, representing Tobacco-Free-Kids, testified before our committee that he believed you could take an additional \$2 on a pack before it would develop a black market. But the figures for California really, if the tax passes in June, indicate that the tax in this bill, plus that tax, would be substantially above \$5 within 5 years.

Mr. HATCH. Is the Senator aware of this comment by CBO in April 1998—and I hope this is in the form of a question that is acceptable to the manager of the bill—about black-market cigarettes?

Any legislation that would rapidly raise the price of a product by a third or more would almost certainly spawn a black market as people attempted to evade the high prices. Tobacco is no exception.

Is the Senator aware of that?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Is the Senator concerned about that?

Mrs. FEINSTEIN. I am very concerned about it, because, again, we have 40 million smokers in the United States, 5 million of them in California. There is a huge market. There is a huge number of people already addicted, and as the price per pack, plus reduction of smokers, comes into play, the opportunity for a black market increases, and particularly if you begin to ratchet down the addicting chemical which is nicotine.

It is a serious question. I am surprised, frankly, that people really don't want to know more about it. I, frankly, am surprised that there is a rush to judgment. It seems to me that because of what we are doing is for 25 years, we better be right. I don't want to see in my State a huge black market in 5 years and know that I voted to help make that market possible.

Mr. HATCH. Can I ask the Senator from California another question that I think is relevant to her concerns?

Mrs. FEINSTEIN. Absolutely.

Mr. HATCH. The Senator comes from California, the largest populated State in our Nation. How many people live in California?

Mrs. FEINSTEIN. Oh, probably around 33 million today.

Mr. HATCH. Almost 34 million people, I understand.

Mrs. FEINSTEIN. Nineteen percent of whom smoke.

Mr. HATCH. Nineteen percent of whom smoke. Is the Senator aware that one out of five packs of cigarettes sold in California happens to be contraband?

Mrs. FEINSTEIN. I believe that is correct. Law enforcement has said there is now a substantial black market in California. With the franchise tax, port authorities advise that the State loses about \$20 million to \$50 million a year in revenue now from that market.

Mr. HATCH. And that jumped up when the State raised its tax by a few pennies from, I think, was it 17 cents to 34 cents or something like that.

Mrs. FEINSTEIN. That is correct. There was a proposition on the ballot that did do that. That generated the market. They have made some major arrests with large numbers of confiscated goods to go on the black market.

Mr. HATCH. What do you think is going to happen in California and other States if that price is raised per pack from \$2 to \$4.50 or \$5.50?

Mrs. FEINSTEIN. I think if it goes from \$2 to \$4.50 in California, with the number of people addicted and the fact that most are low income, that it creates a black market. One of the concerns I have is that it becomes a real pawn for organized criminal elements

that also brings on other serious repercussions. But I don't want the Senator from Utah, or anybody else, to mistake me. I want to see us have a bill. I want to see us have a bill that is going to be able to do the job, rather than have adverse, unintended consequences.

Mr. HATCH. I have to agree with the Senator. And I have to say, is the Senator aware that on May 4, 1998, testimony before the Senate Democratic Task Force on Tobacco, Robert A. Robinson, Director of Food and Drug, Agriculture Issues, Resources, Community and Economic Division of the General Accounting Office—who should surely win an award for one of the longest titles in Government—said:

Smuggling cigarettes from low- to high-tax States or interstate smuggling prominent in the 1970s may be a reemerging problem. Such activity is likely to occur when the differences in cigarette taxes across the States are significant enough to make it profitable. Recently, many States have opted to sharply increase their cigarette taxes, yet most low-tax States have not. As a result, recent studies suggest that the level of interstate smuggling activity may now be increasing. In fact, recent estimates suggest that smuggling is responsible for States collectively losing hundreds of millions of dollars in annual tax revenues.

Is the Senator aware of that?

Mrs. FEINSTEIN. Yes, I am aware of it. I am also glad that the Senator from Utah is mentioning this, because one of the most discouraging things here has been the rush to judgment, has been the feeling of many people, very well-meaning, very much wanting to see legislation in place, that if you pause to consider these impacts, somehow you are un-American, somehow you are pro-tobacco. And yet, as we know, the devil is in the details with all of these things. It really is the long-term effect of a bill that we need to consider carefully.

That is one of the reasons I have been, frankly, opposed to the speed with which this bill is being pushed, and I think it is being pushed so that we don't have this information in front of us, so that we don't understand the repercussions, so that a bill gets passed and everybody can pound their chests and say what a wonderful job we have done and then, boom, in 4 years, there can be a cataclysmic event like a big black-market operation.

Mr. HATCH. Let me just ask one other question of the distinguished Senator, because there has been some indication here that there is some sort of a game being played in this colloquy between the Senator and myself. It is anything but a game being played.

We have seriously looked at these matters in 10 Judiciary Committee hearings, at which the Senator from California was in attendance. And these are important issues.

I just ask the distinguished Senator, what are we going to do if we go through all of this piling on mentality,

as is embodied in this managers' agreement and many of the proposed amendments thereto, and, after we get to the end of this, the bill is still constitutionally unsound? What happens if we have 10 years of litigation and the program falls apart? Isn't that some justification for finding out the facts now in order to either amend this bill or have a substitute amendment or other correctional measure? Shouldn't we really get to the heart of how to develop a constitutionally-sound bill that will help reduce teen smoking and solve some of these other problems in society? Does the Senator agree with me?

Mrs. FEINSTEIN. That is absolutely correct, I say to the Senator. Not only are we not playing a game, certainly no one in this body has asked me, representing the State, what would be the impact of a bill on the largest State in the Union with the most smokers by far in California, with the most young people.

I came to this body to use my brain, to try to work for my State and try to see that whatever it is that I vote for doesn't have unintended consequences.

I think all the purpose of this colloquy is to say that there may very well be serious, unintended consequences, heightened by the fact that we are moving so fast without any major governmental analysis of the long-term, per-pack costs and what those costs might do when you measure elasticity, diminished market demand and a diminution of nicotine in a regulatory order by the FDA.

These are very serious things. I think they deserve consideration, and I thank you very much.

Mr. HATCH. May I ask the distinguished Senator one more question? It is this: I have sought to facilitate a thorough examination of public discussion of the Treasury model so policymakers can better understand why there is so much disparity between Wall Street and 1600 Pennsylvania Avenue on critical items like the estimates of the retail price per pack of cigarettes under the Commerce Committee bill.

Is the Senator aware that we have heard the official estimate is that the Commerce Committee bill will increase the cost of a pack of cigarettes by \$1.10 per pack over 5 years? Many in the press simply report that the price, not cost, will go up by just \$1.10 a pack.

As I understand it, and I ask the Senator to help me to know if she understands it the same way I do, the Treasury Department and the proponents of the Commerce Committee bill believe that when you take into account all other factors, you arrive at a real price in year 5 of \$3.19 per pack. Although it is not a number that many of the bill's proponents seem anxious to get into public discussion, and the press is not widely reporting it in nominal terms,

this is how much money you actually have to pull out of your wallet. This \$3.19 per pack figure translates at the cash register price of \$3.57 in the year 2003 under the White House and Treasury Department's estimates.

Now, again, I ask the Senator, is the Senator aware of those facts?

Mrs. FEINSTEIN. Actually, Senator, those are not the facts—they may be the facts coming out of the White House.

Mr. HATCH. That is right.

Mrs. FEINSTEIN. But the facts in committee.

Mr. HATCH. That is the White House's spin here.

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Let me ask the Senator this. Does the Senator recall that in September the President called for, and the White House repeated again in February, bipartisan legislation that raises the price of cigarettes by up to—and that is up to—\$1.50 per pack over 10 years? Does the Senator remember the President calling for that?

Mrs. FEINSTEIN. I do.

Mr. HATCH. Given that the price of cigarettes is about \$1.95 per pack today, it looks like the Commerce Committee bill or this managers' amendment will achieve the \$1.50 price hike 5 years ahead of schedule by the Treasury's own estimates. Is the Senator aware of that?

Mrs. FEINSTEIN. That is correct; yes.

Mr. HATCH. All right. Now, Wall Street analysts tell us the Treasury numbers are off—way off, they say. They say that the actual price increases under the Commerce Committee bill will be much higher than what Treasury is telling us. They say the price in real dollars will climb to between \$4.50 and \$5 per pack in 5 years; and at least one indicated higher than \$5 per pack, up to over \$5.50. Is the Senator aware of that?

Mrs. FEINSTEIN. I am.

Mr. HATCH. Martin Feldman of Salomon Smith Barney projects in the year 2003, the Commerce Committee bill, the old bill—but the revised one is the same on the facts—will result in a real price of \$4.61 per pack. In nominal terms, this means that cigarettes will cost \$5.11 per pack. That is over \$50 per carton. Does the Senator remember that testimony?

Mrs. FEINSTEIN. I believe you are accurately reflecting the testimony.

Mr. HATCH. David Adelman of Morgan Stanley Dean Witter testified on April 30 that the 2003 average retail price will reach at least \$4.53 per pack if the Commerce Committee bill is adopted. His analysis also indicates that the price under this bill that is on the floor right now could actually grow to \$5.66 per pack or higher within 5 years. Is the Senator aware over that?

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Now, similarly, Gary Black of Sanford C. Bernstein & Com-

pany, told the Judiciary Committee on May 12, 1998, that under the Commerce Committee bill the real price of cigarettes will exceed \$5 per pack in 2003. Is the Senator aware of that?

Mrs. FEINSTEIN. Absolutely. And the point that you are making is really reflective of the point that I am trying to make in a less erudite way. That point is, let us take the time to have a CRS analysis, a CBO analysis, a joint tax force on some of the figures that we are putting forward, because these are figures that have been presented to us in a formal way.

Mr. HATCH. I would ask the Senator if she is aware—let me emphasize the \$4.50 to \$5-per-pack prices that these leading Wall Street analysts projected in testimony to the Judiciary Committee, those prices are much higher than what the Treasury estimated and far higher than the widely cited and widely reported \$1.10-per-pack figure. Isn't that correct?

Mrs. FEINSTEIN. That is correct—one of the reasons I do not know who to believe.

Mr. HATCH. So it is far higher than the up to \$1.50-per-pack increase that the President called for over a 10-year period; is that correct?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. If these Wall Street analysts are correct, and the Treasury estimates are off in year 5, under the Commerce Committee bill, we may reach a price increase that is twice as high as what the President has called for; that is, a \$3-per-pack price increase rather than a \$1.50 price increase. That is certainly a far cry from the \$1.10 we hear so much about; isn't that so?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Let me just finish this. What is more, according to these experts, we will reach this twice as high level twice as fast as called for by the President. I guess we should ask whether the American public understands that what we may actually be talking about under the Commerce Committee bill is a \$50-per-carton price for cigarettes.

Now, if you are like me, and do not, and will not, ever smoke, this may not seem so bad, literally; but I just hope that the public health lobby does not next focus its attention on the problem of obesity, or we may have chocolate ice cream at \$20 a gallon, a \$10 package of potato chips, or a \$5 slice of apple pie, sold by prescription no doubt, if we continue to follow this type of bureaucratic reasoning. Is the Senator in disagreement with me on this? And I didn't even talk about cheeseburgers!

Mrs. FEINSTEIN. My point is, Senator, I do not really know whom to believe. And that is why I am where I am with respect to this bill. Different committees have had different testimony. I do not know whether the Finance and the Commerce Committees actually had this testimony. We had it in the Judiciary Committee.

Mr. HATCH. The Finance Committee did not hear any testimony on the tobacco issue; the Commerce Committee heard from Secretary Summers as well as Mr. Feldman.

Is the Senator aware that the \$1.10 price that is so widely reported in the media as the add-on to the current \$1.95 or the \$2-per-pack price at the manufacturer's level does not include a whole wide variety of factors, like the wholesale markups, the retail costs, the additional excise taxes added on by the States, litigations costs, the lookback, all factors that could be added to the retail price under this bill?

So it is pretty clear that it is a lot higher than what the media are reporting is \$1.10. It is a lot higher, isn't it, than what the White House has indicated?

And I would just ask the Senator this other question: Isn't it plausible to believe these Wall Street analysts, whose very livelihoods depend on trying to arrive at correct economic projections in order to advise clients about whether or not to invest money, who have used extensive models to make those projections rather than just a 5-line sheet of paper?

Mrs. FEINSTEIN. I think that is right. I think what has happened is that we have seen a net figure applied as a gross figure when in fact it is just a beginning figure. It becomes an arbitrary cost added, and then there are all these other costs that come on top that are not factored in.

I think that is why we need a very thorough, objective report on what actual street prices of cigarettes will be, what you get them for in your 7-11, what you buy them for in your supermarket, what it will be with inflated dollars in 5 years.

If we know that with specificity, then I think we can make some informed judgments as to whether, in each of our respective States, this is apt to create a black market or not apt to create a black market. We then can relate this data to the distribution table that Joint Tax has done so you know what portion of this falls on the lowest-income people versus the highest-income people.

Mr. HATCH. Is it not true—this will be my last question—is it not true that under the substitute that the distinguished Senator from California and I are working on, that we do not base this on a price per pack of cigarettes, our \$428.5 billion, we base it on payments that have to be made over 25 years?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Whether the companies—whether they sell a lot of cigarettes or not, they are going to have to make those payments; isn't that correct?

Mrs. FEINSTEIN. That is correct. You see, the thing that bothers me is, in this rush to judgment, everything is

evaluated based on the per-pack numbers that are thrown around, based on what is a net addition that will not be the real street addition. So there is no way, with the speed this bill is moving, to know exactly what we are going to be doing down the line. The beauty of our bill, if people should be interested, is that we have tried to avoid that problem.

Mr. HATCH. Mr. President, I thank the distinguished Senator from California for answering my questions.

Parliamentary inquiry. Have these questions been in order under the rules of the Senate?

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. HATCH. I am asking the Parliamentarian if these questions have been in order under the rules?

The PRESIDING OFFICER. I believe they are, Senator.

Mr. HATCH. Well, my goodness, I am so happy to find that out.

Thank you so much, Senator.

Mrs. FEINSTEIN. I thank the Senator. It has been a pleasure for me to work with him.

Let me once again sum up, because I know the distinguished Senator from Maine is waiting, and I do want to thank the Senator from Utah for his leadership not only of the Judiciary Committee but in what we have been working on. I hope if people might be interested they would let us know.

In the meantime, I am really not prepared, based on the analytical data—and we have tried to get every single piece we could—to cast a vote which has repercussions for a quarter of a century and which would have repercussions on a State where 5 million people smoke and almost a million youngsters and one out of every four high school seniors is addicted to nicotine. Until I have some of these answers and we know what the impact on the streets in Los Angeles, in San Francisco, in Fresno, in San Diego, is going to be 5 years, 10 years, 15 years, 20 years, and 25 years hence—then we can cast an informed vote, and then we can go home and say we really have done something good for the people we represent.

I thank the Chair. I apologize and I thank the Senator from Maine for her forbearance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, this week the Senate is debating far-reaching landmark legislation which gives us a historic opportunity to combat teen smoking and in the process save millions of lives.

Tobacco use is the No. 1 preventable cause of death in the United States, accounting for almost half a million deaths a year and billions of dollars in health care costs. More people die each year in the United States from smok-

ing than from AIDS, suicide, alcohol and drug abuse, car accidents, and fires combined. Tobacco use in this country carries a price tag of almost \$100 billion a year in direct health costs and in lost productivity.

Clearly, the single most effective thing we can do to improve our Nation's health is to stop smoking. However, smoking rates are actually increasing, particularly, and most tragically, among our young people. Tragically, tobacco addiction is increasingly a teen onset disease. Ninety percent of all smokers start before age 21. What is especially disturbing is that children, especially girls, are smoking at younger and younger ages. Smoking is at a 19-year high among high school seniors and has increased by over 35 percent among 8th graders over the past 7 years.

The statistics for my own State of Maine are particularly alarming. Maine has the dubious distinction of having the highest smoking rate among young adults in the country. Thirty-two percent of our 18- to 30-year-olds are regular smokers. Almost 40 percent of Maine's high school seniors smoke. If current trends continue, one in nine children will die prematurely of tobacco-related illnesses.

Tobacco is the leading preventable cause of death in Maine, responsible for almost 2,500 deaths a year. Direct medical costs of treating tobacco-related illnesses in Maine are about \$200 million. Indirect costs—the costs associated with lost work time, higher insurance premiums and so forth—are also estimated to be about \$200 million.

These numbers speak for themselves. The status quo is simply unacceptable. If we are to put an end to this tragic and preventable epidemic, we must accelerate our efforts not only to help more smokers quit but also to discourage young people from ever lighting up in the first place.

I found one fact in a recent Maine survey of smoking habits to be particularly disturbing. The smoking rate among young girls in my State has increased by 30 percent since 1993. I think that this advertisement gives us a good clue why. It is a blatant and shameless attempt by the tobacco industry to entice young girls, to entice teenagers to smoke. With more than 1,000 of the tobacco industries' best customers dying every day and another 3,000 to 5,000 quitting because of health concerns, smokers are literally a dying breed. As a consequence, the tobacco industry must hook thousands of new customers each day just to break even, and is now spending over \$5 billion a year on advertising and promotional campaigns.

The tobacco industry actually claims that it does not target image-conscious young people with its advertisements featuring rugged Marlboro men and fresh-faced, model thin, "You can do it" young women. But, Mr. President,

the evidence clearly proves otherwise. Just look again at this magazine ad. It is very typical, very typical of cigarette advertising. This ad is not aimed at people my age. It certainly is not aimed at people my parent's age. There can be no doubt it is not aimed at adults at all. It is aimed at teenagers.

Moreover, internal industry documents indicate that tobacco companies have long known that tobacco use leads to addiction, serious illness, and death. Yet, they nevertheless continue to pursue children, to target teens through ads and promotional campaigns, and have even gone so far as to consider marketing Coca-Cola-flavored cigarettes.

A landmark 1991 study published in the Journal of American Medical Association showed that cigarette-smoking "Smooth Joe" Camel was as recognizable to 6-year-olds as Mickey Mouse. Let me repeat that. Joe Camel was as recognizable to 6-year-olds as Mickey Mouse. The tobacco industry claimed the ads were, in fact, directed at adults. A second study found that 98 percent of the 12- to 19-year-olds recognized Joe Camel, compared to just 72 percent of adults. As a result, Camel's market share among underage consumers rose from less than 1 percent when the Joe Camel campaign first began, to 33 percent when he was finally put out to pasture.

More recent studies published in JAMA and elsewhere add further weight to the mounting evidence that advertising and marketing are the linchpins of the tobacco industry's efforts to hook children on nicotine. A February 1998 JAMA study found that the effect of tobacco advertising and promotional activities is "strong and specific," with at least 34 percent of all experimentation with cigarettes by teenagers attributable to those activities.

Moreover, a 1995 article in the Journal of the National Cancer Institute found that tobacco marketing has a greater influence over a teen's decision to smoke than whether or not their parents smoke or their peers smoke.

Other studies have shown that the cigarette brands most popular with teenagers are the ones most likely to advertise in magazines with the highest youth readership. Moreover, unlike adults, the vast majority of young smokers prefer the most heavily advertised brands of cigarettes.

It is also far too easy for children and teens in the United States to purchase cigarettes. During hearings in the Labor Committee, we heard testimony that children living in 99 percent of our cities and towns have very little trouble walking into a store and buying a pack of cigarettes, despite the fact that it is against the law in all 50 States to sell tobacco products to minors.

Mr. President, during this debate, we have focused a great deal of attention

on the \$1.10-a-pack fee that the McCain bill imposes on cigarettes. Some have argued today that is simply too low and that an increase to \$1.50 or more a pack is necessary if we are going to curb underage smoking. Others—and I include myself in this group—are concerned that the evidence linking teen usage and price is not conclusive. Moreover, I am very concerned that a price increase of this magnitude is highly regressive and will fall mainly on adult smokers earning less than \$30,000 a year. If we were to increase the cost by the \$1.50 that was proposed, it would have meant that the average couple who smoke would be paying \$712 more a year in taxes. That is a very hefty tax increase on low-income Americans.

Mr. President, at some point, raising the tax on cigarettes ceases to contribute to the reduction of smoking and becomes little more than an act of financial cruelty. Tobacco is highly addictive and there are people, perhaps many people, who will not be able to quit smoking even with an additional tax of \$1.50 or more.

There is a point at which the tendency of the U.S. Senate to play God in the lives of the American people becomes dangerous. The notion that we can cure addictions by creating enough deprivation for those who are addicted is a very arrogant one. If we are wrong, we do nothing more than inflict suffering on those who do not deserve it.

While I respect the motives of its supporters, I could not, and did not, back an amendment that carries such a risk and that is not truly needed to fund the antismoking programs included in this bill. Those of us who legislate must draw lines, and recognizing that I am far from infallible, I believe that a tax of \$1.50 per pack crosses that line. If our purpose is to inflict pain, it should be on those who profit from the addiction and not on those who suffer from it. That is why I shall vote to support the amendment offered by my friend and colleague from New Hampshire to eliminate the immunity protections afforded to the tobacco industry by this bill.

My view on the \$1.50-a-pack tax proposal has been strongly reinforced by conversations I have had in recent weeks with young people in my State in an attempt to find out what the true experts—our teenagers—believe would be most effective in stopping teens from smoking in the first place. I have asked this question to, among others, a seventh grader from Portland, a Boy Scout troop in Dover-Foxcroft, high school students in Aroostook, and a teen smoker in Bangor. Significantly, none of these teens felt that a price increase would be the most effective means of discouraging teens from smoking.

As the addicted Bangor teen told me, "I can't quit, so what I'll do is cut back

on going to the movies or going to McDonald's in order to pay for cigarettes."

Another teen told me that many students get their cigarettes by stealing them from their parents, so unless their parents stopped smoking, their access to cigarettes will be unaffected.

Alex Pringle, a seventh grader from Portland, suggested that having smokers who are suffering from lung cancer or other smoking-related diseases come to schools would be the most effective means of discouraging kids from smoking. It would effectively make the link between smoking and illness, a link that is too often unrecognizable to teens who believe themselves to be invulnerable.

Teens throughout the State told me that they smoked simply because it was "cool" or because it helped them feel more accepted by their friends. From their comments, I have no doubt that the tobacco industry's ads, such as the one I have displayed today, have sent a clear message to teens that teens who smoke are cool. I also have no doubt that when teens see movie idols such as Leonardo DeCaprio smoke, that message is, unfortunately, reinforced.

That is why the educational, counteradvertising, and research programs funded by this legislation, as well as the advertising restrictions, are so critical to our efforts to sever the deadly connection between teens and tobacco.

Earlier this year, I joined Senators JIM JEFFORDS and MIKE ENZI in introducing the Preventing Addiction to Smoking Among Teens, or the PAST Act, which adopts a comprehensive approach to preventing teens from smoking. The bill gave clear and comprehensive authority to the FDA to regulate tobacco products and incorporated the FDA's recommendations on combating teen smoking, such as strong warning labels, a ban on vending machine sales, a ban on outdoor advertising and brand name sponsorship of sporting events, and prohibition on the use of images like Joe Camel and the Marlboro man. The legislation also held tobacco companies accountable by imposing stiff financial penalties if the smoking rate among children does not decline.

Moreover, the legislation incorporates strong measures to ensure that restrictions on youth access to tobacco products are tough and enforceable, and it promoted the development of State and local community action programs designed not only to educate the public on the hazards of tobacco and addiction, but also to promote the prevention and cessation of the use of tobacco products. We need to focus on cessation programs. They are an important part of this bill.

It also called for a comprehensive, tobacco-related research program to study the nature of addiction, the ef-

fects of nicotine on the body, and ways to change behavior, particularly that of children and teens. We don't know enough about addiction yet.

And finally, and very important, it called for a national public education campaign to deglamorize the use of tobacco products to discourage teens from smoking.

Mr. President, we have made tremendous progress in recent years in making our streets safer from alcohol-impaired drivers. This was accomplished not only through tough drunk-driving laws, but also through a very effective national advertising campaign waged by Mothers Against Drunk Driving and others that has resulted in a change in our Nation's attitudes toward drinking and driving. This is the approach that we need to take to curb teen smoking.

The legislation we are considering this week contains many of the public health provisions that were included in the PAST Act. While the legislation before us tonight is not perfect and will undoubtedly face many more amendments during Senate consideration, it does give us a critical opportunity to address the teen smoking epidemic in a strong and comprehensive way.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, while we may all agree that teenagers should not be smoking, this bill goes well beyond reaching that goal.

We should all be deeply concerned about the "tax and spend" approach that the bill takes to resolving a social problem. The bill reaches right into the pockets of hard-working low- and middle-income adults who, even tobacco's most staunch critics acknowledge, have every right to smoke if they so choose.

And, it takes their hard-earned dollars to create yet more federal programs and to pay trial lawyers billions of dollars. We're literally grabbing money from the poorest Americans to buy trial lawyers more Learjets.

To what end? There appears to be uncertainty as to whether price increases really have the effect of getting kids to stop smoking or to never start in the first place.

And what is the real motivation here? If it were really to cut smoking, we wouldn't phase it in, we would drop it right at once. But we're not doing that because the tax-and-spenders want the revenues. I know they're not doing it for the tobacco companies.

We all know that this isn't about smoking—it's about money.

What unpopular product or industry is next—now that we, our nation's lawmakers, have decided that "and justice for all" really doesn't mean what it says.

First, let's discuss the taxes imposed by the bill. Lots of people are jubilant at the prospect of this legislation passing. The plaintiffs' lawyers would become fabulously wealthy; the public

health community would get all of its favorite projects generously funded; and, of course, the bureaucrats will get write volumes of new rules.

The ones who won't be so happy are the working class families who have been targeted to pay for it all.

In short, the McCain bill, through its highly regressive tax provisions, inflicts enormous costs on lower- and middle-income families. Let me put this regressivity problem in concrete terms. The increased excise tax payments under the McCain bill are projected to exceed \$690 billion over the next 25 years.

Based on analyses by the Joint Committee on Taxation, families with incomes less than \$30,000 a year will wind up paying roughly 43 percent of these taxes. In other words, under the bill, families earning less than \$30,000 a year will have to pay roughly \$300 billion in new taxes over the next 25 years.

This amounts to more than the total income taxes that these families are expected to pay over the same period of time.

The numbers are even more striking if we look at families earning less than \$75,000 a year. Other experts have estimated that families in this category will pay more than 83 percent of all the tobacco excise taxes, which means that families earning less than \$75,000 a year will, as a group, pay more than \$570 billion in new excise taxes as a result of the McCain bill.

Where are the cries about regressive taxes? We're all so used to the long speeches about taxes on the poor. Or is that argument just used for convenience? This is the largest tax increase on the poor in years—if not in all time!

It gets even worse. The numbers I just cited only take into account the excise taxes imposed by the bill. The reality is that the increases in the prices of tobacco products resulting from this bill will be substantially greater in magnitude. This is because of the look-back payments and the increased sales taxes as well as wholesaler and retailer margins that will be tacked on to any excise taxes.

It is estimated that, based on projections of the actual increases in the prices of tobacco products, the true cost over the next 25 years will be more in the range of \$380 billion for families earning less than \$30,000 a year. It will be more than \$735 billion for families earning less than \$75,000 a year.

These are truly staggering numbers. To put them in perspective, it is projected that once the new excise taxes under the McCain bill are fully phased in, the annual cost to the family of a smoker earning less than \$30,000 a year will be \$875.

For a smoker's family earning less than \$75,000 a year, the cost on average will be more than \$950 each year. Now, a figure of \$875 or \$950 a year may not sound like much to these plaintiffs'

lawyers who are expecting to get hundreds of millions of dollars. But I can assure you that this money means a lot to families trying to get by on \$30,000 a year, or even on \$75,000 a year.

If this doesn't persuade you, let's hear from the experts on Wall Street. As noted by Morgan Stanley analyst, David Adelman: "98.5 percent of cigarettes are legally purchased by adult smokers, and therefore higher excise taxes will unfairly (and regressively) penalize adult consumers who choose to smoke."

So, we're talking about hundreds of billions of dollars in new taxes to try to stop 1.5 percent of tobacco users from illegally buying tobacco. Why not just impose penalties on children who try to purchase tobacco? Well, I suppose, because it wouldn't be a jackpot for trial lawyers and Washington bureaucrats. The fact that it might help the children is irrelevant.

Mr. President, I, for one, was not elected to sock the American taxpayer with more taxes. If teens are really our target, we owe it to the taxpayer to first explore other non-price measures to combat youth smoking.

At a minimum, we need to explore whether there are ways to rebate these increased taxes back to the adult smokers who paid them—rather than using these regressive taxes to fund huge new government programs.

Turning to the bill's disturbing reliance on new government programs, I find it highly ironic that we are here debating a bill that will increase the size of the federal bureaucracy when this is the Congress that is supposedly committed to reducing federal government bloat.

The bill takes over half a trillion dollars in tobacco funds to fund new social programs or enlarge existing programs.

We also need to think long and hard about the bill's Orwellian approach—giving the federal government more power to look over our shoulders regarding the personal choices we make.

I'd like to take this opportunity to read into the RECORD a few excerpts from recent articles, articulating these concerns:

Most Americans may not like smoking, but that doesn't necessarily mean they favor a big-spending nanny state. Yet if President Clinton and his supporters are allowed to succeed with this tobacco pact, the same extortionist tactics will undoubtedly be applied to other "sins." Just imagine how much government could "do" by slapping a health tax on Big Macs and Budweiser.

That's from the Detroit News, on April 24, 1998.

I urge my colleagues to learn from experience. Too many times in the past, Washington has raised taxes in the name of one feel-good social program or another. The American people have consistently indicated that they are tired of that practice.

We on the Republican side of the aisle were supposedly sent here to see

to it that the tax and spend era of big government ceases to exist. I'm not so sure we're holding up our end of the bargain when we propose to pass legislation along the lines of the bill we're debating today.

As I raised earlier in my remarks, we appear to be forging blindly into a tax and spend approach to combating youth smoking, even though it is highly speculative that higher prices will even have this desired effect.

This legislation is going to result in a massive price increase for the entire smoking population, including the 98 percent of legal adult smokers. I think it is important that my colleagues are aware of all the facts before they vote on it.

A Cornell University study found that there is no significant correlation between price levels and the youth smoking rate.

This study, conducted by researchers at the Department of Policy Analysis and Management of Cornell University over a period of four years, reexamined the relationship between price increases on tobacco products and the likelihood that children will smoke.

It analyzed the smoking habits of over 14,000 children in grades 8 through 12. To quote the study's conclusion: "the level and changes in cigarette taxes [is] not strongly related to smoking onset" for children between 8th and 12th grades.

In addition, this study casts doubts on the results of previous studies which have directly linked smoking rates among children to price, noting that " * * * youth who face different tax rates also face different anti-smoking sentiment * * * "

The study suggests that previous research on youth smoking failed to take into account differing public perceptions that smokers face across the country. The Cornell study attempted to eliminate such extraneous information from their results.

Removing the effect of other factors, such as different State smoking-related legislation, allowed researchers "to directly examine the impact of changes in tax rates on youth smoking behavior, and our results indicate this impact is small or nonexistent."

This view is also supported by statistical evidence from other countries. As Martin Feldman of Salomon Smith Barney has noted:

But we all know that kids don't stop smoking because of the price of cigarettes. Let me give you an example. In England, between 1988 and 1994, cigarette prices rose in real terms, by 20 percent. In '88, 8 percent of them 11 to 16-year-olds smoked. By '94, 13 percent of them smoked, after the price increase. The White House will not take this into account. And I don't understand why.

And, it's not just academia that questions whether increased prices will deter kids from smoking. It is the kids themselves. Just ask the four bright, young citizens who recently testified

before the House Commerce Subcommittee on Health and Environment on March 19, 1998.

Of the four who testified about the effects of price increases on youth smoking, three clearly stated that price increases would have no effect on the number of youth smokers, and the fourth didn't know what the result would be.

As one teenager testified, "[I]f money were a huge issue, then kids wouldn't be buying marijuana as much.

Another teenager testified:

[I]f you look, it's kind of weird how, people would be willing to pay \$150, \$200, for shoes. And it's completely outrageous; but people will complain about it. They'll moan and groan; but they'll still pay. And, when it comes to cigarettes—how much is it? Two dollars a pack?

We've heard it from the horse's mouth.

I closing, I know that the tobacco companies have become so unpopular that nothing seems out of bounds. But, whatever our views are about how much pain to inflict upon the industry, let us not forget that Congress also has an institutional responsibility.

We should be concerned that the McCain bill will set a terrible precedent that will haunt us for years to come. If we begin to use the tax code as a coercive means of social engineering, then I submit that there is no end in sight.

Today, smokers will be asked to pay a huge share of their income to the federal government and tomorrow, who will be next?

I fear the precedent of the anti-smoking remedies now before Congress. What will they be used for next? Perhaps fat. Excuse me, Big Fat. As I understand it, fat, when used as intended, causes heart disease, which actually kills more people each year than smoking. And have you seen any of those chocolate ads, the ones targeting children, or the adult versions, where a beautiful woman caresses a nougat bar with her moist alluring lips? Consider that there are no warnings on boxes of high-fat cake about the hazards to our health, no restrictions on purchases of bacon by people under 26 and, to my knowledge, no lawsuits. How about a fat tax?

That's from Fred Barbash in the *Washington Post*, April 19, 1998.

Mr. President, I believe that passage of the McCain legislation is going to have a dramatic impact on the lives of millions of adult smokers across the country who are going to have to bear a significant price increase to purchase legal tobacco products.

It also perpetuates a tax and spend mentality that our constituents have rejected, as well as sets us sliding down the slippery slope. And, not only do we have no hard data that this is going to achieve the goal of preventing kids from smoking, we have evidence suggesting that it won't.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I rise tonight to take this opportunity to discuss why I believe it is so important that the U.S. Senate pass strong legislation to protect our children from the tobacco companies that are preying on them.

I got my real start in public service in Eugene, OR, right after I got out of law school in my twenties in Lane County in Oregon. I started a senior citizens legal clinic. I was able to get almost all of the attorneys in town to volunteer their time, coming to the senior citizens center to help the older people with the varied legal problems that seniors have.

At the legal clinic when I was in my twenties I saw firsthand the extraordinary health consequences that smoking has for our citizens. I saw older people come to that legal clinic in Lane County in Oregon racked with emphysema. They were struggling for every breath.

I found myself, having organized this legal clinic to help older people, having to console the widows and widowers of cancer victims, families that lost loved ones years and years before their time. I saw then when I set up that senior citizens legal clinic exactly what cigarettes can do to the health and well-being of our citizens and the toll that they take on American families.

So when I decided to seek elected office I said that I would put a special focus on my service in the U.S. Senate in trying to improve the health care of our citizens. I said that I wanted to focus on health care issues in a meaningful way, because I came to feel that if a person doesn't have their health care, doesn't have well-being, then they can't really focus on much of anything else. If they and their loved ones can't get access to decent medical care and they are suffering, there really aren't many other issues that a person and a family can focus on.

When I came to the U.S. Congress, I said I am going to remember all those seniors that I met at the legal clinic when I got out of law school, and I said if we really are going to take strong steps to improve the health of our citizens, we had to take on these tobacco companies, and that we will take them on even if it was a tough fight in order to make the lives of our citizens better when they got older. And it was just that simple.

The older people that I saw in that legal program didn't get started smoking when they were 48 or 55. They got started in their teens. They got started as kids when they were the age of Adam Wyden and his sister Lilly.

So I felt then that all other issues revolved around whether our citizens had their health. I remember those older people who came to the legal clinic in Oregon. I said we are going to take steps to make their lives better, and I am going to make that a special focus of my service in the Congress.

So when I was elected to the House of Representatives in 1980, I was able to win a position on the House Health Care Subcommittee, a committee that, in my view, turned out some of the most important public health legislation in our country's history under the extraordinary leadership of HENRY WAXMAN. I got to serve with one of the most courageous public officials who has ever served in the U.S. Congress, the late Mike Synar.

Against all odds, against all odds when he faced tremendous resistance in his home district, the late Mike Synar was willing to stand up for kids, and, in fact, wrote one of the first and the most important public health statutes to protect kids against the tobacco companies that prey on them, the statute known as the Synar amendment. Of course, the tobacco companies worked very hard to try to get around that because the Synar amendment stood for the proposition that we were going to enforce tough laws to protect our minors at the State level. That was too much for the tobacco companies, just as they sought hard to get around the early advertising restrictions on the electronic news, just as they sought to get around the early warning labels, they sought to evade the mission and the specific requirements of the Synar legislation.

So Mike Synar, HENRY WAXMAN, I, and others worked through the 1980s to try to rein in these tobacco companies and improve the lives of our children.

A little over 4 years ago we were at the now well-recognized hearing with the tobacco CEOs who under oath addressed for the first time before the U.S. Congress these major public health questions that the Senate has been occupied with over the last couple of days.

Mr. President, it was an extraordinary hearing. It went on for more than 7 hours. The executives said, for example, that cigarettes were sort of like Hostess Twinkies. They said that, of course, they never ever would target young people. And for more than 7 hours they said under oath that cigarettes essentially were not something that the U.S. Congress should be focusing on. They said it is just like any other health concern a person might have with sugar or with fat. Why is the U.S. Congress singling out tobacco, was essentially their message over a hearing that lasted more than 7 hours.

Chairman WAXMAN, Mike Synar, and others did, in my view, a superlative job trying to put the key issues on the record. When it came to my initial turn I felt that it was especially important to get the executives' position on whether nicotine was addictive. We had them all in front of the U.S. House of Representatives, the Subcommittee on Health. They were under oath. So I simply said I am going to go down the row. I am going to go down the row and

ask each one of these executives one after another whether nicotine is addictive. So I began.

The first executive said nicotine was not an addictive substance. The second executive said that nicotine was not addictive. The third one raised questions again about why anyone would possibly have reservations about this issue, specifically why we would be asking whether nicotine was addictive. And all of the executives then under oath said for the first time that nicotine was not an addictive substance.

They contradicted the Surgeon General, who has come before health committees in the Congress for more than 20 years, and perhaps even more importantly, they contradicted what their own executives were saying for more than 30 years. That, of course, came out after the hearing took place. But what has been especially telling is that, after that historic hearing in 1994 when the executives said nicotine wasn't addictive and didn't target kids, a voluminous record has been made by various committees in the Congress which documents and makes very clear that these executives, in fact, knew all along that nicotine was addictive. There was not any question in their minds about whether it was addictive. Their own documents had proved that. But yet they told the U.S. House of Representatives, the Subcommittee on Health, and myself specifically under oath that nicotine was not addictive.

I think that moment contributed in a significant way to our achieving a chance now to pass important legislation to protect our children. But there were a number of other important issues that were brought up that day before the Health Subcommittee that have implications even this evening as the Senate considers this historic legislation. And I would like to just touch on one of those.

At that hearing, it came to light that one tobacco company, Brown & Williamson, was in fact genetically altering nicotine in order to give it an extra punch, in order to make it more addictive to children and others who used the product. The Food and Drug Administration under the leadership of David Kessler had essentially brought this to light. The committee confronted the Brown & Williamson Company, and they were under oath and said that they would cease utilizing this high-nicotine tobacco called 1Y. So this was more than 4 years ago. It came to light as a result of the investigative work done by the Food and Drug Administration.

After the Brown & Williamson Company was caught using 1Y, this genetically altered, high-nicotine tobacco, they said they would not do it anymore.

A number of things happened over the last 4 years. One of them was that I had the honor of being chosen by the

people of Oregon to serve in the Senate, and I was chosen to serve in the Senate January 30 of 1996. Having had the additional privilege of being named to serve on the Senate Commerce Committee under the outstanding leadership of JOHN MCCAIN, and our ranking Democrat, FRITZ HOLLINGS, I had a chance to participate in the next round of important tobacco hearings under JOHN MCCAIN's leadership. We held a number of them prior to the committee's consideration of the legislation that is now before us. And when Senator MCCAIN asked the executives—and a number of them, of course, are new—to come before the Senate Commerce Committee, I asked Brown & Williamson what was the current status of the use of 1Y genetically altered, high-nicotine tobacco.

The reason I asked the question is that I had read news reports that this special, genetically altered, high-nicotine tobacco was in fact still being used by the Brown & Williamson Company even though the company had said under oath that it would no longer use this genetically altered, high-nicotine tobacco. And in fact at that important hearing chaired by our leader on the committee, JOHN MCCAIN, Brown & Williamson said in fact that they are now working off a small stockpile of genetically altered nicotine. There is already a criminal investigation underway.

The reason that I bring this to the attention of the Senate tonight is for just one reason. If this company is so brazen as to engage in this conduct, having promised the American people that they would no longer do it again, and now being watched under the scrutiny of the Congress, what will it be like, Mr. President and colleagues, when in fact the hot spotlight is turned away from tobacco? This company has engaged in activity that they pledged to the American people they no longer would engage in, and they told the McCain committee that they are now working off a small stockpile of genetically altered, high-nicotine tobacco and that this product is being used in our country and overseas.

The other reason that I bring this to the attention of the Senate, Mr. President and colleagues, is this goes right to the heart of the industry's argument that it is a new day and that they are pursuing a new standard with respect to corporate citizenship. Before the McCain committee, the executives came and said: We realize that what happened in yesteryear was no longer acceptable. We are going to clean up our act. We are going to make sure that young people are not targeted.

I think it is the impulse of all of us to say, new executives, new day; let's look at this anew. But when it came to light that Brown & Williamson was again using genetically altered, high-nicotine tobacco after promising the

American people and the Congress that they would no longer engage in the practice, that is a pretty blatant contradiction of the claim that things really are different, that it is a new day, and that tobacco companies want to clean up their act.

As we consider this legislation on the floor of the Senate, Mr. President and colleagues, the Justice Department continues its inquiry into the use of this genetically altered nicotine, and there have already been criminal pleas that have been entered into.

Now, having said that, and noting some of the great challenges, let me also talk about what I think is a significant success, and I am particularly pleased to have an opportunity to do it while Chairman MCCAIN is here and on the floor of the Senate.

Mr. President and Chairman MCCAIN, I will tell you that when I left the Waxman hearings in 1994, walking out of that hearing room with the late Mike Synar, I told him that I was not convinced that we would make real headway in this fight to protect our children in our lifetime. I said to Mike Synar, "We are going to be up against all of the odds. We are going to be up against a lobbyist tidal wave. I am not sure we are ever going to do it in our lifetime."

We lost the late Mike Synar years before his time, but a lot of us said that we are going to continue that work. And we have the opportunity to do it because Chairman MCCAIN was courageous enough to take on this issue, come to Members of the Senate like myself, come to the public health groups, and say that we are going to focus on this issue until we get it done.

He did not minimize how tough a job it was. All he has to do is look down the row of his committee members. He has our good friend, WENDELL FORD, sitting a few places away from me. It is going to be a challenge to get WENDELL FORD and RON WYDEN to support a bill. We both did in the Senate Commerce Committee.

I commend Chairman MCCAIN at this time because we would not be on this floor, we would not have made as much progress, had he not been willing to take this issue on. I say to you, Mr. President, and to the country, we have come a long way. If you had told me 4 years ago, when I walked out of the Waxman hearings, that we would now be debating whether to impose fines of billions of dollars on companies that do not meet tough targets in reducing youth smoking, if you had told me 4 years ago that we would be having a debate on how to do that and impose those penalties, I would have asked you, "What are you smoking?" Because I thought there would never ever be an opportunity like that in my lifetime.

We have that opportunity because JOHN MCCAIN has focused on this issue and brought together a group in the

Senate that certainly does not agree on every single issue—that has been very clear—but does agree on how important it is to focus on this and get the job done.

Now, I do want to touch for just a few additional moments on several of the specific issues that have been important to me, and talk for a bit about why that is the case.

First, I am certain that many Members of the Senate have not heard about the accountability requirements that are in the legislation that we take up this week. And the word "accountability," for me and most public health specialists, is probably the single most important word in the discussion of this whole subject, because in the past it has not been possible to hold the tobacco companies accountable. For all of the past legislative efforts designed to rein them in—the Synar amendment, the early warning labels, the restrictions on electronic advertising—the industry would use their marketing and entrepreneurial talent and would find a way around them. So when we focused on enforcement issues in the committee, I began to discuss with Chairman MCCAIN and the bipartisan leadership of the Senate Commerce Committee how we could assure our children and future generations that there would be an ongoing watchdog who would scrutinize the practices of the tobacco companies when they inevitably try to get around the new law that I hope this Congress passes and that I know President Clinton will sign.

The tobacco companies, once again, when we get a new law, will put their entrepreneurial and marketing talent to the task of getting around it. They will have scores of slick strategies to employ to try to get around these protections. With the accountability requirements in this legislation, we will have an ongoing watchdog who will be in a position to let us know when the tobacco companies start trying to evade an important new public health law, as they have done every single time for decades.

With the accountability requirements, public health officials, the Surgeon General, the Director of the Centers for Disease Control, and the Office of Minority Health, will be involved in looking at company-specific behavior to determine whether a company is trying to evade the requirements of this law. They will be able to recommend at any time that a company that seeks to evade the strictures of this statute ought to have any liability protection they have pulled. Tobacco companies clearly have not been straight with the Congress. All their documents that came out after the 1994 hearings that contradicted what the executive said under oath in 1994 have made it very clear to me the single most important word in this debate—

the single most intellectually honest word in this debate—is "accountability." I, again, thank Chairman MCCAIN and his staff. They were under a lot of pressure from powerful interests to essentially strip out these accountability requirements. Once again, Chairman MCCAIN hung in there for the public health, and I want to tell him how much I appreciate that.

There are two other issues I would like to touch on briefly, with the first being the issue of the health care of our minority citizens and those in communities inhabited by many minority Americans. For years, again as has come out in documents since the 1994 hearings, the tobacco companies have shamelessly targeted these minority youngsters and minority communities to sell their products. I think it is critically important now that in this legislation there be resources specifically targeted to these minority communities and to minority youngsters who are preyed upon by the tobacco industry. This legislation provides a first step toward addressing the health concerns of minorities by assuring that all of the State efforts for smoking cessation and prevention include minority populations, and that services can be made available through community-based organizations.

In the Congressional Black Caucus, for example, Congressman BENNIE THOMPSON has done a yeoman's job in terms of trying to focus both the other body and the U.S. Senate on this issue. I know they have talked about this with Chairman MCCAIN. This issue is not one that we are going to allow to be swept under the rug. It is not right to see so many minority youngsters get involved with tobacco at an early age, and it is unconscionable the way these tobacco companies have targeted our minority communities. In addition to the support for the State plans for smoking cessation and prevention, the Office of Minority Health will be represented on the accountability panel. In my view, this is a significant win for the cause of minority health.

We are going to have much to do as we consider these questions through the rest of the debate in the U.S. Senate and in the House. I am particularly troubled about the prospect that some of the focus on improving the health of our minority citizens, and specifically seeing a reduction in smoking among minority youngsters, will get lost if the final judgment by the Congress on this issue is to create a State block grant approach. I don't want to see this issue, which has been neglected for so long, lost in some sort of amorphous block grant where, once again, the health needs of minority youngsters and minority communities get lost. So there are going to be a number of Members of the U.S. Senate who care about this issue, particularly Senators JEFFORDS and HARKIN, and I am looking

forward to working with them to strengthen the minority provisions, minority health provisions of this legislation. I know that Congressman BENNIE THOMPSON is going to bring his talents and energy to doing that as the House considers the bill as well.

Finally, there is one last issue I would like to raise. I have been talking tonight about the needs of youngsters in the United States. I represent the people of Oregon. I have the privilege of representing them, serving with my colleague, Senator GORDON SMITH who, in my view, has been a very strong voice for protecting youngsters in this debate. I appreciate that very much. We are both very proud to represent Oregon, and to work to improve the health of youngsters all across this country.

But I come tonight, as well, to talk about an issue that I think ought to strike at our moral conscience, and that is, as I have said, to say that it is critically important that we protect kids in Bend, OR, across the country, in Bangor, ME, and communities in between. But it is also critically important to protect kids in Bangladesh and Bangkok, because a child is a child is a child. And I hope—it is my fervent hope—that when this bill heads to the President of the United States, that we will have put in place extremely strong health protections for youngsters across the world.

Let us not say on our watch that to pay for a settlement, a tobacco settlement in the United States, the children around the world lost their health. Let us not sacrifice the lungs of youngsters around the world to pay for a settlement here. Let's protect kids in the United States. That is what we have a sworn obligation to do. But let us not forget youngsters around the world who don't have lobbyists, who don't have lawyers and the great array of talent that so many powerful interest groups have.

I will say that if we don't speak for those children all over the world on our watch—the Presiding Officer of the Senate and I are about the same age, I am a little older, I resent that, but a little older—but on our watch, millions of youngsters around the world will get sick during our lifetime and die needlessly. I know that the Presiding Officer and all our colleagues don't want to see that. That is why I think it is so important that we pass the provisions in this legislation that will protect youngsters around the world when the tobacco companies target them.

Make no mistake about it, that is the game plan. The game plan for the tobacco companies is consumption is going down here—it is well documented—and it is going up at a staggeringly high level around the world. The evidence shows, for example, that for every smoker who quits in the United States, two start in China.

There are countries around the world that actually are in support of companies that sponsor contests to see how many cigarettes a youngster can smoke at one time. If we don't take the steps to protect these youngsters around the world who are envisaged in the McCain legislation before us, we will have the bizarre situation where a tobacco company in the United States won't be able to slap a decal on some car or something that is utilized at a sporting event, but that same company will be able to participate in these contests around the world to see how many cigarettes a youngster can smoke.

I don't think we ought to have that kind of double standard where we say we are going to protect kids here but we are really not much interested around the world. I know that this is an issue that a lot of Members are not familiar with, but we are going to take the time over the next few days and, in the days ahead, to make sure that they are, because I think those kids count too.

The legislation before us today is not all that I would want, and it is not all that Senator DURBIN and Senator WELLSTONE and Senator HARKIN and many others who have been interested in this issue would want either. We really had our ideal plan and consideration in the Senate Commerce Committee. Chairman MCCAIN was straight and realistic with us. We knew that we couldn't win that kind of package on the floor of the U.S. Senate, so we vowed that we were going to lay a foundation to protect the health of youngsters around the world, as well as youngsters here, and that is what we have done in this legislation.

It wouldn't be my first choice, but to tell you the truth, Senator HOLLINGS, who very graciously worked with us essentially nonstop over the weekend, wouldn't think it is his first choice either. But that is what the legislative process is all about. What this legislation does with respect to kids around the world is very, very important.

Make no mistake about it, it is a strong beginning at laying out a global policy to protect kids around the world. It essentially does three things.

First, for all time—for all time—it gets the Federal Government out of the business, through the U.S. Trade Representative and other agencies, of promoting the sale of tobacco overseas. For the first time, the U.S. Trade Representative will be directed to consult with the Department of Health and Human Services concerning any trade actions related to tobacco. The U.S. Trade Representative will not be acting in a vacuum. They are required to let the Congress of the United States know when tobacco companies approach them on these matters. I think it is fair to say that with respect to the role of the U.S. Trade Representative

and the Federal agencies that are charged with leading the international trade effort, that never again, as a matter of Federal law, will we have them promoting the sale of tobacco overseas.

Second, for the first time, we will require that U.S. health warnings on cigarette packs for exports are carried in a specific way. In effect, we are making it clear that the kind of warning labels, health-specific, that we have in the United States have to apply overseas. If the other governments around the world choose to put another warning on, it has to be substantially similar—substantially similar—in terms of the warning provided to our citizens.

It would not be right, as our colleague DICK DURBIN has said, to let them off by putting on a warning, "Well, cigarettes may cause bad breath," or, as some have seen in other parts of the world, "Cigarette smoking may be inconvenient to your neighbor." That won't do.

Around the world, as a result of the legislation incorporated into the McCain bill that we are considering now on the floor of the U.S. Senate, the warning that is health specific used in our country will have to be used around the world by regulation unless it is substantially similar. Those labels will make it clear that smoking is harmful, and they will be scientifically based.

The administration is charged with finding the most effective compliance mechanism and assuring that the labels are in the language of the country of destination. That is extremely important and something long sought by the public health groups.

Finally—I guess our colleague from Missouri, Senator ASHCROFT, took particular issue with this—this for the first time puts resources into the effort to work in an educational fashion around the globe. Several hundred million dollars is devoted to our participation in these global kinds of health efforts which are critically important, because if, for example, we learn about an important educational innovation that really does reach kids—for example, some of the counteradvertising that is already showing real promise in deterring youth smoking—we want to make sure that this kind of information is easily shared with the global network of public health specialists.

This isn't going to be sort of sock the Government. This is to make sure that kids around the world don't get sick. If we can prevent those illnesses, those countries will be able to avoid some of the much larger medical bills which often, as our colleagues know—particularly the Presiding Officer of the Senate because of his role in foreign affairs—and avoid coming to our Government to ask for support to deal with it.

So again, if we can prevent these illnesses among young people, particu-

larly as it relates to tobacco, my sense is that the Presiding Officer of the Senate will see fewer demands for help with much greater medical bills which will come about as youngsters get hooked and addicted to tobacco.

Finally, the bill sets up a system to combat smuggling, and in much the same way the Federal Government today enforces the law against the smuggling of alcohol. And in regard to the smuggling provisions, I particularly want to commend the Senator from New Jersey, Senator LAUTENBERG, who has long been involved in this issue.

The tobacco companies, as a number of our colleagues already noted to me, do not want these provisions in this legislation. They do not want these provisions to ruin their business plans to target kids overseas. That is what the game plan is all about, Mr. President, and colleagues. It is about recognizing that consumption is going down in our country and skyrocketing around the world. With the export provisions, through removing the U.S. Trade Representative and Federal officials from the business of promoting tobacco permanently, through the warning labels, through the funds to participate in educational efforts, we make a very strong start to protect kids around the world. And I again thank Chairman MCCAIN for his help.

Mr. President, I want to wrap up with one last point.

I think I am the only Member of the U.S. Congress on either side who had the privilege in the last few years to participate in historic hearings in both of the Commerce Committees. I had the honor of serving on HENRY WAXMAN's subcommittee as a Member of the other body and I am now honored to have the chance to serve with JOHN MCCAIN, who has done so much to bring this bill to the floor tonight.

I will say that I think we have a once-in-a-lifetime opportunity to protect kids. That is what this is all about. At the end of the day, it is not about all these arcane and technical questions that we are debating on the floor of the Senate. That is not to say those questions are unimportant. They are. They are very important.

I will tell you, all of our colleagues who I have heard have been asking important questions. But as we ask those important questions, let us not lose sight of the end game here, which is to protect kids.

We have a President who is willing to take on the tobacco lobbies. That is a major reason we have come thus far. We have a chairman of the Senate Commerce Committee who has reached across both sides of the aisle to try to fashion a strong bill. We have public health groups all over this country who have made the case with their volunteers, with their physicians, with their nurses, with all of the individuals who

participate in these superb organizations that now is the time, now is the time to act. And that means passing a bill in this Senate.

It is not going to be the perfect bill. It is not going to be what any of us would like in an ideal world. That is why I said there are a number of aspects of the export provisions that I was very bothered to see disappear. Senator HOLLINGS has concerns about what is in there—that is the process of fashioning legislation—but we were able to make a strong start at protecting our kids. And if the Senate passes this bill, and does it in a timely way, we can make a difference for kids here and around the world.

But I say, Mr. President, and colleagues—and I will conclude with this—the clock is ticking. It is not exactly an atomic secret that there are not many days left in the session. And delay is the best friend that the advocates of the status quo could possibly have. Delay is the very best friend of the tobacco lobbies that want to engage in business as usual. Delay is a perfect opportunity for all of those who say, "Tobacco company profits ought to come before the health of kids, that, well, we just have to study this longer. We don't know all the facts."

I say, Mr. President, and colleagues, that we will have a chance all the way through this process, through the amendments on the floor, and the House considers its legislation and passes it, as we go to conference, we will have a chance to learn more, to refine this legislation and to improve it. That is what we did through the many hearings that were held in the Senate Commerce Committee. That is what has happened through the work done by the Labor Committee, the Judiciary Committee, with so many of our colleagues on both sides of the aisle. But let us not miss this opportunity to pass this legislation. We have to do it soon. The clock is ticking.

Mr. President, this bill will be good for our children. More importantly, it will be good for our children's children. It is my fervent hope that this Senate passes this legislation, and does so in an expeditious way.

Mr. President, I yield the floor.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from the great State of Arizona.

Mr. McCAIN. Before my colleague from Oregon leaves the floor, I express to him, first of all, my appreciation for his kind remarks, which I do not deserve. Second of all, I thank him for all the work that he has done on this legislation. Without him and his incredibly active participation in this effort, we would not have been able to reach the goal of getting a bill through the Commerce Committee and now to the floor of the Senate.

But most importantly, I thank the Senator from Oregon because he was

involved in this issue very long before I or most of the Members of this body were involved. He and former Congressman Synar embarked on this effort long ago. And sometimes we have a reputation, which is well deserved as politicians, of butterflying from one issue to the other and forgetting the one of yesterday for the one of today and tomorrow.

Senator WYDEN does not take that approach on any issue, but on this issue he has been steadfast. He has been courageous. And, very frankly, he has been criticized from time to time, when the mood of the country was not as it is today. There was a time when we did not know all of the details about the tobacco companies having deceived the American people. There was a time when the tobacco lobby, we all know, had a much greater influence on both sides of the Capitol than today. It was during those times that Senator WYDEN carried the torch for the children of America.

I will always be grateful to him. And history will record that Senator WYDEN was a key and vital player in that effort. So I extend my gratitude to Senator WYDEN and remind him that we have a great deal yet to do. I know I can count on him to do it.

EXPLANATION OF VOTE

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted "present" on the Faircloth amendment related to attorneys' fees in tobacco litigation.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

The Ethics Committee has advised me that voting on an amendment such as this "would not pose an actual conflict of interest" under the Senate Code of Conduct.

However, I decided that this vote could create the appearance of a conflict of interest and therefore I abstained by voting "present."

MORNING BUSINESS

Mr. McCAIN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

RETIREMENT OF STUART BALDERSON

Mr. LOTT. Mr. President, this evening, a number of us will be gathering together to honor Stuart Balderson who recently retired from the United States Senate after nearly four decades of exemplary service. I

would like to take just a few moments to thank Stuart and to wish him well as he begins the next chapter of his life.

On May 23, 1960, Stuart Balderson, a twenty-two year old fresh out of the Navy, came to work in the United States Senate. At that time, Lyndon Johnson was the Majority Leader and Dwight D. Eisenhower was in the White House. Stuart was brought on board by Secretary of the Senate "Skeeter" Johnston and assigned a position in the Senate Finance Office. Over the course of the next 38 years, Stuart worked in every department of that office, including payroll, accounting, retirement and benefits, and legislative budgeting. In 1980, he assumed its top position, Financial Clerk of the United States Senate, and served in that capacity for the next 18 years.

Over the past 38 years, Stuart has seen a lot of history on Capitol Hill. To give you an idea of how much things have changed, when Stuart began working in the Senate, the Capitol Building was still using direct current from its own generators. You needed to use an AC adaptor if you wanted to plug in any electrical equipment, but there wasn't much electrical equipment to plug in. In those days, "computers" referred to the people who calculated the numbers rather than to any machines they used. Stuart's predecessor, Bill Ridgely, used to call those the "Bob Cratchitt" days of the Disbursing Office, when the Senate's bookkeepers, like Bob Cratchitt in Dickens' A Christmas Carol, wore green visors and armbands and sat on high stools.

A lot has changed since then. The number of Senate employees relying on the Senate Finance Office to handle their paychecks has more than doubled. Total Senate expenditures have risen from \$25.9 million in 1960 to \$583.3 million in 1997. In many ways, Stuart grew with the Senate, but the two things that always remained constant were his dedication to this institution and the financial integrity he brought to the job.

I know I speak for many other members and staff, past and present, when I say that we will miss Stuart. We commend him for his long and outstanding service and we wish him well as he retires.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, May 19, 1998, the federal debt stood at \$5,501,436,319,981.88 (Five trillion, five hundred one billion, four hundred thirty-six million, three hundred nineteen thousand, nine hundred eighty-one dollars and eighty-eight cents).

One year ago, May 19, 1997, the federal debt stood at \$5,344,451,000,000 (Five trillion, three hundred forty-four billion, four hundred fifty-one million).

Five years ago, May 19, 1993, the federal debt stood at \$4,285,943,000,000 (Four trillion, two hundred eighty-five billion, nine hundred forty-three million).

Ten years ago, May 19, 1988, the federal debt stood at \$2,523,047,000,000 (Two trillion, five hundred twenty-three billion, forty-seven million).

Fifteen years ago, May 19, 1983, the federal debt stood at \$1,265,692,000,000 (One trillion, two hundred sixty-five billion, six hundred ninety-two million) which reflects a debt increase of more than \$4 trillion—\$4,235,744,319,981.88 (Four trillion, two hundred thirty-five billion, seven hundred forty-four million, three hundred nineteen thousand, nine hundred eighty-one dollars and eighty-eight cents) during the past 15 years.

JIMMY STEWART—AND WHY HE'S REMEMBERED BY SO MANY

Mr. HELMS. Mr. President, when Jimmy Stewart died last July, less than a year shy of his 90th birthday, which would have been today, millions of Americans of all ages felt they had lost a dear friend. They had grown up with great films such as "It's a Wonderful Life," "Harvey," "The Philadelphia Story," and the one that's probably many Americans' personal favorite, "Mr. Smith Goes to Washington."

I was fortunate to get to work with Mr. Stewart during the 1970s when we were on the campaign trail across North Carolina. Dot and I will never forget travelling with him introducing him to the citizens who felt that they already knew him.

Perhaps what I like most about "Mr. Smith Goes to Washington" is the manner in which Jimmy Stewart and director Frank Capra captured the timeless principles outlined in the Declaration of Independence. In describing the theme of the picture, Capra said: "The more uncertain are the people of the world, the more their hard-won freedoms are scattered and lost in the winds of change, the more they need a ringing statement of America's democratic ideals."

Jimmy Stewart, Mr. President, in a sense was playing a character modeled after Abe Lincoln. According to Capra, Jefferson Smith was "tailored to the rail-splitter's simplicity, compassion, ideals, humor and unswerving moral courage under pressure."

A year ago, on the occasion of Jimmy Stewart's eighty-ninth birthday, John Meroney of *Advance*, N.C., wrote a *Wall Street Journal* essay, "A Hero Larger Than Those He Portrayed," celebrating Jimmy Stewart's life and career. I learned about John Meroney when he was a student at Wake Forest University. I am persuaded the reason Jimmy Stewart appeals to John and other young people isn't simply because Mr. Stewart made some of the greatest pic-

tures of all-time. I believe, Mr. President, that it's the contrast between Jimmy Stewart and so many of those who live and work in Hollywood today. It's hard to imagine anyone out there capturing America's heart the way Jimmy Stewart did, and via his countless films, still does. It's as John Meroney put it, it isn't because Jimmy played great characters. It's because of the way Jimmy Stewart lived his life.

So, Mr. President, in commemoration of the birthday of an American original, James Maitland Stewart, I ask unanimous consent that the text of Mr. Meroney's column be printed in the RECORD.

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

[From the *Wall Street Journal*, May 20, 1997]

A HERO LARGER THAN THOSE HE PORTRAYED (By John Meroney)

Beverly Hills, Calif.—James Stewart turns 89 today, and he will mark his birthday in a fitting manner—quietly at home, without the trappings of celebrity that he has avoided his entire life. It's also fitting that a man whose movies celebrate middle American values has lived in the same, rather plain Tudor-style house on a block absent the typical L.A. glitz for almost 50 years.

Mr. Stewart is not just one of the greatest American movie actors of all time, he's also probably the last cultural icon from his generation. Although it helps, working with directors like Ford, Wilder, DeMille and Hitchcock doesn't necessarily bring such exalted status. Nor does having your face projected 50 feet tall on movie screens for four decades. Many others have been that fortunate, yet are now forgotten. The parts you play, the message you carry, the life you live—that's what gives audiences what Mr. Stewart calls the "little tiny pieces of time that they never forget."

It was the director Frank Capra, an Italian immigrant who had a love affair with America, who gave Mr. Stewart the roles that stand out as eloquent and intelligent celebrations of American ideals and principles. Perhaps the best of these was found in Capra's 1939 feature "Mr. Smith Goes to Washington," in which Mr. Stewart played Jefferson Smith, an idealistic young man who becomes a U.S. senator only to have his hopes shattered when he discovers that his political heroes are dishonest. In a town where politics is a serious game, he's told, players have to check their ideals at the door. When he challenges this orthodoxy, Smith learns lessons the likes of which Robert Bork and Clarence Thomas could appreciate. But in the end, Smith triumphs, justice prevails, and a political machine is destroyed.

The establishment wasn't amused. Halfway through the Constitution Hall premiere, senators and congressmen began walking out. Members of the press corps, portrayed as elite snobs with their own agendas, were outraged. The Senate majority leader, Alben W. Barkley, called the movie a "grotesque distortion, as grotesque as anything I have ever seen." Ambassador Joe Kennedy wired Columbia Pictures President Harry Cohn from London and pleaded with him to block the European distribution, fearful it would be used as propaganda by the Axis powers.

Moviegoers in America and abroad saw "Mr. Smith" differently. In France, it was

the last English-language film to be shown before the Nazi ban in 1942. Audiences there spontaneously erupted with standing ovations during Stewart's scene at the Lincoln Memorial. Observed one reporter: "It was as though the joys, suffering, love and hatred, the hopes and wishes of an entire people who value freedom above everything, found expression for the very last time."

Like some of his roles, Jimmy Stewart's life also symbolizes the American dream. Born near the Allegheny mountains in the coal mining town of Indiana, Pa., he was raised by parents who instilled in him values Hollywood couldn't corrupt. His father ran the local hardware store, which was, for Mr. Stewart, "the center of the universe." When he won the Best Actor Oscar for "The Philadelphia Story" in 1941, he remembers, "It was 3:45 [a.m.] when I got home and the phone rang. It was my father: 'I hear on the radio they gave you a prize or something. What is it, a plaque or a statue?' I told him it was a sort of a statue. He said, 'Well, send it home to me and I'll put in the hardware store window.' So the next day, I got it, packed it up, and sent it. It was there for 20 years."

Drafted in 1941—"I keep saying that's the only lottery I ever won"—Mr. Stewart became the commander of an Eighth Air Force squadron, and a genuine war hero. After flying some 25 missions over enemy territory with a copy of Psalm 91 that his father gave him in his pocket, he returned to Hollywood in 1945 as Col. Stewart, and was promptly decorated with the Air Medal and Distinguished Flying Cross. Active in the reserves until 1968, Jimmy Stewart retired with the rank of brigadier general. Of his combat experience, and the horrors of war, Gen. Stewart once said, "Everybody was scared. You just had to handle that. I prayed a lot."

During the 1940s and 1950s, while making such popular films as "It's a Wonderful Life," "Rear Window" and "Harvey," Mr. Stewart found that his traditional conservative political beliefs were becoming increasingly unpopular among his colleagues. Hearings by the House Un-American Activities Committee and its foray into Hollywood proved troublesome for Mr. Stewart because of his staunch anticommunism. It tested his long friendship with Henry Fonda, an outspoken liberal critical of HUAC. But Mr. Fonda couldn't resist his friend's intrinsic decency, and they agreed not to discuss politics to preserve their friendship. Mr. Fonda also understood that Mr. Stewart's beliefs had not come cheap. Unlike many families here who have escaped making the sacrifices that freedom often demands, the Stewarts lost a son in Vietnam when their oldest was killed in 1969.

The authenticity in Jimmy Stewart's personal life, so evident in his film career, seems to be a rarity in Hollywood. "There was something so totally real in his own way," Kim Novak, his co-star in "Vertigo," told me. "How often can you find somebody who's spent his whole life in Hollywood but represents so much of America?"

Director Ron Howard acted with Mr. Stewart in "The Shootist," a 1976 film that teamed them with the Duke. "John Wayne was sort of a mythological figure," says Mr. Howard. "Stewart wasn't aspiring to that. He was a character for us to relate to."

The way Jimmy Stewart has lived his 89 years is an example today's celebrities—and every American, for that matter—would do well to emulate. When asked in a documentary on his life how he wanted to be remembered, Mr. Stewart answered: "A guy who believed in hard work, and decent values, love

of country, love of family, love of community, love of God."

George C. Scott, Mr. Stewart's co-star in "Anatomy of a Murder," and now one of his neighbors here, summed it up best, albeit sadly, when he told me: "They don't make them like that anymore. Hollywood misses them already, I'll tell you that."

REPORT OF THE DISAPPROVAL OF THE DISTRICT OF COLUMBIA STUDENT OPPORTUNITY SCHOLARSHIP ACT OF 1998—MESSAGE FROM THE PRESIDENT—PM 128

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States; which was ordered to lie on the table:

To the Senate of the United States:

I am returning herewith without my approval S. 1502, the "District of Columbia Student Opportunity Scholarship Act of 1998."

If we are to prepare our children for the 21st Century by providing them with the best education in the world, we must strengthen our public schools, not abandon them. My agenda for accomplishing this includes raising academic standards; strengthening accountability; providing more public school choice, including public charter schools; and providing additional help to students who need it through tutors, mentors, and after-school programs. My education agenda also calls for reducing class size, modernizing our schools and linking them to the Internet, making our schools safe by removing guns, drugs, and instilling greater discipline.

This bill would create a program of federally funded vouchers that would divert critical Federal resources to private schools instead of investing in fundamental improvements in public schools. The voucher program established by S. 1502 would pay for a few selected students to attend private schools, with little or no public accountability for how those funds are used, and would draw resources and attention away from the essential work of reforming the public schools that serve the overwhelming majority of the District's students. In short, S. 1502 would do nothing to improve public education in the District of Columbia. The bill won't hire one new teacher, purchase one more computer, or open one after-school program.

Although I appreciate the interest of the Congress in the educational needs of the children in our Nation's Capital, this bill is fundamentally misguided and a disservice to those children.

The way to improve education for all our children is to increase standards, accountability, and choice within the public schools. I urge the Congress to send me legislation I have proposed to reduce class size, modernize our schools, end social promotions, raise

academic standards for all students, and hold school systems, schools, and staff accountable for results.

WILLIAM J. CLINTON.

THE WHITE HOUSE, May 20, 1998.

MESSAGES FROM THE HOUSE

At 12:23 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the Senate amendment to House amendment to Senate amendment to the bill (H.R. 2472) to extend certain programs under the Energy Policy and Conservation Act.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 171. Concurrent resolution declaring the city of Roanoke, Virginia, to be the official site of the National Emergency Medical Services Memorial Service.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 512. An act to establish requirements relating to the designation of new units of the National Wildlife Refuge System.

H.R. 1023. An act to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes.

H.R. 1522. An act to extend the authorization for the National Historic Preservation Fund, and for other purposes.

H.R. 2202. An act to amend the Public Health Service Act to revise and extend the bone marrow donor program, and for other purposes.

H.R. 2556. An act to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

H.R. 2652. An act to amend title 17, United States Code, to prevent the misappropriation of collections of information.

H.R. 3039. An act to amend title 38, United States Code, to authorize the Secretary of Veterans' Affairs to guarantee loans to provide multifamily transitional housing for homeless veterans, and for other purposes.

H.R. 3534. An act to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes.

H.R. 3603. An act to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal year 1999, and for other purposes.

H.R. 3718. An act to limit the jurisdiction of the Federal courts with respect to prison release orders.

H.R. 3809. An act to authorize appropriations for the United States Customs Service for fiscal years 1999 and 2000, and for other purposes.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 512. An act to establish requirements relating to the designation of new units of

the National Wildlife Refuge System; to the Committee on Environment and Public Works.

H.R. 1023. An act to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 1522. An act to extend the authorization for the National Historic Preservation Fund, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2202. An act to amend the Public Health Service Act to revise and extend the bone marrow donor program, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 2556. An act to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act; to the Committee on Environment and Public Works.

H.R. 2652. An act to amend title 17, United States Code, to prevent the misappropriation of collections of information; to the Committee on the Judiciary.

H.R. 3039. An act to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to guarantee loans to provide multifamily transitional housing for homeless veterans, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 3603. An act to authorize major medical facility projects and major medical facility leases for the Department of Veterans Affairs for fiscal year 1999, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 3718. An act to limit the jurisdiction of the Federal courts with respect to prison release orders; to the Committee on the Judiciary.

H.R. 3809. An act to authorize appropriations for the United States Customs Service for fiscal years 1999 and 2000, and for other purposes; to the Committee on Finance.

Pursuant to the order of August 4, 1977, with instructions that if one committee reports the other committee have thirty days to report or be discharged, the following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 3534. An act to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes; to the Committee on the Budget and the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following report of committee was submitted:

By Mr. HELMS, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 30. A concurrent resolution expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance:

Patrick A. Mulloy, of Virginia, to be an Assistant Secretary of Commerce.

Thelma J. Askey, of Tennessee, to be a Member of the United States International Trade Commission for the remainder of the term expiring December 16, 2000.

Jennifer Anne Hillman, of Indiana, to be a Member of the United States International Trade Commission for the term expiring December 16, 2006.

Stephen Koplan, of Virginia, to be a Member of the United States International Trade Commission for the term expiring June 16, 2005.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ALLARD (for himself and Mr. CHAFEE):

S. 2094. A bill to amend the Fish and Wildlife Improvement Act of 1978 to enable the Secretary of the Interior to more effectively use the proceeds of sales of certain items; to the Committee on Environment and Public Works.

By Mr. CHAFEE (for himself, Mr. KEMPTHORNE, Mr. LOTT, Mr. DASCHLE, Mr. BAUCUS, Mr. BREAUX, Mr. GRAHAM, Mr. WYDEN, Mr. SMITH of New Hampshire, Mr. SARBANES, Mr. WARNER, Mr. STEVENS, Ms. SNOWE, Ms. COLLINS, Mr. BOND, Mrs. MURRAY, and Mr. DOMENICI):

S. 2095. A bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act; to the Committee on Environment and Public Works.

By Mr. INOUE (for himself and Mr. AKAKA):

S. 2096. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel FOILCAT; to the Committee on Commerce, Science, and Transportation.

By Mr. CAMPBELL:

S. 2097. A bill to encourage and facilitate the resolution of conflicts involving Indian tribes, and for other purposes; to the Committee on Indian Affairs.

S. 2098. A bill to preserve the sovereignty of the United States over public lands and acquired lands owned by the United States, and to preserve State sovereignty and private property rights in non-Federal lands surrounding those public lands and acquired lands; to the Committee on Energy and Natural Resources.

S. 2099. A bill to provide for enhanced Federal sentencing guidelines for counterfeiting offenses, and for other purposes; to the Committee on the Judiciary.

By Mr. SPECTER (for himself, Mr. MACK, and Mr. FAIRCLOTH):

S. 2100. A bill to amend the Higher Education Act of 1965 to increase public awareness concerning crime on college and university campuses; to the Committee on Labor and Human Resources.

By Mr. BENNETT (for himself, Ms. MOSELEY-BRAUN, and Mr. SHELBY):

S. 2101. A bill to amend the Public Health Service Act to provide for research and services with respect to lupus; to the Committee on Labor and Human Resources.

By Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. LEAHY, and Mr. WELLSTONE):

S. 2102. A bill to promote democracy and good governance in Nigeria, and for other purposes; to the Committee on Foreign Relations.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, and Mrs. BOXER):

S. 2103. A bill to provide protection from personal intrusion for commercial purposes; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. ABRAHAM):

S. 2104. A bill to authorize the Automobile National Heritage Area; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLARD (for himself and Mr. CHAFEE):

S. 2094. A bill to amend the Fish and Wildlife Improvement Act of 1978 to enable the Secretary of the Interior to more effectively use the proceeds of sales of certain items; to the Committee on Environment and Public Works.

FISH AND WILDLIFE REVENUE ENHANCEMENT ACT OF 1998

Mr. ALLARD. Mr. President, I am introducing a bill today to amend the Fish and Wildlife Improvement Act of 1978.

This bill will allow the Secretary of the Interior and the Secretary of Commerce to more effectively use proceeds from the sale of forfeited and abandoned wildlife items.

Mr. President, there is a warehouse in Commerce City, Colorado, operated by the U.S. Fish and Wildlife Service, which is filled with wildlife parts and products.

It is the National Repository for items that have been forfeited or abandoned to the U.S. Government and are being held for disposition by the Service.

Some of these items are quite unusual: mounted rhinoceros, coral jewelry, stuffed alligators, elephant foot stools.

Some of these items are endangered or otherwise protected by law, and it is illegal to import them into the United States.

Those companies or individuals who were caught trying to do so either abandoned the items or they were forfeited to the U.S. Government through a legal process.

The Service distributes these wildlife items to museums and to schools for conservation education programs around the country.

Anyone who flew through Denver's old Stapleton Airport, for instance, might have seen a display in the main

terminal reminding travelers about various laws regulating importation of wildlife and wildlife products.

A similar display is being erected at Denver International Airport.

In addition to the unusual wildlife specimens stored at the Service's Colorado Repository are some more familiar items such as leather boots, jackets, purses, watchbands, and sea shells.

These are in the possession of the Service because, in many cases, the required foreign export permits were not obtained or the items were falsely identified.

Although it is legal to possess and sell many of these wildlife items, there is, of course, a procedure for importing them. This includes obtaining the required foreign export permits prior to importation and properly declaring the items.

If these procedures are not followed correctly, then the items can be seized.

Abandonment or forfeiture actions are then initiated with title being transferred to the Government.

Many times, however, the people who try to bring them in will just abandon them to the Service.

These items are retained by the Service at the Commerce City facility until an appropriate disposition can be made.

I want to take just a moment here to point out that the Repository in question is located on the Rocky Mountain Arsenal northeast of Denver.

This inactive military facility is in the middle of a transformation from a Superfund site to the largest urban wildlife refuge in the country.

The Arsenal, which once produced nerve agents and chemical weapons, is now a haven for eagles, migratory birds, deer, and other wildlife.

I've been told that there is hope to one day introduce bison back into the 27 square mile facility.

The old Arsenal will become a new gem in the National Wildlife Refuge System, and an excellent resource for the people of Colorado.

A Service priority for disposing of these wildlife items is to utilize them in scientific and educational programs.

There are, however, many items in the Repository inventory excess to the needs of these scientific and educational programs.

Those excess items which are not given a high level of protection—those that are not endangered, or marine mammals, or migratory birds—can legally be sold on the open market.

If these surplus items were sold by the Service at an auction, they would generate proceeds which could be used to offset operational costs of the Repository, thereby allowing for a more efficient use of appropriated funds by the Service and a saving of money for the tax payers.

But there is a hitch. Current law mandates proceeds from the sale except for those that can be used for rewards, must be returned to the General Treasury.

This sounds fine, until you consider the mechanics of holding an auction.

An auctioneer charges a commission which is usually a percentage of the proceeds from a sale.

Since the Service estimates that they have about one million-dollars worth of surplus wildlife items on hand, which is a 10 year backlog, they can expect to pay the auctioneer a commission of around 15 percent or about \$150,000.

Now, the budget for the Repository in Fiscal Year 1998 is \$310,000 with salaries alone costing 80 percent of that number. They simply cannot pay about half of their funding towards an auctioneer's commission, and that is what they would have to do under current law.

Although a sale would bring in money, the majority of the proceeds would go to the General Treasury, and the Service would have to use money already in their operational budget to pay for the sale.

Needless to say, there are not enough funds to pay the auctioneer's commission, so the auction does not take place and the wildlife property sits and decays.

What this bill would do is allow the Fish and Wildlife Service, and the National Marine Fisheries Service under the Commerce Department, to keep the proceeds from the selling of wildlife products at an auction.

The money would be used for very specific purposes.

These purposes, except for one, are all related to the task of storing, shipping and disposing of the forfeited and abandoned items located around the country.

The other uses of the funds I will explain in just a minute.

This bill specifically says that the Services can use the proceeds of the sale for:

- (1) Shipping items from one location to another;
- (2) Storage and security of the items;
- (3) Appraisal of the items;
- (4) Sale of the items—this is necessary to pay an auctioneer's commission; and
- (5) Payment of any valid liens against the objects.

As you can see, this will not allow the Services to establish a slush fund for their use.

The bill requires the money may be used only to continue paying for rewards, storage and shipping of the property, and to facilitate the disposal of the items, thereby making them available for the people of the United States.

The other use for the proceeds is very special.

The U.S. Fish and Wildlife Service administers a program that provides for the distribution of dead eagles to Native Americans so they may be used for religious and cultural purposes.

As you probably know, bald and golden eagles are highly protected and it is illegal for anyone to kill an eagle or possess an eagle carcass or its feathers.

The way the program is set up, dead eagles are sent to the National Eagle Repository, which is also located on Rocky Mountain Arsenal in Commerce City, Colorado.

There they are cataloged, processed, and shipped to Native Americans.

Even though the Repository distributes about 1,000 eagles to Native Americans each year, there is currently about a three year wait to receive an eagle carcass. This is because of the limited number of eagles being received at the Repository.

Most have been trapped, or electrocuted, or have collided with power lines and cars—they are not in very good shape.

When an eagle is received by the Repository, attempts are made to match the type of eagle with that being requested, i.e. bald or golden, immature or mature.

Requests for individual feathers are also filled.

The Repository is so concerned about customer service that they will replace any broken or missing feathers with whole ones from another bird.

The cost to box and ship an eagle is about \$50. This cost is absorbed by the Service rather than being passed on to the Native Americans.

This bill will allow the Fish and Wildlife Service to use the proceeds from an auction to assist the eagle program by paying for boxes, dry ice, and other costs associated with shipping the eagles.

For instance, some of the proceeds could also be used to purchase chest freezers to be placed in regional collection points.

This would be for short term storage of the eagles near where they are initially found.

This would hopefully increase the number of eagles being sent to the Repository and subsequently increase the number being shipped to the Native Americans, thereby reducing the waiting period to receive an eagle.

Before I close here, let me stress—the auctions will only be selling wildlife items that are legal to possess and sell in the U.S., items like boots, belts, wallets, purses, shell products, etc.

These items have a valid place on the U.S. market.

Items that have a higher scientific or educational value will be distributed to museums and schools.

No products from endangered species, eagles, marine mammals, or migratory birds will be sold.

The Fish and Wildlife Improvement Act already gives the authority to sell

those items that are surplus for scientific and educational needs.

The Act is silent, however, as to what happens to the proceeds from the sale of abandoned items, so by default they go to the General Treasury.

The Services are therefore precluded from being able to utilize these funds.

If this bill is enacted, the proceeds from the sale of forfeited and abandoned items will aid in the shipping, storing, and disposing of wildlife products to scientific and educational programs and the distribution of eagles to Native Americans for religious and ceremonial purposes.

I hope this bill can be moved quickly in the Senate.

Mr. CHAFEE. Mr. President, I am pleased to cosponsor this bill with my colleague Senator ALLARD. This bill represents a move towards efficient use of government funds, and support for the valuable programs carried out with those scarce funds. The bill would initially generate approximately \$1 million for the Service through the sale of items derived from fish and wildlife that are currently stored by the Service. This money would be used to cover the costs of disposing of these items—which is now a financial drain on the Service—and to fund programs that loan these items to schools and Native American groups for educational and religious purposes.

Each year, the Fish and Wildlife Service (Service) receives hundreds of thousands of items derived from fish, wildlife and plants, such as skins, furs, feathers, jewelry, etc. These items can be seized, forfeited or abandoned during enforcement of Federal wildlife laws, and they are eventually shipped to the National Wildlife Property Repository in Colorado. The Repository currently has about 150,000 items, with about 50,000 items stored elsewhere.

Under current law, the Service may dispose of fish, wildlife or other items forfeited or abandoned to the U.S. government, either by loan, gift, sale or destruction. There are certain restrictions on disposal of those items. For example, items made from threatened or endangered species, marine mammals and migratory birds cannot be sold according to the laws that apply to those particular species.

Revenue from the sale of forfeited items go to the Service for certain program operations; however, revenue from the sale of abandoned items go to the General Treasury, and are not available to the Service. More than 90 percent of the fish and wildlife items are abandoned, so that the Service would receive very little revenue from sales of these items. Indeed, under current law, the costs of selling these items would outweigh any revenue, so that the Service has no incentive to sell them.

The Service must further expend funds for the shipment, storage and

disposal of the items that it acquires. In addition, the Service will make many of these items—those that cannot be sold under law—available for Native American religious and ceremonial purposes, educational purposes, and research, but must expend its own funds to do so. The Repository was appropriated \$310,000 for operations last year. After overhead, only \$61,000 was available for disposal of these items.

Disposal includes two programs in particular. The first, known as Cargo for Conservation, provides wildlife specimens to schools for educational programs. Under this program, the Service has distributed almost 400 educational kits to various organizations. The second program provides eagle carcasses and parts to Native Americans for religious and ceremonial purposes. Under this program, the Service has filled almost 1,500 requests for eagles, eagle parts and other raptors in 1997 alone, although there is currently a two year backlog in filling orders for some eagle carcasses.

The bill would specifically amend the Fish and Wildlife Improvement Act in two ways. First, it would authorize the deposit of proceeds from the sale of forfeited and abandoned items into Service accounts rather than into the general treasury. Second, it would expand the use of funds received through these sales to include costs incurred by shipping, storage and disposal of these items, as well as payment of any liens on these items.

I would like to note that this bill does not change existing authority with respect to items that may be sold by the Service. It does not allow the sale of items derived from threatened and endangered species, marine mammals, or migratory birds. The Service already has authority to sell certain items for which it is lawful to do so. This bill merely allows the Service to keep revenues derived from any items it sells, and to use those revenues for certain programs. This is a bill representing efficient use of government funds.

At the same time, this bill is not intended to imply that the Service should sell everything that it lawfully can in order to maximize profits. It is my understanding that the Service has no intention to sell items derived from sensitive species, including those that are candidates for listing as endangered or threatened. It is also my expectation that, in considering which items to sell, the Service would take into account the biological status of any species used for that item, and any implications that the sale may have for conservation efforts relating to that species. For example, any sale by the Service should not encourage new markets that may undermine protections elsewhere. Lastly, the Service should ensure that the sale of these items does not undermine enforcement efforts within the U.S.

In summary, I am pleased to cosponsor this bill with Senator ALLARD. Our staffs have worked closely with each other and with the Administration in drafting this legislation, and I look forward to working on this bill in the future.

By Mr. CHAFEE (for himself, Mr. KEMPTHORNE, Mr. LOTT, Mr. DASCHLE, Mr. BAUCUS, Mr. BREAUX, Mr. GRAHAM, Mr. WYDEN, Mr. SMITH of New Hampshire, Mr. SARBANES, Mr. WARNER, Mr. STEVENS, Ms. SNOWE, Ms. COLLINS, Mr. BOND, Mrs. MURRAY, and Mr. DOMENICI):

S. 2095. A bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act; to the Committee on Environment and Public Works.

NATIONAL FISH AND WILDLIFE FOUNDATION
ESTABLISHMENT ACT AMENDMENTS OF 1998

Mr. CHAFEE. Mr. President, today I introduce legislation to reauthorize the National Fish and Wildlife Foundation Establishment Act of 1984. This legislation makes important changes in the Foundation's charter, changes that I believe will allow the Foundation to build on its fine record of providing funding for conservation of our nation's fish, wildlife, and plant resources.

The National Fish and Wildlife Foundation was established in 1984, to bring together diverse groups to engage in conservation projects across America and, in some cases, around the world. Since its inception, the Foundation has made more than 2,300 grants totaling over \$270 million. This is an impressive record of accomplishment. The Foundation has pioneered some notable conservation programs, including implementing the North American Waterfowl Management plan, Partners in Flight for neotropical birds, Bring Back the Natives Program, the Exxon Save the Tiger Fund, and the establishment of the Conservation Plan for Sterling Forest in New York and New Jersey, to name just a few.

Mr. President, the Foundation has funded these programs by raising private funds to match federal appropriations on at least a 2 to 1 basis. During this time of fiscal constraint this is an impressive record of leveraging federal dollars. Moreover, all of the Foundation's operating costs are raised privately, which means that federal and private dollars given for conservation is spent only on conservation projects.

I am proud to count myself as one of the "Founding Fathers" of the National Fish and Wildlife Foundation. In 1984, I, along with my colleagues Senators Howard Baker, George Mitchell, and JOHN BREAUX, saw the need to create a private, nonprofit group that could build public-private partnerships and consensus, where previously there

had only been acrimony and, many times, contentious litigation.

The National Fish and Wildlife Foundation has more than fulfilled the hopes of its original sponsors. It has helped to bring solutions to some difficult natural resource problems and is becoming widely recognized for its innovative approach to solving environmental problems. For example, when Atlantic salmon neared extinction in the U.S. due to overharvest in Greenland, the Foundation and its partners bought Greenland salmon quotas. I and many others in Congress want the Foundation to continue its important conservation efforts. So, today I am introducing amendments to the Foundation's charter that will allow it to do just that.

Mr. President, this legislation is quite simple. It makes three key changes to current law. First, the bill would expand the Foundation's governing Board of Directors from 15 members to 25 members. This will allow a greater number of those with a strong interest in conservation to actively participate in, and contribute to, the Foundation's activities.

The bill's second key feature authorizes the Foundation to work with other agencies within the Department of the Interior and the Department of Commerce, in addition to the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. Mr. President, it is my view that the Foundation should continue to provide valuable assistance to government agencies within the Departments of the Interior and Commerce that may be faced with conservation issues. Finally, it would reauthorize appropriations to the Department of the Interior and the Department of Commerce through 2003.

Mr. President, I believe that this legislation I introduce today will produce real conservation benefits and I strongly urge my colleagues to give the bill their support.

Mr. KEMPTHORNE. Mr. President, nearly fourteen years ago President Reagan signed P.L. 98-244, an act to establish the National Fish and Wildlife Foundation as a charitable, nonprofit corporation of the United States specifically to further the conservation and management of the Nation's fish, wildlife, and plant resources. Since that time, the Foundation has funded more than 2,200 conservation projects through their partnership and challenge grant program.

In the State of Idaho alone, the Foundation has funded nearly 100 projects worth over \$19,000,000. The good news is that they have done this work with only \$5M of federal money. That is nearly a four to one contribution from the private sector. In addition, there have been many projects in adjacent States that benefit the State of Idaho.

But the Foundation has had its share of controversy. A Foundation grant to

the Pacific Rivers Council may have allowed the Pacific Rivers Council to use other resources to nearly shut down the economy of several counties in the State of Idaho. A federal judge shut down all permitted activities in our national forests when the Pacific Rivers Council brought suit against the United States Forest Service and the National Marine Fisheries Service for failure to consider cumulative impacts of permitted activities under the Endangered Species Act. The two agencies could not agree on the extent and nature of the consultations, so the Federal judge shut down all activities in our national forests until they were in compliance. Even the plaintiffs in the suit were surprised by the effect of their suit. They quickly joined the effort to reverse the injunction and to have the two Federal agencies agree on a solution.

Since then the Foundation has implemented procedures into its grant contracts to prevent a recurrence of the devastating injunction triggered by the Pacific Rivers Council. The Foundation has repeatedly stated that "it does not engage in lobbying or litigation and does not allow its grants to be used for those activities."

And, I recognize that the Foundation has provided grant monies to support studies of grizzly bears and wolves in the Pacific Northwest. However, in my review of those grants I am pleased to say that the grants have been used to discover basic biological information about these predators. The Foundation has produced educational materials, backed research on the impacts of human activities, improved sanitation and safety will bear-proof dumpsters, supported GIS mapping of bear habitats, and brought in non-federal partners.

During the years I have been acquainted with the Foundation, I have found that they work with the entire spectrum of interests to leverage through private partners a limited amount of federal funding into significant monies for conservation.

Mr. LOTT. Mr. President, today Senator CHAFEE, chairman of the Senate Environment and Public Works Committee, has introduced legislation to reauthorize the National Fish and Wildlife Foundation. I support the Foundation and the activities it undertakes to further conservation and management of our nation's fish and wildlife resources.

Created by Congress in 1984, the Foundation has forged a strong relationship between government and corporate stakeholders, fostering cooperation and coordination. It has been successful in bringing private sector involvement, initiative and technology to bear in solving conservation problems. With this reauthorization, the Foundation's record of providing real on-the-ground conservation will continue.

Mr. President, all federal money appropriated to the National Fish and Wildlife Foundation must be matched by contributions from non-federal sources: corporations, State and local government agencies, foundations and individuals. The Foundation's operating policy is to raise a match of at least 2 to 1, to maximize leverage for our federal funds. With the financial assistance of the private sector and the technical knowledge of the States, the Foundation can be both effective and responsive to conservation needs.

All of the Foundation's projects are peer reviewed by agency staff, state resource officials, and other professionals in the natural resource field. No project is undertaken without the input and support of the local community and state interests. The Foundation has also initiated a process to solicit comments from members of Congress concerning grants in a member's district or state.

Mr. President, one of the things that distinguishes the Foundation from other conservation groups is its results in the field. The Foundation has worked with over 700 agencies, universities, businesses and conservation groups, both large and small, over the last decade. These relationships have helped the Foundation become one of the most effective conservation organizations in the nation.

In Mississippi, for example, the Foundation has supported local habitat restoration projects to help private landowners install water control structures to provide wintering habitat for migratory waterfowl. Our farmers have learned that it also benefits weed control, seed-bed preparation, prevention of erosion—all at a lower cost. The Foundation has provided grants to assist private landowners in restoring bottomland hardwood habitats critical to migrating neotropical songbirds and other water-dependant wildlife species. These efforts are helping to maintain the state's original wetlands habitats.

Activities of the Foundation do produce real on-the-ground conservation benefits for the resources of our nation. I ask that my colleagues join me in supporting this legislation.

By Mr. INOUE (for himself and Mr. AKAKA):

S. 2096. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Foilcat*; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION FOR THE VESSEL "FOILCAT"

• Mr. INOUE. Mr. President, I am introducing a bill today to direct that the vessel *Foilcat*, Official Number 1063892, be accorded coastwise trading privileges for a fixed duration and be issued a certificate of documentation

under section 12103 of title 46, U.S. Code.

The *Foilcat* was originally constructed in Norway, in 1992, and is a hydrofoil vessel presently under renovation in a U.S. shipyard. It is 84.2 feet in length and is expected to be less than 100 U.S.C.G. registered tons.

The vessel is owned by Steven Loui of Honolulu, Hawaii. Mr. Loui would like to utilize his vessel to evaluate the use of hydrofoil technology in the establishment of a high speed ferry demonstration project. However, because the vessel was built in Norway, it did not meet the requirements for coastwise license endorsement in the United States.

The Hawaiian islands are exposed to high and rough surf and it is incumbent that we utilize high speed technologies in order to overcome the impediments of high surf and transportation distance requirements. *Foilcat* utilizes advanced hydrofoil technologies enabling the vessel to travel at high speeds while also providing safe and comfortable passenger ferry service. Should this technology as applied in passenger ferry service, prove successful, a series of these types of vessels will be built in the U.S.—using U.S. workers. Mr. Loui is planning to invest almost three times the amount of the vessel's purchase price in repairs and upgrades in a U.S. shipyard. My reflagging request would be for a limited time period, which would provide adequate time to evaluate the use of this technology in the establishment of inter and intra-island passenger ferry service.

The owner of the *Foilcat* is seeking a waiver of the existing law because he wishes to use the vessel to evaluate high speed technology in passenger ferry service. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Foilcat* to engage in the coastwise trade and the fisheries of the United States.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2096

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITED DURATION WAIVER OF COASTWISE TRADE LAWS.

(a) IN GENERAL.—Notwithstanding sections 12106 and 12108 of title 46, United States Code, section 8 of the Passenger Vessel Act (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in

the coastwise trade for the vessel *Foilcat*, (United States Official Number 1063892).

(b) **TERMINATION.**—The certificate issued under subsection (a) shall be in effect for the vessel *Foilcat* for the period—

(1) beginning on the date on which the vessel is placed in service to initiate a high-speed marine ferry demonstration project; and

(2) ending on the last day of the 36th month beginning after the date on which it became effective under paragraph (1).•

By Mr. CAMPBELL:

S. 2097. A bill to encourage and facilitate the resolution of conflicts involving Indian tribes, and for other purposes; to the Committee on Indian Affairs.

INDIAN TRIBAL CONFLICT RESOLUTION, TORT CLAIMS, AND RISK MANAGEMENT ACT OF 1998

Mr. CAMPBELL. Mr. President, today I introduce the Indian Tribal Conflict Resolution, Tort Claims and Risk Management Act of 1998 to continue the discourse on matters involving Indian tribal governments such as providing a mechanism for the collection of legitimate state retail sales taxes and affording a remedy to those persons injured by the acts of tribal governments, or those acting on their behalf.

By introducing this legislation, I am hopeful that tribal leaders, concerned parties, and those affected by the actions of tribal governments can find some common ground and craft innovative solutions to these issues which I believe will continue to hamper Indian tribes unless dealt with appropriately.

It has been said that because of Indian tribal immunity from lawsuits, states have no enforcement mechanism to collect state retail taxes on transactions made to non-members. Similarly, opponents of tribal immunity charge that tribal immunity prevents injured persons from seeking legal recourse for their injuries.

The Supreme Court has held that on retail sales made to non-members, Indian tribes are under a duty to collect and remit such state taxes. The Court made it clear that there are numerous remedies available to the states in such situations including suits against tribal officials; levying the tax at the wholesale level before goods enter reservation commerce; negotiating agreements with the tribes involved; and if these prove unworkable, then seeking congressional action.

At least 18 states and numerous tribes have chosen the negotiations route to settling their differences short of litigation and acrimony. Testimony presented to the committee on March 11, 1998, revealed that there are approximately 200 intergovernmental agreements between Indian tribes and states providing for the collection and remittance by the tribes of state sales taxes on sales made to non-members.

Rather than waive the immunity of all tribes—those who have chosen to deal with the issue of taxation through

agreement and those who have not—the legislation I introduce today declares the policy of the United States to be the reaffirmation of the federal obligation to protect Indian tribes, people, and trust resources and property of Indian tribes. In fulfilling that obligation, the United States should make available the framework and machinery for the amicable settlement and resolution of disputes, including tax matters, involving states and Indian tribes.

The achievement of mutual agreements is the major objective of this bill, and in addition to encouraging such agreements, this legislation provides for the creation of an "Intergovernmental Alternative Dispute Resolution Panel" to consider and render decisions on tax matters that cannot be resolved through negotiation.

The panel will be composed of a five member team including representatives of the Departments of Interior, Justice, and Treasury; one representative of state governments; and one representative of tribal governments. Rather than create a "new" mediation framework, this bill relies on the existing Federal Mediation and Conciliation Service to provide mediation services for such situations.

Title II of the bill is intended to provide a remedy in tort situations for those tribes that are not covered by the Federal Tort Claims Act, or covered by private secured liability insurance.

This title would require the Secretary of Interior to obtain or provide tort liability insurance or equivalent coverage for each Indian tribe that receives tribal priority allocations from the Bureau of Indian Affairs (BIA).

Because many, if not most, Indian tribes maintain some type of insurance coverage, the Secretary is obligated to determine the type and adequacy of coverage already provided in order to avoid duplicative or redundant coverage.

Significantly, and as is the case with insurance policies now in place for many tribal governments, the policy of insurance must contain a provision prohibiting the carrier from raising the defense of sovereign immunity with respect to any tort action filed involving the tribe. In this way, injured persons would be afforded a remedy. Such policies would also contain a provision precluding any waiver for pre-judgment interest or punitive damages.

The Secretary would prescribe regulations governing the amount and nature of claims covered by such insurance policy, and would also set a schedule of premiums payable by any tribe that is provided insurance under this bill.

Lastly, as Indian tribes have begun to re-develop their economies and are beginning to assert their influence, issues and matters have developed that

should receive the attention of a full-time, intergovernmental body to review and analyze such situations.

This legislation creates the "Joint Tribal-Federal-State Commission on Intergovernmental Affairs" to thoughtfully and deliberately consider matters such as law enforcement, civil and criminal jurisdiction, taxation, transportation, economic development, and related issues. Two years after enactment, the commission is required to submit a report of its findings and recommendations to the President, the Committee on Indian Affairs in the Senate, and the Committee on Resources in the House of Representatives.

Finally, let me say that I do not agree with those who suggest that the doctrine of tribal sovereign immunity is an anachronism and one no longer deserving of protection. Several of the states, as well as the federal government, have chosen to waive their immunity from suit in very limited circumstances and under strict conditions.

It is simply inaccurate to suggest that tribal governments are the last repository of immunity. Whether by limiting damage awards as some states have done, or eliminating entire classes of activities that will not trigger immunity waivers as the federal government has done in the Federal Tort Claims Act, the doctrine of immunity is alive and well in the United States.

That there are issues that need to be dealt with I agree; that the way to address these issues is through involuntary, broad-based waivers of immunity, I disagree heartily. I call on the quiet, thoughtful, and reasonable people on both sides of these issues to craft solutions that respects Indian tribal governments and yet provides reasonable solutions for legitimate problems that do exist.

Mr. President, I ask that the contents of the legislation be printed in the RECORD.

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

S. 2097

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Tribal Conflict Resolution and Tort Claims and Risk Management Act of 1998".

SEC. 2. FINDINGS; PURPOSES.

(a) **FINDINGS.**—Congress finds that—

(1) Indian tribal sovereignty predates the formation of the United States and the United States Constitution;

(2) a unique legal and political relationship exists between the United States and Indian tribes;

(3) through treaties, statutes, Executive orders, and course of dealing, the United States has recognized tribal sovereignty and the unique relationship that the United States has with Indian tribes;

(4) Indian tribal governments exercise governmental authority and powers over persons and activities within the territory and lands under the jurisdiction of those governments;

(5) conflicts involving Indian tribal governments may necessitate the active involvement of the United States in the role of the trustee for Indian tribes;

(6) litigation involving Indian tribes, that often requires the United States to intervene as a litigant, is costly, lengthy, and contentious;

(7) for many years, alternative dispute resolution has been used successfully to resolve disputes in the private sector, and in the public sector;

(8) alternative dispute resolution—

(A) results in expedited decisionmaking; and

(B) is less costly, and less contentious than litigation;

(9) it is necessary to facilitate intergovernmental agreements between Indian tribes and States and political subdivisions thereof;

(10) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

(11) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

(12) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

(13) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

(b) PURPOSES.—The purposes of this Act are to enable Indian tribes, tribal organizations, States and political subdivisions thereof, through viable intergovernmental agreements to—

(1) achieve intergovernmental harmony; and

(2) enhance intergovernmental commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) FEDERAL AGENCY.—The term "Federal agency" has the meaning given the term "Executive agency" in section 105 of title 5, United States Code.

(2) INDIAN COUNTRY.—The term "Indian country" has the meaning given that term in section 1151 of title 18, United States Code.

(3) INDIAN TRIBE.—The term "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) PANEL.—The term "Panel" means the Intergovernmental Alternative Dispute Panel established under section 103.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Department of the Interior.

(6) STATE.—The term "State" means each of the 50 States and the District of Columbia.

(7) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given that

term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

SEC. 4. DECLARED POLICY OF THE UNITED STATES.

It is the policy of the United States—

(1) to continue to preserve and protect Indian tribes, Indian people, and trust resources and property of Indian tribes; and

(2) that the settlement of issues and disputes involving Indian tribes and States or political subdivisions thereof, through negotiation and accommodation, may be advanced by making available full and adequate governmental facilities for fact finding, conciliation, mediation, and voluntary arbitration to aid and encourage Indian tribes, States, and political subdivisions thereof—

(A) to reach and maintain agreements; and

(B) to make reasonable efforts to settle differences by mutual agreement reached by such methods as may be provided for in any applicable agreement for the settlement of disputes.

TITLE I—INTERGOVERNMENTAL AGREEMENTS

SEC. 101. INTERGOVERNMENTAL COMPACT AUTHORIZATION.

(a) IN GENERAL.—The consent of the United States is granted to States and Indian tribes to enter into compacts and agreements in accordance with this title.

(b) COLLECTION OF TAXES.—Consistent with the United States Constitution, treaties, and principles of tribal and State sovereignty, and consistent with Supreme Court decisions regarding the collection and payment of certain retail taxes of a State or political subdivision thereof, the consent of the United States is hereby given to Indian tribes, tribal organizations, and States and States and Indian tribes may enter into compacts and agreements relating to the collection and payment of certain retail taxes.

(c) FILING.—Not later than 30 days after entering into an agreement or compact under this section, a State or Indian tribe shall submit a copy of the compact or agreement to the Secretary. Upon receipt of the compact or agreement, the Secretary shall publish the compact or agreement in the Federal Register.

(d) LIMITATIONS.—

(1) IN GENERAL.—An agreement or compact under this section shall not affect any action or proceeding over which a court has assumed jurisdiction at the time that the agreement or compact is executed.

(2) PROHIBITION.—No action or proceeding described in paragraph (1) shall abate by reason of that agreement or compact unless specifically agreed upon by all parties—

(A) to the action or proceedings; and

(B) to the agreement or compact.

(e) REVOCATION.—An agreement or compact entered into under this section shall be subject to revocation by any party to that agreement or compact. That revocation shall take effect on the earlier of—

(1) the date that is 180 days after the date on which notice of revocation is provided to each party to that agreement or compact; or

(2) any date that is agreed to by all parties to that agreement or compact.

(f) REVISION OR RENEWAL.—Upon the expiration or revocation of an agreement or compact under this section, the parties to such agreement or compact may enter into a revised agreement or compact, or may renew that agreement or compact.

(g) EFFECT OF RENEWAL.—For purposes of this title, the renewal of an agreement or compact entered into under this title shall

be treated as a separate agreement or compact and shall be subject to the limitations and requirements applicable to an initial agreement or compact.

(h) STATUTORY CONSTRUCTION.—Nothing in this title shall be construed to—

(1) except as expressly provided in this title, expand or diminish the jurisdiction over civil or criminal matters that may be exercised by a State or the governing body of an Indian tribe; or

(2) authorize or empower a State or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction exercised by the Government of the United States to—

(A) make criminal, civil, or regulatory laws; or

(B) enforce those laws in Indian country.

SEC. 102. INTERGOVERNMENTAL NEGOTIATIONS PROCEDURES.

(a) GOOD FAITH NEGOTIATIONS.—In negotiating a claim, the parties shall conduct full and fair good faith negotiations pursuant to this title, with the objective of achieving an intergovernmental agreement or compact that meets the requirement of this title.

(b) REQUEST FOR NEGOTIATIONS.—

(1) IN GENERAL.—An Indian tribe or a State may request the Secretary to initiate negotiations to address a claim covered under this title.

(2) NOTIFICATION.—The Secretary shall notify the parties of any request made under paragraph (1).

(3) REQUESTS.—Any request made to the Secretary under this subsection shall be in writing.

(4) PARTICIPATION AS A PREREQUISITE TO INVOKE PROCEDURES UNDER SECTION 103.—

(A) IN GENERAL.—A party may not file a claim under section 103 unless that party is available for, agrees to, and participates in, negotiations under this section.

(B) NOTICE.—Upon receipt of any request made pursuant to paragraph (1), the Secretary shall, not later than 30 days after such receipt, send a notice by registered mail, return receipt requested, advising the parties that are subject to a request made under paragraph (1), that no party may file a claim under section 103 without having participated in negotiations under this section.

(c) NEGOTIATIONS.—

(1) IN GENERAL.—The Secretary shall, in a manner consistent with section 103, cause to occur and facilitate negotiations that are subject to a request under subsection (a).

(2) NON-BINDING NATURE OF NEGOTIATIONS.—Consistent with the purposes of this title, the negotiations referred to in paragraph (1) shall—

(A) be nonbinding; and

(B) be facilitated by a mediator selected in accordance with section 103.

(3) SELECTION OF MEDIATOR.—

(A) IN GENERAL.—The Secretary shall select 3 mediators from a list supplied by the Federal Mediation and Conciliation Service and submit a list of these mediators to the parties.

(B) CHALLENGES.—Each party may challenge the selection of 1 of the mediators listed by the Secretary under subparagraph (A).

(C) SELECTION.—After each party has had an opportunity to challenge the list made by the Administrator under subparagraph (B), the Secretary shall select a mediator from the list who is not subject to such a challenge.

(4) PAYMENT.—The expenses and fees of the mediator selected under paragraph (3) in facilitating negotiations under paragraph (1) shall be paid by the Secretary.

(5) REIMBURSEMENT.—If a party that files a claim under section 103 and that party is not the prevailing party in that claim, that party shall reimburse the Secretary for any fees and expenses incurred by the Secretary pursuant to paragraph (4).

(d) PROCEDURES.—Negotiations conducted under this title shall be subject to the following procedures:

(1) COMMENCEMENT.—Negotiations conducted under this section shall commence as soon as practicable after the party that receives notice under subsection (b)(4)(B) responds to the Secretary.

(2) ADDITIONAL INVESTIGATION, RESEARCH, OR NEGOTIATION.—

(A) IN GENERAL.—Each party that enters into negotiation under this section and the Secretary may agree to additional investigation, research, or analysis to facilitate a negotiated settlement.

(B) PAYMENTS.—The cost of the additional investigation, research, or analysis referred to in subparagraph (A) shall be borne by the party that undertakes that investigation, research, or analysis, or causes that investigation, research, and analysis.

(3) EXCHANGE OF RECORDS AND DOCUMENTATION.—Each party that enters into negotiations under this section shall exchange, and make available to the Secretary, any records, documents, or other information that the party may have with regard to transactions within the scope of the claims alleged that—

(A) may be relevant to resolving the negotiations; and

(B) are not privileged information under applicable law, or otherwise subject to restrictions on disclosure under applicable law.

(4) TERMINATION.—

(A) IN GENERAL.—

(i) TERMINATION.—Except as provided in clause (i) and subparagraph (B), negotiations conducted under this section shall terminate on the date that is 1 year after the date of the first meeting of the parties to conduct negotiations under this section.

(ii) MUTUAL AGREEMENT.—The period for negotiations under clause (i) may be extended if the parties and the Secretary agree that there is a reasonable likelihood that the extension may result in a negotiated settlement.

(B) MUTUAL AGREEMENT.—At any time during negotiations under this section, the parties may mutually agree to terminate the negotiations.

(C) FULFILLMENT OF CERTAIN REQUIREMENTS.—A party shall be considered to have met the requirements described in subsection (b)(4) in any case in which negotiations are terminated by mutual agreement of the parties under subparagraph (B).

(e) NEGOTIATED SETTLEMENTS.—

(1) IN GENERAL.—A negotiated settlement of a claim covered by this title reached by the parties under this section shall constitute the final, complete, and conclusive resolution of that claim.

(2) ALTERNATIVE DISPUTE RESOLUTION.—Any claim, setoff, or counterclaim (including any claim, setoff, or counterclaim described in section 103(c)) that is not subject to a negotiated settlement under this section may be pursued by the parties or the Secretary pursuant to section 103.

SEC. 103. INTERGOVERNMENTAL ALTERNATIVE DISPUTE RESOLUTION PANEL ESTABLISHMENT.

(a) IN GENERAL.—If negotiations conducted under section 103 do not result in a settlement, the Secretary may refer the State and Indian tribe involved to the Panel established under subsection (b).

(b) AUTHORITY OF PANEL.—To the extent allowable by law, the Panel may consider and render a decision on a referred to the Panel under this section.

(c) TAXATION.—Any claim involving the legitimacy of a claim for the collection or payment of certain retail taxes owed by an Indian tribe to a State or political subdivision thereof and shall include or admit of counterclaims, setoffs, or related claims submitted or filed by the tribe in question regarding the original claim.

(d) MEMBERSHIP OF THE PANEL.—

(1) IN GENERAL.—The Panel shall consist of—

(A) 1 representative from the Department of the Interior;

(B) 1 representative from the Department of Justice;

(C) 1 representative from the Department of the Treasury;

(D) 1 representative of State governments; and

(E) 1 representative of tribal governments of Indian tribes.

(2) CHAIRPERSON.—The members of the Panel shall select a Chairperson from among the members of the Panel.

(e) FEDERAL MEDIATION CONCILIATION SERVICE.—

(1) IN GENERAL.—In a manner consistent with this title, the Panel shall consult with the Federal Mediation Conciliation Service (referred to in this subsection as the "Service") established under section 202 of the National Labor Relations Act (29 U.S.C. 172).

(2) DUTIES OF SERVICE.—The Service shall, upon request of the Panel and in a manner consistent with applicable law—

(A) provide services to the Panel to aid in resolving disputes brought before the Panel;

(B) furnish employees to act as neutrals (as that term is defined in section 571(9) of title 5, United States Code) in resolving the disputes brought before the Panel; and

(C) consult with the Administrative Conference of the United States to maintain a roster of neutrals and arbitrators.

SEC. 104. JUDICIAL ENFORCEMENT.

(a) INTERGOVERNMENTAL AGREEMENTS.—

(1) IN GENERAL.—

(A) JURISDICTION.—Except as provided in subparagraph (B), the district courts of the United States shall have original jurisdiction with respect to—

(i) any civil action, claim, counterclaim, or setoff, brought by any party to an agreement or compact entered into in accordance with this title to secure equitable relief, including injunctive and declaratory relief; and

(ii) the enforcement of any agreement or compact.

(B) DAMAGES.—No action to recover damages arising out of or in connection with an agreement or compact entered into under this section may be brought, except as specifically provided for in that agreement or compact.

(2) CONSENT TO SUIT.—Each compact or agreement entered into under this title shall specify that the partner consent to litigation to enforce the agreement, and to the extent necessary to enforce that agreement, each party waives any defense of sovereign immunity.

SEC. 105. JOINT TRIBAL-FEDERAL-STATE COMMISSION ON INTERGOVERNMENTAL AFFAIRS.

(a) IN GENERAL.—The Secretary shall establish a tribal, Federal, and State commission (to be known as the "Tribal-Federal-State Commission") (referred to in this section as the "Commission").

(b) MEMBERS.—

(1) IN GENERAL.—The Commission shall be comprised of representatives of Indian tribes, the States, and the Federal Government.

(2) DUTIES OF THE COMMISSION.—The Commission shall advise the Secretary concerning issues of intergovernmental concern with respect to Indian tribes, States, and the Federal Government, including—

- (A) law enforcement;
- (B) civil and criminal jurisdiction;
- (C) taxation;
- (D) transportation;
- (E) economy development; and
- (F) other matters related to a matter described in subparagraph (A), (B), (C), (D), or (E).

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(5) MEETINGS.—The Commission shall meet at the call of the Chairman.

(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(8) POWERS.—

(A) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(D) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(9) COMMISSION PERSONNEL MATTERS.—

(A) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Commission shall prepare and submit to the President, the Committee on Indian Affairs of the Senate, and the Committee on Resources of the House of Representatives a report on the implementation of this title that includes any recommendations that the Commission determines to be appropriate.

SEC. 106. FUNDING AND IMPLEMENTATION.

(a) IN GENERAL.—With respect to any agreement or compact between an Indian tribe and a State, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such parties for costs of personnel or administrative expenses in an amount not to exceed 100 percent of the costs incurred by the parties as a consequence of that agreement or compact, including any indirect costs of administration that are attributable to the services performed under the agreement or compact.

(b) ASSISTANCE.—The head of each Federal agency may, to the extent allowable by law and subject to the availability of appropriations, provide technical assistance, material support, and personnel to assist States and Indian tribes in the implementation of the agreements or compacts entered into under this title.

TITLE II—TORT LIABILITY INSURANCE

SEC. 201. LIABILITY INSURANCE, WAIVER OF DEFENSE.

(a) TRIBAL PRIORITY ALLOCATION DEFINED.—The term "tribal priority allocation" means an allocation to a tribal priority account of an Indian tribe by the Bureau of Indian Affairs to allow that Indian tribe to establish program priorities and funding levels.

(b) INSURANCE.—

(1) IN GENERAL.—Except as provided in paragraph (3), not later than 2 years after the date of enactment of this Act, the Secretary shall obtain or provide tort liability insurance or equivalent coverage for each Indian tribe that receives a tribal priority allocation from amounts made available to the Bureau of Indian Affairs for the operation of Indian programs.

(2) COST-EFFECTIVENESS.—In carrying out paragraph (1), the Secretary shall—

(A) ensure that the insurance or equivalent coverage is provided in the most cost-effective manner available; and

(B) for each Indian tribe referred to in paragraph (1), take into consideration the extent to which the tort liability is covered—

(i) by privately secured liability insurance; or

(ii) chapter 171 of title 28, United States Code (commonly referred to as the "Federal Tort Claims Act") by reason of an activity of the Indian tribe in which the Indian tribe is acting in the same capacity as an agency of the United States.

(3) LIMITATION.—If the Secretary determines that an Indian tribe, described in paragraph (1), has obtained liability insurance in an amount and of the type that the Secretary determines to be appropriate by the date specified in paragraph (1), the Secretary shall not be required to provide additional coverage for that Indian tribe.

(c) REQUIREMENTS.—A policy of insurance or a document for equivalent coverage under subsection (a)(1) shall—

(1) contain a provision that the insurance carrier shall waive any right to raise as a defense the sovereign immunity of an Indian tribe with respect to an action involving tort liability of that Indian tribe, but only with

respect to tort liability claims of an amount and nature covered under the insurance policy or equivalent coverage offered by the insurance carrier; and

(2) not waive or otherwise limit the sovereign immunity of the Indian tribe outside or beyond the coverage or limits of the policy of insurance or equivalent coverage.

(d) PROHIBITION.—No waiver of the sovereign immunity of a Indian tribe under this section shall include a waiver of any potential liability for—

(1) interest that may be payable before judgment; or

(2) exemplary or punitive damages.

(e) PREFERENCE.—In obtaining or providing tort liability insurance coverage for Indian tribes under this section, the Secretary shall, to the greatest extent practicable, give preference to coverage underwritten by Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), except that for the purposes of this subsection, those enterprises may include non-profit corporations.

(f) REGULATIONS.—To carry out this title, the Secretary shall promulgate regulations that—

(1) provide for the amount and nature of claims to be covered by an insurance policy or equivalent coverage provided to an Indian tribe under this title; and

(2) establish a schedule of premiums that may be assessed against any Indian tribe that is provided liability insurance under this title.

SEC. 202. STUDY AND REPORT TO CONGRESS

(a) IN GENERAL.—

(1) STUDY.—In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance of equivalent coverage under this title is cost-effective, before carrying out the requirements of section 201, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

(2) CONTENTS OF STUDY.—The study conducted under this subsection shall include—

(A) an analysis of loss data;

(B) risk assessments;

(C) projected exposure to liability, and related matters; and

(D) the category of risk and coverage involved which may include—

(i) general liability;

(ii) automobile liability;

(iii) the liability of officials of the Indian tribe;

(iv) law enforcement liability;

(v) workers' compensation; and

(vi) other types of liability contingencies.

(3) ASSESSMENT OF COVERAGE BY CATEGORIES OF RISK.—For each Indian tribe described in section 201(a)(1), for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage other than coverage to be provided under this title or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress concerning the implementation of this title, that contains any legislative recommendations that the Secretary determines to be appropriate to improve the provision of insurance of equivalent coverage to Indian tribes under this title, or otherwise achieves the goals and objectives of this title.

By Mr. CAMPBELL:

S. 2098. A bill to preserve the sovereignty of the United States over public lands and acquired lands owned by the United States, and to preserve State sovereignty and private property rights in non-Federal lands surrounding those public lands and acquired lands; to the Committee on Energy and Natural Resources.

AMERICAN LAND SOVEREIGNTY PROTECTION ACT

Mr. CAMPBELL. Mr. President, as a strong supporter of American public lands and private property rights, I am concerned about the setting aside of public lands by the federal government for international agreements and oversight. The absence of congressional oversight in such programs as the United Nations Biosphere Reserve is of special concern to me. The United Nations has designated 47 "Biosphere Reserves" in the United States which contain a total area greater than the size of my home state of Colorado. That is why today I introduce companion legislation to H.R. 901, the American Land Sovereignty Protection Act, introduced by Representative DON YOUNG, to preserve American sovereignty and halt the extension of the executive branch into congressional constitutional authority.

We are facing a threat to our sovereignty by the creation of these land reserves in our public lands. I also believe the rights of private landowners must be protected if these international land designations are made. Even more disturbing is the fact the executive branch elected to be a party to this "Biosphere Reserve" program without the approval of Congress or the American people. The absence of congressional oversight in this area is a serious concern.

In fact most of these international land reserves have been created with minimal, if any, congressional input or oversight or public consultation. Congress must protect individual property owners, local communities, and State sovereignty which may be adversely impacted economically by any such international agreements.

The current system for implementing international land reserves diminishes the power and sovereignty of the Congress to exercise its constitutional power to make laws that govern lands belonging to the United States. The executive branch may be indirectly agreeing to terms of international treaties, such as the Convention of Biodiversity, to which the United States is not a party, and one which our country has refused to ratify.

A "Biosphere Reserve" is a federally-zoned and coordinated region that could prohibit certain uses of private lands outside of the designated international area. The executive branch is agreeing to manage the designated area in accordance with an underlying agreement which may have implications on non-federal land outside the

affected area. When residents of Arkansas discovered a plan by the United Nations and the administration to advance a proposed "Ozark Highland Man and Biosphere Reserve" without public input, the plan was withdrawn in the face of public pressure. This type of stealth tactic to accommodate international interests does not serve the needs and desires of the American people. Rather, it is an encroachment by the Executive branch on congressional authority.

As policymaking authority is further centralized at the executive branch level, the role of ordinary citizens in the making of this policy through their elected representatives is diminished. The administration has allowed some of America's most symbolic monuments of freedom, such as the Statue of Liberty and Independence Hall to be listed as World Heritage Sites. Furthermore the United Nations has listed national parks including Yellowstone National Park—our nation's first national park.

Federal legislation is needed to require the specific approval of Congress before any area within the borders of United States is made part of an international land reserve. My bill reasserts Congress' constitutional role in the creation of rules and regulations governing lands belonging to the United States and its people.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2098

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Land Sovereignty Protection Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The power to dispose of and make all needful rules and regulations governing lands belonging to the United States is vested in the Congress under article IV, section 3, of the Constitution.

(2) Some Federal land designations made pursuant to international agreements concern land use policies and regulations for lands belonging to the United States which under article IV, section 3, of the Constitution can only be implemented through laws enacted by the Congress.

(3) Some international land designations, such as those under the United States Biosphere Reserve Program and the Man and Biosphere Program of the United Nations Scientific, Educational, and Cultural Organization, operate under independent national committees, such as the United States National Man and Biosphere Committee, which have no legislative directives or authorization from the Congress.

(4) Actions by the United States in making such designations may affect the use and value of nearby or intermixed non-Federal lands.

(5) The sovereignty of the States is a critical component of our Federal system of government and a bulwark against the unwise concentration of power.

(6) Private property rights are essential for the protection of freedom.

(7) Actions by the United States to designate lands belonging to the United States pursuant to international agreements in some cases conflict with congressional constitutional responsibilities and State sovereign capabilities.

(8) Actions by the President in applying certain international agreements to lands owned by the United States diminishes the authority of the Congress to make rules and regulations respecting these lands.

(b) PURPOSE.—The purposes of this Act are the following:

(1) To reaffirm the power of the Congress under article IV, section 3, of the Constitution over international agreements which concern disposal, management, and use of lands belonging to the United States.

(2) To protect State powers not reserved to the Federal Government under the Constitution from Federal actions designating lands pursuant to international agreements.

(3) To ensure that no United States citizen suffers any diminishment or loss of individual rights as a result of Federal actions designating lands pursuant to international agreements for purposes of imposing restrictions on use of those lands.

(4) To protect private interests in real property from diminishment as a result of Federal actions designating lands pursuant to international agreements.

(5) To provide a process under which the United States may, when desirable, designate lands pursuant to international agreements.

SEC. 3. CLARIFICATION OF CONGRESSIONAL ROLE IN WORLD HERITAGE SITE LISTING.

Section 401 of the National Historic Preservation Act Amendments of 1980 (Public Law 96-515; 94 Stat. 2987) is amended—

(1) in subsection (a) in the first sentence, by—

(A) striking "The Secretary" and inserting "Subject to subsections (b), (c), (d), and (e), the Secretary"; and

(B) inserting "(in this section referred to as the 'Convention')" after "1973"; and

(2) by adding at the end the following new subsections:

"(d)(1) The Secretary of the Interior may not nominate any lands owned by the United States for inclusion on the World Heritage List pursuant to the Convention, unless—

"(A) the Secretary finds with reasonable basis that commercially viable uses of the nominated lands, and commercially viable uses of other lands located within 10 miles of the nominated lands, in existence on the date of the nomination will not be adversely affected by inclusion of the lands on the World Heritage List, and publishes that finding;

"(B) the Secretary has submitted to the Congress a report describing—

"(i) natural resources associated with the lands referred to in subparagraph (A); and

"(ii) the impacts that inclusion of the nominated lands on the World Heritage List would have on existing and future uses of the nominated lands or other lands located within 10 miles of the nominated lands; and

"(C) the nomination is specifically authorized by a law enacted after the date of enactment of the American Land Sovereignty Protection Act and after the date of publication of a finding under subparagraph (A) of the nomination.

"(2) The President may submit to the Speaker of the House of Representatives and the President of the Senate a proposal for legislation authorizing such a nomination after publication of a finding under paragraph (1)(A) for the nomination.

"(e) The Secretary of the Interior shall object to the inclusion of any property in the United States on the list of World Heritage in Danger established under Article 11.4 of the Convention, unless—

"(1) the Secretary has submitted to the Speaker of the House of Representatives and the President of the Senate a report describing—

"(A) the necessity for including that property on the list;

"(B) the natural resources associated with the property; and

"(C) the impacts that inclusion of the property on the list would have on existing and future uses of the property and other property located within 10 miles of the property proposed for inclusion; and

"(2) the Secretary is specifically authorized to assent to the inclusion of the property on the list, by a joint resolution of the Congress after the date of submittal of the report required by paragraph (1)."

"(f) The Secretary of the Interior shall submit an annual report on each World Heritage Site within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, that contains for the year covered by the report the following information for the site:

"(1) An accounting of all money expended to manage the site.

"(2) A summary of Federal full time equivalent hours related to management of the site.

"(3) A list and explanation of all non-governmental organizations that contributed to the management of the site.

"(4) A summary and account of the disposition of complaints received by the Secretary related to management of the site."

SEC. 4. PROHIBITION AND TERMINATION OF UNAUTHORIZED UNITED NATIONS BIOSPHERE RESERVES.

Title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1 et seq.) is amended by adding at the end the following new section:

"SEC. 403. (a) No Federal official may nominate any lands in the United States for designation as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization.

"(b) Any designation on or before the date of enactment of the American Land Sovereignty Protection Act of an area in the United States as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization shall not have, and shall not be given, any force or effect, unless the Biosphere Reserve—

"(1) is specifically authorized by a law enacted after that date of enactment and before December 31, 2000;

"(2) consists solely of lands that on that date of enactment are owned by the United States; and

"(3) is subject to a management plan that specifically ensures that the use of intermixed or adjacent non-Federal property is not limited or restricted as a result of that designation.

"(c) The Secretary of State shall submit an annual report on each Biosphere Reserve

within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, that contains for the year covered by the report the following information for the reserve:

"(1) An accounting of all money expended to manage the reserve.

"(2) A summary of Federal full time equivalent hours related to management of the reserve.

"(3) A list and explanation of all non-governmental organizations that contributed to the management of the reserve.

"(4) A summary and account of the disposition of the complaints received by the Secretary related to management of the reserve."

SEC. 5. INTERNATIONAL AGREEMENTS IN GENERAL.

Title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1 et seq.) is further amended by adding at the end the following new section:

"SEC. 404. (a) No Federal official may nominate, classify, or designate any lands owned by the United States and located within the United States for a special, including commercial, or restricted use under any international agreement unless such nomination, classification, or designation is specifically authorized by law. The President may from time to time submit to the Speaker of the House of Representatives and the President of the Senate proposals for legislation authorizing such a nomination, classification, or designation.

"(b) A nomination, classification, or designation, under any international agreement, of lands owned by a State or local government shall have no force or effect unless the nomination, classification, or designation is specifically authorized by a law enacted by the State or local government, respectively.

"(c) A nomination, classification, or designation, under any international agreement, of privately owned lands shall have no force or effect without the written consent of the owner of the lands.

"(d) This section shall not apply to—

"(1) agreements established under section 16(a) of the North American Wetlands Conservation Act (16 U.S.C. 4413); and

"(2) conventions referred to in section 3(h)(3) of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712(2)).

"(e) In this section, the term 'international agreement' means any treaty, compact, executive agreement, convention, bilateral agreement, or multilateral agreement between the United States or any agency of the United States and any foreign entity or agency of any foreign entity, having a primary purpose of conserving, preserving, or protecting the terrestrial or marine environment, flora, or fauna."

SEC. 6. CLERICAL AMENDMENT.

Section 401(b) of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a-1(b)) is amended by striking "Committee on Natural Resources" and inserting "Committee on Resources".

By Mr. CAMPBELL:

S. 2099. A bill to provide for enhanced Federal sentencing guidelines for counterfeiting offenses, and for other purposes; to the Committee on the Judiciary.

COUNTERFEITING SENTENCING ENHANCEMENT ACT OF 1998

Mr. CAMPBELL. Mr. President, today I introduce the Counterfeiting

Sentencing Enhancement Act of 1998. My bill would tighten the sentencing guidelines' base offense level in recognition of the fact that advances in computer and printing technology have fundamentally changed the nature of counterfeiting. This bill would bring our nation's counterfeiting laws out of Gutenberg's printing press era and into the modern computer age.

Counterfeiting of our nation's currency is a serious and growing problem. Incidents of computer generated counterfeiting have increased dramatically over the last three years. In 1995 only one half of one percent of counterfeit U.S. currency passed were computer generated.

Today, just three short years later, computer generated counterfeits account for approximately 43 percent of the counterfeits passed.

Traditional counterfeiters use offset printing production methods that require specialized equipment including printing presses, engraved printing press plates and green ink. These counterfeiters encounter a cumbersome process that is messy, is harder to conceal, and requires them to produce in large batches.

However, a rapidly growing number of today's counterfeiters are using personal computers, scanners, digital imaging software, full color copiers, and laser and inkjet printers. They can also use the Internet to instantaneously transmit the computer images needed for counterfeiting. This technology, which is readily available and increasingly affordable, enables criminals to produce high-quality counterfeit currency in small batches and at a low cost. It is this ability for counterfeiters to easily produce in small batches that has rendered our sentencing guidelines outdated and less effective as a deterrent.

Our sentencing guidelines under current law are based in a world where the realities of offset printing required counterfeiters to produce in rather large batches. That reality no longer exists. Basically, the more counterfeit currency a counterfeiter got caught with, the stiffer the sentence. Using computer technology, today's counterfeiters can simply print out smaller batches of counterfeit currency whenever they want to. This allows these criminals to effectively fly just under the radar of our sentencing guideline thresholds.

The administration recently acknowledged the extent of the problem. In a March 5, 1998, letter to the U.S. Sentencing Commission, Treasury Secretary Robert E. Rubin wrote that "increases in computer counterfeiting cases represent not only a threat to our law enforcement interests, but also seriously threaten the integrity of our U.S. currency. Maintaining the stability and integrity of U.S. currency is essential to preserving the benefits de-

rived from the dollar's status as a world currency."

In response to these enhanced counterfeiting techniques, the Department of Treasury has been redesigning our nation's currency to make it harder to counterfeit. In addition the Secret Service has stepped up its battle against counterfeiters, both at home and abroad. But more needs to be done. This bill is another important step to toughen the penalties for counterfeiting.

Specifically, my bill strengthens the sentencing guidelines so that increases are based on offense levels determined by the amount of counterfeit bills produced and a point system based on the offender's prior criminal history. Under current law, the base offense begins with level 9 for convictions involving \$2,000 in counterfeit currency or less. Increases in this level occur according to the amount of counterfeit bills over \$2,000. Thus a defendant's guideline range in counterfeiting cases depends largely on the amount of counterfeit inventory seized when the operation is shut down.

Increases in sentencing are also determined by the prior criminal history of the offender. Points are added for such things as: prior imprisonment; offenses committed while on probation, parole, or supervised release; offenses committed less than two years from prior release; and other misdemeanor and petty offenses.

Under current law at base offense level 9, seven points are needed for the imposition of a prison sentence of 12 to 18 months. Without these points for prior criminal history many offenders simply are being released on probation. I believe these sentencing guidelines are too lenient and fail to address the growing problem of counterfeiting.

Therefore, my bill increases the base offense level in section 2B5.1 of the Federal Sentencing Guidelines by not less than two levels to level 11. Under my bill, an offender would need only four points to receive the same 12 to 18 month sentence which previously required seven points. This relates to all counterfeiting offenses to address the overall harm counterfeiting can have on the integrity of U.S. currency.

Second, my bill adds a sentencing enhancement of not less than two levels for counterfeiting offenses that involve the use of computer printer or a color photocopying machine. This would place this new class of computer counterfeiters at an offense level of 13. Here, an offender would need zero points to receive the same 12 to 18 month sentence. The increase in my bill would provide for actual prison sentences in many of the cases where previous offenders were only receiving probation. I believe this legislation clearly addresses our growing problem with counterfeiters by imposing stricter sentencing penalties.

Mr. President, counterfeiting threatens the very underpinnings of our economy, the American people's confidence in the integrity and value of our nation's currency, the U.S. dollar. The "Counterfeiting Sentencing Enhancement Act of 1998" will send a clear message to criminals who are even thinking about counterfeiting. I urge my colleagues to join in support of this legislation.

Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 2099

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SENTENCING GUIDELINES FOR COUNTERFEITING OFFENSES.

The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide—

(1) a sentencing enhancement of not less than 2 levels, with respect to the base level for offenses involving counterfeit bearer obligations of the United States, as described in section 2B5.1 of the Federal sentencing guidelines; and

(2) an additional sentencing enhancement of not less than 2 levels, with respect to any offense described in paragraph (1) that involves the use of a computer printer or a color photocopying machine.

By Mr. SPECTER (for himself, Mr. MACK, and Mr. FAIRCLOTH):
S. 2100. A bill to amend the Higher Education Act of 1965 to increase public awareness concerning crime on college and university campuses; to the Committee on Labor and Human Resources.

CAMPUS CRIME DISCLOSURE ACT OF 1998

Mr. SPECTER. Mr. President, today I introduce the Campus Crime Disclosure Act of 1998. My legislation amends the Crime Awareness and Campus Security Act of 1990.

Educational institutions were once safe havens where we sent our children. Unfortunately, today we are all aware of the increase in violence that has reached as far down as our elementary schools to our youngest and most innocent victims. I would note that just recently, in the rural Pennsylvania community of Edinboro, a young teenager lamentably shot a teacher to death at an 8th grade graduation dance and wounded other students. While there is much that Congress can do to reduce violence in our society and across all levels of educational institutions, my legislation is focused on our national commitment to improving public safety on college and university campuses, where young adults are often away from their homes for the first time and living in unfamiliar surroundings.

The legislation I am introducing today builds upon the fine work of my distinguished colleagues, Representative GOODLING of Pennsylvania and

Senator JEFFORDS of Vermont, who as chairmen of the authorizing committees having jurisdiction over higher education, have included campus crime amendments in the legislation reauthorizing the Higher Education Act. However, I believe that their amendments to the 1990 Campus Security Act do not go far enough. Accordingly, my legislation includes provisions which are not included in the reauthorization bill and are necessary to bring schools into full compliance with the law, such as a more detailed definition of "campus" and new civil penalties.

Based on my experience as District Attorney of Philadelphia, and my frequent involvement with educators and college students, I know that safety on campuses is a very serious issue. I want to recognize one family in particular for helping keep me and my colleagues informed on the important issue of campus crime, Howard and Connie Clery, and their son Ben, of King of Prussia, Pennsylvania for their continued work on campus security policy. As my colleagues may know, in 1988, the Clerys' daughter, Jeanne, was beaten, raped and murdered by a fellow student in her campus dormitory room at Lehigh University. Soon after the tragedy, Howard and Connie began to work on getting campus safety laws passed in the States and the U.S. Congress. In fact, the campus security law enacted in 1990 is often referred to as the "Clery Bill." The Clerys founded Security on Campus, Inc., which serves as a watchdog of campus crime policies and procedures administered by our nation's colleges and universities.

Based on continued conversations with the Clerys, it became apparent to me that there was a critical need for Congressional oversight of how the Department of Education has implemented the 1990 Act and whether the Department's financial resources are adequate for enforcement of the reporting requirements. On the fifth of March of this year, I held a hearing on security on campus as chairman of the Senate Labor, Health and Human Services and Education Appropriations Subcommittee, to examine the Department of Education's enforcement of campus crime reporting requirements. The Assistant Secretary for Postsecondary Education for the U.S. Department of Education, David Longanecker, testified that: "Generally the issue of campus is one of the foremost difficult areas that we have found campuses are having a difficult time with, and it is a particular issue for an urban institution." Secretary Longanecker went on to say that sidewalks and public lands are excluded from the Department's current definition of campus. Further, testimony at the hearing showed that buildings which are used for commercial purposes where other parts are used for educational purposes do not fall within

the Department's interpretation of "campus," which, my own personal view, is an incorrect one. As one of the authors of the 1990 law, I believe that the omission of such information violates the spirit of the law and is a disservice to parents and students, especially for parents who send their children to college in urban settings, where commercial property such as food shops and retail stores and city streets thread through the entire campus. I believe it is preposterous to suggest that if a student fell victim to a crime say on a sidewalk which he or she was using to get to class would go unreported.

The Campus Crime Disclosure Act of 1998 clarifies the law as to what constitutes a college or university campus. From now on, institutions would have to report to parents, students, and other members of the general public a more precise assessment of the criminal activity on campus. Specifically, a campus will be interpreted to mean: any building or property owned and controlled by the institution or owned by a student organization recognized by the institution, any public property such as sidewalks, streets, parking facilities, and other thoroughfares that provide access to the facilities of the institution, and any property owned or controlled by the institution that is not in close proximity to the campus must still be reported on. The bill also makes clear that all dormitories and residential facilities, whether on or off-campus, which are owned or operated by the institution, fall under the definition of campus.

My legislation gives the Secretary of Education stronger enforcement authority. Should an institution fail to report crime data, the Department of Education can fine that institution up to \$25,000. According to a study conducted by the General Accounting Office, 63 institutions of higher education were in violation of the Crime Awareness and Campus Security Act of 1990. Yet, the Department of Education did not take any punitive action against these institutions. The inclusion of fines will provide the Department with the necessary tool to ensure that all schools fulfill the intention of the law.

I encourage my colleagues to join me in support of the Campus Crime Disclosure Act of 1998 to enhance security on campus. The bill is urgently needed to steer the U.S. Department of Education in the right direction as it monitors crime on America's college campuses. Quite simply, everyone benefits from clear and accurate reporting of the risks facing college students.

Mr. President, I ask unanimous consent that a copy of the text of the bill be printed in the RECORD as well as a section-by-section analysis.

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

S. 2100

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Campus Crime Disclosure Act of 1998".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the General Accounting Office, 63 institutions of higher education were in violation of the amendments made by the Crime Awareness and Campus Security Act of 1990 since the enactment of such Act in 1990. The Department of Education has not taken punitive action against these institutions.

(2) The Department of Education's interpretation of the statutory definition of campus has enabled institutions of higher education to underreport the instances of crimes committed against students.

(3) In order to improve public awareness of crimes committed on college and university campuses, it is essential that Congress act to clarify existing law and to discourage underreporting of offenses covered by the amendments made by the Crime Awareness and Campus Security Act of 1990.

SEC. 3. ADDITIONAL CRIME CATEGORIES.

(a) IN GENERAL.—Section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) is amended—

(1) by amending subparagraph (F) to read as follows:

"(F) Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of criminal offenses reported to campus security authorities or local police agencies, and of referrals of persons for campus disciplinary action, for the following:

"(i) Murder.

"(ii) Sex offenses, forcible or nonforcible.

"(iii) Robbery.

"(iv) Aggravated assault.

"(v) Burglary.

"(vi) Motor vehicle theft.

"(vii) Manslaughter.

"(viii) Larceny.

"(ix) Arson.

"(x) Liquor law violations, drug-related violations, and weapons violations.";

(2) by striking subparagraph (H); and

(3) by redesignating subparagraph (I) as subparagraph (H).

(b) CONFORMING AMENDMENTS.—Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (4), by striking "paragraphs (1)(F) and (1)(H)" and inserting "paragraph (1)(F)"; and

(2) in paragraph (6), by striking "paragraphs (1)(F) and (1)(H)" and inserting "paragraph (1)(F)".

SEC. 4. TIMELY MANNER.

Section 485(f)(3) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(3)) is amended by adding at the end the following: "Such reports shall be readily available to students and employees through various mediums such as resident advisors, electronic mail, school newspapers, and announcement postings throughout the campus."

SEC. 5. DEFINITION OF CAMPUS.

Subparagraph (A) of section 485(f)(5) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(5)) is amended to read as follows: "(A) For purposes of this section the term 'campus' means—

"(i) any building or property owned or controlled by an institution of higher education

within the same reasonably contiguous geographic area of the institution, including a building or property owned by the institution, but controlled by another person, such as a food or other retail vendor;

"(ii) any building or property owned or controlled by a student organization recognized by the institution;

"(iii) all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, that provides immediate access to facilities owned or controlled by the institution;

"(iv) any building or property owned, controlled, or used by an institution of higher education in direct support of, or related to the institution's educational purposes, that is used by students, and that is not within the same reasonably contiguous geographic area of the institution; and

"(v) all dormitories or other student residential facilities owned or controlled by the institution."

SEC. 6. REPORTING REQUIREMENTS.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended further by adding at the end the following:

"(8)(A) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

"(B) The Secretary shall provide to an institution of higher education that the Secretary determines is having difficulty, or is not in compliance, with the reporting requirements of this subsection—

"(i) data and analysis regarding successful practices employed by institutions of higher education to reduce campus crime; and

"(ii) technical assistance.

"(9) For purposes of reporting the statistics described in paragraph (1)(F), an institution of higher education shall distinguish, by means of a separate category, any criminal offenses, and any referrals for campus disciplinary actions, that occur—

"(A) on publicly owned sidewalks, streets, or other thoroughfares, or in parking facilities, that provide immediate access to facilities owned by the institution and are within the same reasonably contiguous geographic area of the institution; and

"(B) in dormitories or other residential facilities for students, or in other facilities affiliated with the institution."

SEC. 7. FINES.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended further by adding after paragraph (9) (as added by section 6) the following:

"(10)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an institution of higher education—

"(i) has violated or failed to carry out any provision of this subsection or any regulation prescribed under this subsection; or

"(ii) has engaged in substantial misrepresentation of the nature of the institution's activities under this subsection, the Secretary shall impose a civil penalty upon the institution of not to exceed \$25,000 for each violation, failure, or misrepresentation.

"(B) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be consid-

ered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged."

THE CAMPUS CRIME DISCLOSURE ACT OF 1998—SUMMARY

The Campus Crime Disclosure Act of 1998 amends the Higher Education Act of 1965 to increase public awareness concerning crime on college and university campuses.

Section 1. Title: "Campus Crime Disclosure Act of 1998."

Section 2. Findings.

Section 3. Additional Crime Categories.

Adds reporting requirements for offenses such as manslaughter, larceny, arson, and for arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons violations.

Section 4. Definition of Campus.

This section responds to the Department of Education's interpretation of the 1990 campus crime reporting law by modifying the definition of campus to include: any building or property owned and controlled by the institution or by a student organization recognized by the institution within the contiguous area of the institution, any public property such as sidewalks, streets, parking facilities, and other thoroughfares that provide access to the facilities of the institution, any building or property owned or controlled by the institution that is not within the contiguous area but used for educational purposes. The bill also makes clear that all dormitories and residential facilities (on or off-campus) which are owned or operated by the institution, fall under the definition of campus.

Section 5. Reporting Requirements.

Adds three additional reporting requirements: (1) the Secretary of Education must report back to Congress when schools are found in noncompliance, (2) the Secretary shall provide technical assistance to schools concerning compliance with reporting requirements and the implementation of campus security procedures, and (3) requires institutions to include in their reported statistics: crimes committed on public property such as streets and sidewalks and student residences.

Section 6. Fines.

Mandates for the first time that the Secretary of Education shall impose civil penalties of up to \$25,000 on institutions which fail to comply with the Act's reporting requirements.

By Mr. BENNETT (for himself, Ms. MOSELEY-BRAUN, and Mr. SHELBY):

S. 2101. A bill to amend the Public Health Service Act to provide for research and services with respect to lupus; to the Committee on Labor and Human Resources.

THE LUPUS RESEARCH AND CARE AMENDMENTS OF 1998

• Mr. BENNETT. Mr. President, I rise today to introduce the Lupus Research and Care Amendments of 1998. This legislation would authorize additional funds for lupus research and grants for state and local governments to support the delivery of essential services to low-income individuals with lupus and their families. The National Institute of Health (NIH) spent about \$33 million

on lupus research last year. I believe that we need to increase the funds that are available for research of this debilitating disease.

Lupus is not a well-known disease, nor is it well understood, yet at least 1,400,000 Americans have been diagnosed with lupus and many more are either misdiagnosed or not diagnosed at all. More Americans have lupus than AIDS, cerebral palsy, multiple sclerosis, sickle-cell anemia or cystic fibrosis. Lupus is a disease that attacks and weakens the immune system and is often life threatening. Lupus is nine times more likely to affect women than men. African-American women are diagnosed with lupus two to three times more often than Caucasian women. Lupus is also more prevalent among certain minority groups including Latinos, Native Americans and Asians.

Because lupus is not well understood, it is difficult to diagnose, leading to uncertainty on the actual number of patients suffering from lupus. The symptoms of lupus make diagnosis difficult because they are sporadic and imitate the symptoms of many other illnesses. If diagnosed and with proper treatment, the majority of lupus cases can be controlled. Unfortunately, because of the difficulties in diagnosing lupus and inadequate research, many lupus patients suffer debilitating pain and fatigue. The resulting effects make it difficult, if not impossible, for individuals suffering from lupus to carry on normal everyday activities including work. Thousands of these debilitating cases needlessly end in death each year.

Title I of the Lupus Research and Care Amendments of 1998 authorizes \$45 million in grants starting in fiscal year 1999 to be earmarked for lupus research at NIH. This new authorization would amount to less than one-half of 1 percent of NIH's total budget but would greatly enhance NIH's research.

Title II of the Lupus Research and Care Amendments of 1998 authorizes \$40 million in grants to state and local governments as well as to nonprofit organizations starting in fiscal year 1999. These grants would support the delivery of essential services to low-income individuals with lupus and their families.

I would urge all my colleagues, Mr. President, to join Senator MOSELEY-BRAUN, Senator SHELBY, and myself in sponsoring this legislation to increase funding available to fight lupus. •

By Mr. FEINGOLD (for himself,
Mr. JEFFORDS, Mr. LEAHY, and
Mr. WELLSTONE):

S. 2102. A bill to promote democracy and good governance in Nigeria, and for other purposes; to the Committee on Foreign Relations.

NIGERIA DEMOCRACY AND CIVIL SOCIETY
EMPOWERMENT ACT

• Mr. FEINGOLD. Mr. President, I introduce a sorely needed piece of foreign policy legislation, the Nigeria Democracy and Civil Society Empowerment Act of 1998. As the Ranking Democrat of the Senate Subcommittee on Africa, I have long been concerned about the collapsing economic and political situation in Nigeria. Nigeria, with its rich history, abundant natural resources and wonderful cultural diversity, has the potential to be an important regional leader. But, sadly, it has squandered that potential and the good will of the world with repressive policies, human rights abuses and corruption.

The legislation I am introducing today provides a clear framework for U.S. policy toward that troubled West African nation. The Nigeria Democracy and Civil Society Empowerment Act declares that the United States should encourage the political, economic and legal reforms necessary to ensure the rule of law and respect for human rights in Nigeria and should aggressively support a timely and effective transition to democratic, civilian government for the people of Nigeria. I am pleased to have Senators JEFFORDS, LEAHY and WELLSTONE join me as co-sponsors of this legislation.

This bill draws heavily from legislation introduced in the 104th Congress by the former chair of the Senate Subcommittee on Africa, Senator Kassebaum. I joined 21 other Senators as a proud co-sponsor of that bill. A companion measure to my bill was introduced earlier this week in the House by the distinguished chair of the House International Relations Committee, Mr. GILMAN of New York, and a distinguished member of that Committee and of the Congressional Black Caucus, Mr. PAYNE of New Jersey. I commend both of my House colleagues for their strong leadership on this important issue and I appreciate the opportunity to work with them toward passage of this legislation and the broader goal of a freer Nigeria.

Mr. President, the Nigeria Democracy and Civil Society Empowerment Act provides by law for many of the sanctions that the United States has had in place against Nigeria for a number of years. It includes a ban on most foreign direct assistance, a ban on the sale of military goods and military assistance to Nigeria, and a ban on visas for top Nigerian officials. It would allow the President to lift any of these sanctions if he is able to certify to the Congress that specific conditions, which I will call "benchmarks," regarding the transition to democracy have taken place in Nigeria. These benchmarks include free and fair democratic elections, the release of political prisoners, freedom of the press, the establishment of a functioning independent electoral commission, access

for international human rights monitors and the repeal of the many repressive decrees the Abacha regime has pressed upon the Nigerian people.

This legislation also provides for \$37 million in development assistance over three years to support democracy and governance programs and the activities of the U.S. Information Agency, and mandates a larger presence for the U.S. Agency for International Development. I want to emphasize that this bill authorizes no new money. All of these funds would come out of existing USAID and USIA appropriations. At the same time, the bill prohibits any U.S. resources from being used to support an electoral process in Nigeria until it is clear that any planned election will be free and legitimate.

Importantly, my bill requires the President to impose additional sanctions at the beginning of 1999 if he cannot certify that a free and fair election has taken place by the end of 1998. These new sanctions, will include a ban on Nigerian participation in major international sporting events, an expansion of visa restrictions on Nigerian officials and the submission of a report that lists the senior officials that fall under such restrictions.

Finally, the bill requires the Secretary of State to submit a report on corruption in Nigeria, including the evidence of corruption by government officials in Nigeria and the impact of corruption on the delivery of government services in Nigeria, on U.S. business interests in Nigeria, and on Nigeria's foreign policy. It would also require that the Secretary's report include information on the impact on U.S. citizens of advance fee fraud and other fraudulent business schemes originating in Nigeria.

The intent of this legislation is twofold. First, it will send an unequivocal message to the ruling military junta in Nigeria that it's continued disregard for democracy, human rights and the institutions of civil society in Nigeria is simply unacceptable. Second, the bill is a call to action to the Clinton Administration which has yet to articulate a coherent policy on Nigeria that reflects the brutal political realities there.

Nigeria has suffered under military rule for most of its nearly 40 years as an independent nation. By virtue of its size, geographic location, and resource base, it is economically and strategically important both in regional and international terms. Nigeria is critical to American interests. But Nigeria's future is being squandered by the military government of General Sani Abacha. Abacha presides over a Nigeria stunted by rampant corruption, economic mismanagement and the brutal subjugation of its people.

The abiding calamity in Nigeria occurs in the context of economic and political collapse. Nigeria has the potential to be the economic powerhouse on

the African continent, a key regional political leader, and an important American trading partner, but it is none of these things. Despite its wealth, economic activity in Nigeria continues to stagnate. Even oil revenues are not what they might be, but they remain the only reliable source of economic growth, with the United States purchasing an estimated 41 percent of the output.

Corruption and criminal activity in this military-controlled economic and political system have become common, including reports of drug trafficking and consumer fraud schemes that have originated in Nigeria and reached into the United States, including my home state of Wisconsin.

After the military annulled the 1993 election of Moshood Abiola as Nigeria's president—through what was considered by many observers to be a free and fair election—Chief Abiola was thrown into prison, where he remains, as far as we know, on the pretext of awaiting trial. Reliable information about his situation and condition is difficult to obtain. Chief Abiola's wife, Kudirat, was detained by authorities last year and was later found murdered by the side of a road under circumstances that suggest the military may have been responsible.

On October 1, 1995, General Abacha announced a so-called "transition" program whose goal was the return of an elected civilian government in Nigeria by October 1998. But virtually none of the institutions essential to a free and fair election—an independent electoral commission, an open registration process, or open procedures for the participation of independent political parties, for example—has been put into place in Nigeria. Repression continues; political prisoners remain in jail; the press remains muzzled; and the fruits of Nigeria's abundant natural resources remain in the hands of Abacha's supporters and cronies.

Even this flawed transition process—which in its best days moved at a snail's pace—has now been completely destroyed by the recent announcement that the fifth of the five officially sanctioned parties has endorsed Gen. Abacha as their candidate. Now, what was to have been a competitive presidential election has become a circus referendum on Abacha himself. The general will allow an election so long as his name is the only one on the ballot. This is little more than a sorry joke on the premise of democracy!

Any criticism of this so-called transition process is punishable by five years in a Nigerian prison. Reports from many international human rights organizations and our own State Department document years of similar brutality. Nigerian human rights activists and government critics are commonly whisked away to secret trials before military courts and imprisoned; inde-

pendent media outlets are silenced; workers' rights to organize are restricted; and the infamous State Security [Detention of Persons] Decree #2, giving the military sweeping powers of arrest and detention, remains in force.

Perhaps the most horrific example of repression by the Abacha government was the execution of human rights and environmental activist Ken Saro-Wiwa and eight others in November 1995 on trumped-up charges. Since that barbaric spectacle, it appears the Abacha government has been working even harder to tighten its grip on the country, wasting no opportunity to subjugate the people of Nigeria.

Late last year, retired Major General Musa Yar'Adua, a former Nigerian vice president and a prominent opponent of General Abacha, died in state custody under circumstances that remain shrouded in mystery. General Yar'Adua was one of 40 people arrested in 1995 during a government sweep and sentenced to 25 years in prison for an alleged coup plot widely believed to have been a pretext to silence government critics. Just a few weeks ago, we received the disturbing news that five Nigerians had been sentenced to death by a military tribunal amid other unproven accusations of coup-plotting.

The Clinton Administration response to these events has been an earnest muddle at best, and rudderless at worst. I welcome recent efforts to complete the policy review process; in fact, I have been pushing for its completion for quite some time, because I feel the perceived "lack" of a policy with respect to Nigeria, for the past two years or so, has been dangerous.

But, unfortunately, the long-awaited and oft-postponed principals' meeting on this issue, which finally took place in April, has not yielded any firm recommendations to the President. I have long urged the Administration to take the toughest stance possible in support of democracy in Nigeria, including a clear unequivocal statement that an electoral victory for Abacha would be totally illegitimate and unacceptable. The regime in Nigeria must know that anything less than a transparent transition to civilian rule will be met with severe consequences, including new sanctions as is mandated in this bill.

So I was particularly disappointed to hear the President remark during his recent trip to Africa that General Abacha would be considered acceptable by the United States if he chose to run in the upcoming election as a civilian. My shock at that remark was tempered somewhat by the efforts of numerous administration officials who struggled to clarify the President's remarks. They insist that the U.S. objective is to support a viable transition to civilian rule in Nigeria, but my worst fears about that ominous remark by the President have now come true. Abacha and his cronies seem to believe that

the United States would consider an Abacha victory in the upcoming elections to be a viable, sustainable outcome. Why else would the plan once touted as the basis for a democratic competitive presidential election be downgraded into a rigged referendum on Abacha himself? As planned now, the referendum will be one in which Abacha cannot lose and the people of Nigeria cannot win.

Mr. President, the legislation I am introducing today represents an effort to demonstrate our horror at the continued repression in Nigeria, to encourage the ruling regime to take meaningful steps at reform, to support those Nigerians who have worked tirelessly and fearlessly for democracy and civilian rule and to move our own government toward a Nigeria policy that vigorously reflects the best American values.

I urge my colleagues to support this legislation, and I hope that we will be able to consider it soon in the Committee on Foreign Relations.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Nigerian Democracy and Civil Society Empowerment Act".

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) The continued rule of the Nigerian military government, in power since a 1993 coup, harms the lives of the people of Nigeria, undermines confidence in the Nigerian economy, damages relations between Nigeria and the United States, and threatens the political and economic stability of West Africa.

(2) The transition plan announced by the Government of Nigeria on October 1, 1995, which includes a commitment to hold free and fair elections, has precluded the development of an environment in which such elections would be considered free and fair, nor was the transition plan itself developed in a free and open manner or with the participation of the Nigerian people.

(3) The United States Government would consider a free and fair election in Nigeria one that involves a genuinely independent electoral commission and an open and fair process for the registration of political parties and the fielding of candidates and an environment that allows the full unrestricted participation by all sectors of the Nigerian population.

(4) In particular, the process of registering voters and political parties has been significantly flawed and subject to such extreme pressure by the military so as to guarantee the uncontested election of the incumbent or his designee to the presidency.

(5) The tenure of the ruling military government in Nigeria has been marked by egregious human rights abuses, devastating economic decline, and rampant corruption.

(6) Previous and current military regimes have turned Nigeria into a haven for international drug trafficking rings and other criminal organizations.

(7) On September 18, 1997, a social function in honor of then-United States Ambassador Walter Carrington was disrupted by Nigerian state security forces. This culminated a campaign of political intimidation and personal harassment against Ambassador Carrington by the ruling regime.

(8) Since 1993, the United States and other members of the international community have imposed limited sanctions against Nigeria in response to human rights violations and political repression.

(9) According to international and Nigerian human rights groups, at least several hundred democracy and human rights activists and journalists have been arbitrarily detained or imprisoned, without appropriate due process of law.

(10)(A) The widely recognized winner of the annulled June 6, 1993, presidential election, Chief Moshood K. O. Abiola, remains in detention on charges of treason.

(B) General Olusegun Obasanjo (rt.), who is a former head of state and the only military leader to turn over power to a democratically elected civilian government and who has played a prominent role on the international stage as an advocate of peace and reconciliation, remains in prison serving a life sentence following a secret trial that failed to meet international standards of due process over an alleged coup plot that has never been proven to exist.

(C) Internationally renowned writer, Ken Saro-Wiwa, and 8 other Ogoni activists were arrested in May 1994 and executed on November 10, 1995, despite the pleas to spare their lives from around the world.

(D) Frank O. Kokori, Secretary General of the National Union of Petroleum and Natural Gas Workers (NUPENG), who was arrested in August 1994, and has been held incommunicado since, Chief Milton G. Dabibi, Secretary General of Staff Consultative Association of Nigeria (SESCAN) and former Secretary General of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN), who was arrested in January 1996, remains in detention without charge, for leading demonstrations against the canceled elections and against government efforts to control the labor unions.

(E) Among those individuals who have been detained under similar circumstances and who remain in prison are Christine Anyanwu, Editor-in-Chief and publisher of The Sunday Magazine (TSM), Kunle Ajibade and George Mbah, editor and assistant editor of the News, Ben Charles Obi, a journalist who was tried, convicted, and jailed by the infamous special military tribunal during the reason trials over the alleged 1995 coup plot, the "Ogoni 21" who were arrested on the same charges used to convict and execute the "Ogoni 9" and Dr. Beko Ransome-Kuti, a respected human rights activist and leader of the pro-democracy movement and Shehu Sani, the Vice-Chairman of the Campaign for Democracy.

(11) Numerous decrees issued by the military government in Nigeria suspend the constitutional protection of fundamental human rights, allow indefinite detention without charge, revoke the jurisdiction of civilian courts, and criminalize peaceful criticism of the transition program.

(12) As a party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, and a signatory to the Harare

Commonwealth Declaration, Nigeria is obligated to grant its citizens the right to fairly conduct elections that guarantee the free expression of the will of the electors.

(13) Nigeria has played a major role in restoring elected, civilian governments in Liberia and Sierra Leone as the leading military force within the Economic Community of West African States (ECOWAS) peacekeeping force, yet the military regime has refused to allow the unfettered return of elected, civilian government in Nigeria.

(14) Despite organizing and managing the June 12, 1993, elections, successive Nigerian military regimes nullified that election, imprisoned the winner a year later, and continue to fail to provide a coherent explanation for their actions.

(15) Nigeria has used its military and economic strength to threaten the land and maritime borders and sovereignty of neighboring countries, which is contrary to numerous international treaties to which it is a signatory.

(b) **DECLARATION OF POLICY.**—Congress declares that the United States should encourage political, economic, and legal reforms necessary to ensure rule of law and respect for human rights in Nigeria and support a timely and effective transition to democratic, civilian government in Nigeria.

SEC. 3. SENSE OF CONGRESS.

(a) **INTERNATIONAL COOPERATION.**—It is the sense of Congress that the President should actively seek the cooperation of other countries as part of the United States policy of isolating the military government of Nigeria.

(b) **UNITED NATIONS HUMAN RIGHTS COMMISSION.**—It is the sense of Congress that the President should instruct the United States Representative to the United Nations Commission on Human Rights (UNCHR) to use the voice and vote of the United States at the annual meeting of the Commission—

(1) to condemn human rights abuses in Nigeria; and

(2) to press for the continued renewal of the mandate of, and continued access to Nigeria for, the special rapporteur on Nigeria, as called for in Commission Resolution 1997/53.

(c) **SPECIAL ENVOY FOR NIGERIA.**—It is the sense of Congress that, because the United States Ambassador to Nigeria, a resident of both Lagos and Abuja, Nigeria, is the President's representative to the Government of Nigeria, serves at the pleasure of the President, and was appointed by and with the advice and consent of the Senate, the President should not send any other envoy to Nigeria without prior notification of Congress and should not designate a special envoy to Nigeria without consulting Congress.

SEC. 4. ASSISTANCE TO PROMOTE DEMOCRACY AND CIVIL SOCIETY IN NIGERIA.

(a) DEVELOPMENT ASSISTANCE.—

(1) **IN GENERAL.**—Of the amounts made available for fiscal years 1999, 2000, and 2001 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), not less than \$10,000,000 for fiscal year 1999, not less than \$12,000,000 for fiscal year 2000, and not less than \$15,000,000 for fiscal year 2001 should be available for assistance described in paragraph (2) for Nigeria.

(2) ASSISTANCE DESCRIBED.—

(A) **IN GENERAL.**—The assistance described in this paragraph is assistance provided to nongovernmental organizations for the purpose of promoting democracy, good governance, and the rule of law in Nigeria.

(B) **ADDITIONAL REQUIREMENT.**—In providing assistance under this subsection, the

Administrator of the United States Agency for International Development shall ensure that nongovernmental organizations receiving such assistance represent a broad cross-section of society in Nigeria and seek to promote democracy, human rights, and accountable government.

(3) **GRANTS FOR PROMOTION OF HUMAN RIGHTS.**—Of the amounts made available for fiscal years 1999, 2000, and 2001 under paragraph (1), not less than \$500,000 for each such fiscal year should be available to the United States Agency for International Development for the purpose of providing grants of not more than \$25,000 each to support individuals or nongovernmental organizations that seek to promote, directly or indirectly, the advancement of human rights in Nigeria.

(b) **USIA INFORMATION ASSISTANCE.**—Of the amounts made available for fiscal years 1999, 2000, and 2001 under subsection (a)(1), not less than \$1,000,000 for fiscal year 1999, \$1,500,000 for fiscal year 2000, and \$2,000,000 for fiscal year 2001 should be made available to the United States Information Agency for the purpose of supporting its activities in Nigeria, including the promotion of greater awareness among Nigerians of constitutional democracy, the rule of law, and respect for human rights.

(c) STAFF LEVELS AND ASSIGNMENTS OF UNITED STATES PERSONNEL IN NIGERIA.—

(1) **FINDING.**—Congress finds that staff levels at the office of the United States Agency for International Development in Lagos, Nigeria, are inadequate.

(2) **SENSE OF CONGRESS.**—It is the sense of Congress that the Administrator of the United States Agency for International Development should—

(A) increase the number of United States personnel at such Agency's office in Lagos, Nigeria, from within the current, overall staff resources of such Agency in order for such office to be sufficiently staffed to carry out subsection (a); and

(B) consider placement of personnel elsewhere in Nigeria.

SEC. 5. PROHIBITION ON ECONOMIC ASSISTANCE TO THE GOVERNMENT OF NIGERIA; PROHIBITION ON MILITARY ASSISTANCE FOR NIGERIA; REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE FOR NIGERIA.

(a) PROHIBITION ON ECONOMIC ASSISTANCE.—

(1) **IN GENERAL.**—Economic assistance (including funds previously appropriated for economic assistance) shall not be provided to the Government of Nigeria.

(2) **ECONOMIC ASSISTANCE DEFINED.**—As used in this subsection, the term "economic assistance"—

(A) means—

(i) any assistance under part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) and any assistance under chapter 4 of part II of such Act (22 U.S.C. 2346 et seq.) (relating to economic support fund); and

(ii) any financing by the Export-Import Bank of the United States, financing and assistance by the Overseas Private Investment Corporation, and assistance by the Trade and Development Agency; and

(B) does not include disaster relief assistance, refugee assistance, or narcotics control assistance under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.).

(b) PROHIBITION ON MILITARY ASSISTANCE OR ARMS TRANSFERS.—

(1) **IN GENERAL.**—Military assistance (including funds previously appropriated for military assistance) or arms transfers shall not be provided to Nigeria.

(2) **MILITARY ASSISTANCE OR ARMS TRANSFERS.**—The term "military assistance or arms transfers" means—

(A) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.) (relating to military assistance), including the transfer of excess defense articles under section 516 of that Act (22 U.S.C. 2321j);

(B) assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.) (relating to international military education and training);

(C) assistance under the "Foreign Military Financing Program" under section 23 of the Arms Export Control Act (22 U.S.C. 2763); or

(D) the transfer of defense articles, defense services, or design and construction services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), including defense articles and defense services licensed or approved for export under section 38 of that Act (22 U.S.C. 2778).

(c) **REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE.**—

(1) **IN GENERAL.**—The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in paragraph (2) to use the voice and vote of the United States to oppose any assistance to the Government of Nigeria.

(2) **INTERNATIONAL FINANCIAL INSTITUTIONS DESCRIBED.**—The international financial institutions described in this paragraph are the African Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the International Monetary Fund.

SEC. 6. EXCLUSION FROM ADMISSION INTO THE UNITED STATES OF CERTAIN NIGERIAN NATIONALS.

Notwithstanding any other provision of law, the Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who is—

(1) a current member of the Provisional Ruling Council of Nigeria;

(2) a current civilian minister of Nigeria not on the Provisional Ruling Council;

(3) a military officer currently in the armed forces of Nigeria;

(4) a person in the Foreign Ministry of Nigeria who holds Ambassadorial rank, whether in Nigeria or abroad;

(5) a current civilian head of any agency of the Nigerian government with a rank comparable to the Senior Executive Service in the United States;

(6) a current civilian advisor or financial backer of the head of state of Nigeria;

(7) a high-ranking member of the inner circle of the Babangida regime of Nigeria on June 12, 1993;

(8) a high-ranking member of the inner circle of the Shonekan interim national government of Nigeria;

(9) a civilian who there is reason to believe is traveling to the United States for the purpose of promoting the policies of the military government of Nigeria;

(10) a current head of a parastatal organization in Nigeria; or

(11) a spouse or minor child of any person described in any of the paragraphs (1) through (10).

SEC. 7. ADDITIONAL MEASURES.

(a) **IN GENERAL.**—Unless the President determines and certifies to the appropriate congressional committees by December 31,

1998, that a free and fair presidential election has occurred in Nigeria during 1998 and so certifies to the appropriate committees of Congress, the President, effective January 1, 1999—

(1) shall exercise his authority under section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) to prohibit any financial transaction involving the participation by a Nigerian national as a representative of the Federal Republic of Nigeria in a sporting event in the United States;

(2) shall expand the restrictions in section 6 to include a prohibition on entry into the United States of any employee or military officer of the Nigerian government and their immediate families;

(3) shall submit a report to the appropriate congressional committees listing, by name, senior Nigerian government officials and military officers who are suspended from entry into the United States under section 6; and

(4) shall consider additional economic sanctions against Nigeria.

(b) **ACTIONS OF INTERNATIONAL SPORTS ORGANIZATIONS.**—It is the sense of Congress that any international sports organization in which the United States is represented should refuse to invite the participation of any national of Nigeria in any sporting event in the United States sponsored by that organization.

SEC. 8. WAIVER OF PROHIBITIONS AGAINST NIGERIA IF CERTAIN REQUIREMENTS MET.

(a) **IN GENERAL.**—The President may waive any of the prohibitions contained in section 5, 6, or 7 for any fiscal year if the President makes a determination under subsection (b) for that fiscal year and transmits a notification to Congress of that determination under subsection (c).

(b) **PRESIDENTIAL DETERMINATION REQUIRED.**—A determination under this subsection is a determination that—

(1) the Government of Nigeria—

(A) is not harassing or imprisoning human rights and democracy advocates and individuals who criticize the government's transition program;

(B) has established a new transition process developed in consultation with the pro-democracy forces, including the establishment of a genuinely independent electoral commission and the development of an open and fair process for registration of political parties, candidates, and voters;

(C) is providing increased protection for freedom of speech, assembly, and the media, including cessation of harassment of journalists;

(D) has released individuals who have been imprisoned without due process or for political reasons;

(E) is providing access for independent international human rights monitors;

(F) has repealed all decrees and laws that—

(i) grant undue powers to the military;

(ii) suspend the constitutional protection of fundamental human rights;

(iii) allow indefinite detention without charge, including the State of Security (Detention of Persons) Decree No. 2 of 1984; or

(iv) suspend the right of the courts to rule on the lawfulness of executive action; and

(G) has unconditionally withdrawn the Rivers State internal security task force and other paramilitary units with police functions from regions in which the Ogoni ethnic group lives and from other oil-producing areas where violence has been excessive; or

(2) it is in the national interests of the United States to waive the prohibition in section 5, 6, or 7, as the case may be.

(c) **CONGRESSIONAL NOTIFICATION.**—Notification under this subsection is written notification of the determination of the President under subsection (b) provided to the appropriate congressional committees not less than 15 days in advance of any waiver of any prohibition in section 5, 6, or 7, subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 9. PROHIBITION ON UNITED STATES ASSISTANCE OR CONTRIBUTIONS TO SUPPORT OR INFLUENCE ELECTION ACTIVITIES IN NIGERIA.

(a) **PROHIBITION.**—

(1) **IN GENERAL.**—No department, agency, or other entity of the United States Government shall provide any assistance or other contribution to any political party, group, organization, or person if the assistance or contribution would have the purpose or effect of supporting or influencing any election or campaign for election in Nigeria.

(2) **PERSON DEFINED.**—As used in paragraph (1), the term "person" means any natural person, any corporation, partnership, or other juridical entity.

(b) **WAIVER.**—The President may waive the prohibition contained in subsection (a) if the President—

(1) determines that—

(A) the climate exists in Nigeria for a free and fair democratic election that will lead to civilian rule; or

(B) it is in the national interests of the United States to do so; and

(2) notifies the appropriate congressional committees not less than 15 days in advance of the determination under paragraph (1), subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 10. REPORT ON CORRUPTION IN NIGERIA.

Not later than 3 months after the date of the enactment of this Act, and annually for the next 5 years thereafter, the Secretary of State shall prepare and submit to the appropriate congressional committees, and make available to the public, a report on governmental corruption in Nigeria. This report shall include—

(1) evidence of corruption by government officials in Nigeria;

(2) the impact of corruption on the delivery of government services in Nigeria;

(3) the impact of corruption on United States business interests in Nigeria;

(4) the impact of advance fee fraud, and other fraudulent business schemes originating in Nigeria, on United States citizens; and

(5) the impact of corruption on Nigeria's foreign policy.

SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

Except as provided in section 6, in this Act, the term "appropriate congressional committees" means—

(1) the Committee on International Relations of the House of Representatives;

(2) the Committee on Foreign Relations of the Senate; and

(3) the Committees on Appropriations of the House of Representatives and the Senate.●

By Mrs. FEINSTEIN (for herself, Mr. HATCH, and Mrs. BOXER):

S. 2103. A bill to provide protection from personal intrusion for commercial

purposes; to the Committee on the Judiciary.

PERSONAL PRIVACY PROTECTION ACT

Mrs. FEINSTEIN. Mr. President, today, along with the Chairman of the Judiciary Committee, Senator HATCH, and Senator BOXER, I am introducing the Personal Privacy Protection Act. This legislation narrowly targets threatening and endangering harassment and privacy abuses undertaken by the stalker press.

Freedom of the press is the bedrock of American Democracy. But there is something wrong when a person cannot visit a loved one in the hospital, walk their child to school, or be secure in the privacy of their own home without being dangerously chased, provoked, or trespassed upon by photographers trying to capture pictures of them to sell to the tabloids.

When people find themselves in the public eye due to a personal tragedy or circumstances beyond their control, they should not be put into personal fear of bodily injury by tabloid media persistently chasing them. And just because a person makes their living on television or in the movies should not mean they forfeit all rights to personal privacy. There is a line between legitimate news gathering and invasion of privacy; between snapping a picture of someone in a public place and chasing them to the point where they fear for their safety; between reporting the news and trespassing on private property. Unfortunately, today that line is crossed more and more frequently by an increasingly aggressive cadre of fortune-seekers with cameras.

I began the process of developing this legislation together with Senator BOXER more than a year ago, after meeting with members of the Screen Actors Guild and hearing about the abuses people suffer every day at the hands of the stalker press—photographers using telephoto lenses to peer into private homes, cars chasing them off the road, having their children stalked and harassed. The tragic death of Princess Diana last August brought the seriousness of the problem home with a blunt force that stunned the world.

This legislation is narrowly drafted. It is not aimed at, nor would it affect, the overwhelming majority of those in the media, but is specifically aimed at abusive, threatening tactics employed by some who do not respect where the line is between what is public and what is private.

The Personal Privacy Protection Act would do two basic things. First, it would make it a crime, punishable by a fine and up to a year in prison, to persistently follow or chase someone in order to photograph, film, or record them for commercial purposes, in a manner that causes a reasonable fear of bodily injury. Cases in which the persistent following or chasing actu-

ally caused serious bodily injury would be punishable by up to 5 years in prison, and where the actions caused death, by up to 20 years in prison. The legislation would also allow victims of such actions to bring a civil suit to recover compensatory and punitive damages and for injunctive and declaratory relief.

Second, the legislation would allow civil actions to be brought against those who trespass on private property in order to photograph, film, or record someone for commercial purposes. In such cases, the bill would allow victims to bring suit in Federal court to recover compensatory and punitive damages and to obtain injunctive and declaratory relief.

Furthermore, in certain specified circumstances, the bill would prevent "technological trespass." Specifically, the legislation would allow a civil action where a visual or auditory enhancement device is used to capture images or recordings that could not otherwise have been captured without trespassing. This provision would apply only to images or recordings of a personal or familial activity, captured for commercial purposes, and only where the subject had a reasonable expectation of privacy. In such cases, the victim would be allowed to bring suit in Federal court to recover compensatory and punitive damages and to obtain injunctive and declaratory relief. In the case of trespass or technological trespass, only a civil suit by the victim would be allowed; no criminal penalty would be prescribed.

This legislation is needed because existing laws fail to protect against dangerous and abusive tactics. Although existing laws may cover some instances of abusive harassment or trespass by the stalker press, victims cannot be certain of protection. Existing state laws form at best a patchwork of protection, and courts often make an exception for activity undertaken ostensibly for "news gathering" purposes.

For example, state and local harassment law are often not codified and may require exhaustive litigation to enforce. These vary from state to state and from jurisdiction to jurisdiction, and often do not apply in cases involving the media. Some statutes require proof of an intent to harass; and courts in some jurisdictions may allow a broad "news gathering" exception.

Similarly, reckless endangerment statutes in some states prohibit recklessly engaging in conduct which creates a substantial risk of serious physical injury to another person. However, these laws are not uniform and their application is very spotty when it comes to dealing with abusive media practices.

Federal, state, and local anti-stalking ordinances often contain loopholes and generally do not apply to activities

undertaken for commercial purposes. The Federal anti-stalking ordinance and 28 of the 49 state anti-stalking ordinances—including California's—require proof of the criminal intent to cause fear in order to prosecute.

Existing state trespass laws may be insufficient to protect an owner from an invasion of privacy. For example, an Oregon Court of Appeals upheld a jury verdict for a TV news crew that filmed a police raid in executing a warrant to search the owner's home, despite the fact that the TV crew had entered the property without permission, because the jury found that the intrusion was not "highly offensive" so as to invade the owner's privacy.

Furthermore, existing trespass laws fail to protect against technological trespass using intrusive technology such as telephoto lenses and parabolic microphones aimed at bedrooms, living rooms, and fenced backyards in which people ought to have an expectation of privacy. Because trespass law requires actual physical invasion, it does not protect against such invasive tactics.

In crafting this legislation, we worked with some of the most renowned Constitutional scholars and First Amendment advocates in the nation, including Erwin Chemerinsky of the University of Southern California Law School, Cass Sunstein of the Chicago School of Law, and Lawrence Lessig of Harvard Law School. At their recommendation, we took the approach of plugging loopholes in existing, long-recognized laws prohibiting harassment and trespassing, rather than creating new provisions out of whole cloth, in order to craft a constitutional bill that fully respects First Amendment and other constitutional rights. This bill does so. The Constitutional scholars concurred unanimously that this legislation is narrowly drafted to withstand constitutional challenge on First Amendment, federalism, or any other grounds.

Mr. President, finally, I should mention that we worked closely with Representative Sonny Bono on this legislation prior to his untimely death, and it was Representative Bono's intention to introduce companion legislation in the House of Representatives. I am deeply saddened that he is not alive today to do so.

I urge my colleagues to support this legislation in order to protect against invasive, harassing, and endangering behavior that can threaten any one of us who, for whatever reason, finds him or herself in the public spotlight. I ask unanimous consent that the text of the bill be included in the RECORD, along with the letters mentioned previously.

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

S. 2103

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Personal Privacy Protection Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—Congress makes the following findings:

(1) Individuals and their families have been harassed and endangered by being persistently followed or chased in a manner that puts them in reasonable fear of bodily injury, and in danger of serious bodily injury or even death, by photographers, videographers, and audio recorders attempting to capture images or other reproductions of their private lives for commercial purposes.

(2) The legitimate privacy interests of individuals and their families have been violated by photographers, videographers, and audio recorders who physically trespass in order to capture images or other reproductions of their private lives for commercial purposes, or who do so constructively through intrusive modern visual or auditory enhancement devices, such as powerful telephoto lenses and hyperbolic microphones that enable invasion of private areas that would otherwise be impossible without trespassing.

(3) Such harassment and trespass threatens not only professional public persons and their families, but also private persons and their families for whom personal tragedies or circumstances beyond their control create media interest.

(4) Federal legislation is necessary to protect individuals and their families from persistent following or chasing for commercial purposes that causes reasonable fear of bodily injury, because such harassment is not directly regulated by applicable Federal, State, and local statutory or common laws, because those laws provide an uneven patchwork of coverage, and because those laws may not cover such activities when undertaken for commercial purposes.

(5) Federal legislation is necessary to prohibit and provide proper redress in Federal courts for trespass and constructive trespass using intrusive visual or auditory enhancement devices for commercial purposes, because technological advances such as telephoto lenses and hyperbolic microphones render inadequate existing common law and State and local regulation of such trespass and invasion of privacy.

(6) There is no right, under the first amendment to the Constitution of the United States, to persistently follow or chase another in a manner that creates a reasonable fear of bodily injury, to trespass, or to constructively trespass through the use of intrusive visual or auditory enhancement devices.

(7) This Act, and the amendments made by this Act, do not in any way regulate, prohibit, or create liability for publication or broadcast of any image or information, but rather use narrowly tailored means to prohibit and create liability for specific dangerous and intrusive activities that the Federal Government has an important interest in preventing, and ensure a safe and secure private realm for individuals against intrusion, which the Federal Government has an important interest in ensuring.

(8) This Act protects against unwarranted harassment, endangerment, invasion of privacy, and trespass in an appropriately narrowly tailored manner without abridging the exercise of any rights guaranteed under the first amendment to the Constitution of the United States, or any other provision of law.

(9) Congress has the affirmative power under section 8 of article I of the Constitution of the United States to enact this Act.

(10) Because this Act regulates only conduct undertaken in order to create products intended to be and routinely transmitted, bought, or sold in interstate or foreign commerce, or persons who travel in interstate or foreign commerce in order to engage in regulated conduct, the Act is limited properly to regulation of interstate or foreign commerce.

(11) Photographs and other reproductions of the private activities of persons obtained through activities regulated by this Act, and the amendments made by this Act, are routinely reproduced and broadcast in interstate and international commerce.

(12) Photographers, videographers, and audio recorders routinely travel in interstate commerce in order to engage in the activities regulated by this Act, and the amendments made by this Act, with the intent, expectation, and routine result of gaining material that is bought and sold in interstate commerce.

(13) The activities regulated by this Act, and the amendments made by this Act, occur routinely in the channels of interstate commerce, such as the persistent following or chasing of subjects in an inappropriate manner on public streets and thoroughfares or in airports, and the use of public streets and thoroughfares, interstate and international airports, and travel in interstate and international waters in order to physically or constructively trespass for commercial purposes.

(14) The activities regulated by this Act, and the amendments made by this Act, substantially affect interstate commerce by threatening the careers, livelihoods, and rights to publicity of professional public persons in the national and international media, and by thrusting private persons into the national and international media.

(15) The activities regulated by this Act, and the amendments made by this Act, substantially affect interstate commerce by restricting the movement of persons who are targeted by such activities and their families, often forcing them to curtail travel or appearances in public spaces, or, conversely, forcing them to travel in interstate commerce in order to escape from abuses regulated by this Act, and the amendments made by this Act.

(b) **PURPOSES.**—The purposes of this Act are—

(1) to protect individuals and their families against reasonable fear of bodily injury, endangerment, trespass, and intrusions on their privacy due to activities undertaken in connection with interstate and international commerce in reproduction and broadcast of their private activities;

(2) to protect interstate commerce affected by such activities, including the interstate commerce of individuals who are the subject of such activities; and

(3) to establish the right of private parties injured by such activities, as well as the Attorney General of the United States and State attorneys general in appropriate cases, to bring actions for appropriate relief.

SEC. 3. CRIMINAL OFFENSE.

(a) **IN GENERAL.**—Chapter 89 of title 18, United States Code, is amended by adding at the end the following:

"§ 1822. Harassment for commercial purposes

"(a) **DEFINITIONS.**—In this section:

"(1) **FOR COMMERCIAL PURPOSES.**—

"(A) **IN GENERAL.**—The term 'for commercial purposes' means with the expectation of sale, financial gain, or other consideration.

"(B) **RULE OF CONSTRUCTION.**—For purposes of this section, a visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for commercial purposes unless it was intended to be, or was in fact, sold, published, or transmitted in interstate or foreign commerce, or unless the person attempting to capture such image, recording, or impression moved in interstate or foreign commerce in order to capture such image, recording, or impression.

"(2) **HARASSES.**—The term 'harasses' means persistently physically follows or chases a person in a manner that causes the person to have a reasonable fear of bodily injury, in order to capture by a visual or auditory recording instrument any type of visual image, sound recording, or other physical impression of the person for commercial purposes.

"(b) **PROHIBITION AND PENALTIES.**—Whoever harasses any person within the United States or the special maritime and territorial jurisdiction of the United States—

"(1) if death is proximately caused by such harassment, shall be imprisoned not less than 20 years and fined under this title;

"(2) if serious bodily injury is proximately caused by such harassment, shall be imprisoned not less than 5 years and fined under this title; and

"(3) if neither death nor serious bodily injury is proximately caused by such harassment, shall be imprisoned not more than 1 year, fined under this title, or both.

"(c) **CAUSE OF ACTION.**—Any person who is legally present in the United States and who is subjected to a violation of this section may, in a civil action against the person engaging in the violation, obtain any appropriate relief, including compensatory damages, punitive damages, and injunctive and declaratory relief. In any civil action or proceeding to enforce a provision of this section, the court shall allow the prevailing party reasonable attorney's fees as part of the costs. In awarding attorney's fees, the court shall include expert fees as part of the attorney's fees.

"(d) **LIMITATION ON DEFENSES.**—It is not a defense to a prosecution or civil action under this section that—

"(1) no image or recording was captured; or

"(2) no image or recording was sold.

"(e) **USE OF IMAGES.**—Nothing in this section may be construed to make the sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described in this section in any otherwise lawful manner by any person subject to criminal charge or civil liability.

"(f) **LIMITATION.**—Only a person physically present at the time of, and engaging or assisting another in engaging in, a violation of this section is subject to criminal charge or civil liability under this section. A person shall not be subject to such charge or liability by reason of the conduct of an agent, employee, or contractor of that person or because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person.

"(g) **LAW ENFORCEMENT EXEMPTION.**—The prohibitions of this section do not apply with respect to official law enforcement activities.

"(h) **SAVINGS.**—Nothing in this section shall be taken to preempt any right or remedy otherwise available under Federal, State or local law."

(b) TECHNICAL AMENDMENT.—The analysis for chapter 89 of title 18, United States Code, is amended by adding at the end the following:

"1822. Harassment for commercial purposes."

SEC. 4. PERSONAL INTRUSION FOR COMMERCIAL PURPOSES.

(a) DEFINITION OF FOR COMMERCIAL PURPOSES.—

(1) IN GENERAL.—In this section, the term 'for commercial purposes' means with the expectation of sale, financial gain, or other consideration.

(2) RULE OF CONSTRUCTION.—For purposes of this section, a visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for commercial purposes unless it was intended to be, or was in fact, sold, published, or transmitted in interstate or foreign commerce, or unless the person attempting to capture such image, recording, or impression moved in interstate or foreign commerce in order to capture such image, recording, or impression.

(b) TRESPASS FOR COMMERCIAL PURPOSES AND INVASION OF LEGITIMATE INTEREST IN PRIVACY FOR COMMERCIAL PURPOSES.—

(1) TRESPASS FOR COMMERCIAL PURPOSES.—It shall be unlawful to trespass on private property in order to capture any type of visual image, sound recording, or other physical impression of any person for commercial purposes.

(2) INVASION OF LEGITIMATE INTEREST IN PRIVACY FOR COMMERCIAL PURPOSES.—It shall be unlawful to capture any type of visual image, sound recording, or other physical impression for commercial purposes of a personal or familial activity through the use of a visual or auditory enhancement device, even if no physical trespass has occurred, if—

(A) the subject of the image, sound recording, or other physical impression has a reasonable expectation of privacy with respect to the personal or familial activity captured; and

(B) the image, sound recording, or other physical impression could not have been captured without a trespass if not produced by the use of the enhancement device.

(c) CAUSE OF ACTION.—Any person who is legally present in the United States who is subjected to a violation of this section may, in a civil action against the person engaging in the violation, obtain any appropriate relief, including compensatory damages, punitive damages and injunctive and declaratory relief. A person obtaining relief may be either or both the owner of the property or the person whose visual or auditory impression has been captured. In any civil action or proceeding to enforce a provision of this section, the court shall allow the prevailing party reasonable attorney's fees as part of the costs. In awarding attorney's fees, the court shall include expert fees as part of the attorney's fees.

(d) LIMITATION ON DEFENSES.—It is not a defense to an action under this section that—

(1) no image or recording was captured; or

(2) no image or recording was sold.

(e) USE OF IMAGES.—Nothing in this section may be construed to make the sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described herein in any otherwise lawful manner by any person subject to criminal charge or civil liability.

(f) LIMITATION.—Only a person physically present at the time of, and engaging or as-

sisting another in engaging in, a violation of this section is subject to civil liability under this section. A person shall not be subject to such liability by reason of the conduct of an agent, employee, or contractor of that person, or because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person.

(g) LAW ENFORCEMENT EXEMPTION.—The prohibitions of this section do not apply with respect to official law enforcement activities.

(h) SAVINGS.—Nothing in this section shall be taken to preempt any right or remedy otherwise available under Federal, State, or local law.

SEC. 5. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, April 30, 1998.

Hon. DIANNE FEINSTEIN,
Senate Judiciary Committee, Technology, Terrorism, and Government Information Subcommittee, Washington, DC.

DEAR SENATOR FEINSTEIN: This is in response to a request for my views on issues of federalism raised by the current effort to prevent harassment and invasion of privacy by certain photographers and journalists. In brief: From the standpoint of the constitutional structure, I believe that these efforts reflect an entirely legitimate exercise of national power. I spell out those reasons in short compass here.

There can be no doubt that in its current form, the proposal is constitutional under the commerce clause. Each of the provisions is carefully drafted to apply if and only if there is a clear nexus with interstate commerce. Thus under existing law, the constitutional question is a simple one, and there is no plausible basis for legal objection.

The more plausible objection is not about technical law but about the spirit of the federal structure. A critic might claim that state law already protects against certain harassing and invasive behavior, and that state law, statutory or common, can easily be adapted to provide stronger protections. Since the several states are generally in the business of preventing against trespass and threatening behavior, why should the federal government intervene? Isn't this the kind of problem best handled at the state level?

These questions would be good ones if they are taken to suggest that state law could, in theory, take care of many of the underlying problems. But the questions are not good ones if they are taken to suggest that in practice, state law does, or will do, all that should be done. There are three important points here.

First, state law is both highly variable and in many places ill-defined—a complex mixture of statutory and common law, a mixture that does not, in many places, give a clear signal against the kind of conduct that the proposed legislation would ban. For example, the standards for reckless endangerment are extremely variable. Nor is it at all clear that most state trespass law prohibits the use of high-technology methods to get access to people's private enclaves. In state court, the common law of trespass is in a notorious and continuing state of flux. So

long as the commerce clause is satisfied, there is an entirely legitimate national interest in giving a clear signal that certain behavior is not to be tolerated amidst uncertain and divergent state practices.

Second, the national government often supplements or builds on state law in order to give stronger deterrence. In many states, for example, there are special laws protecting against racial discrimination, environmental harm, or uncompensated invasions of private property. But by itself, this is not an argument that the national government should not provide such measures as well. Congress often acts in order to provide the kind of deterrence that national law—with the availability of federal prosecutors and federal courts—is uniquely in a position to provide. The simple truth is that harassing and invasive practices have not been adequately deterred by state law and the national government can provide further protection. So long as the commerce clause is satisfied, this is a perfectly ordinary and entirely acceptable exercise of national power.

Third, it is important to see that the commercial incentives for engaging in harassing or invasive behavior are emphatically national incentives. If a photographer employed by the National Enquirer chases a movie star or an ordinary person in California, the potential profits are national, and it is the national nature of the profits that makes such behavior so likely. In addition, the nature of the harm tends to involve interstate activity, with movement of people and products across state lines to procure the relevant photograph (when a photograph is involved). If both profits and harms were limited to a single state, it might make more sense to say that each state can handle the problem on its own. But since both profits and harms are national in character, it is far less likely that states are able to do so, as actual practice has tended to show.

I conclude that there is no legal objection to the bill from the standpoint of federalism. I also conclude that the bill fits well within proper practice from the standpoint of maintaining Congress' limited place in the federal structure. In short, this is a national problem calling for a national response.

Sincerely,

CASS R. SUNSTEIN.

HARVARD LAW SCHOOL,
Cambridge, MA, December 7, 1997.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I have reviewed the draft legislation entitled "The Protection From Personal Intrusion for Commercial Purposes Act," and wanted to write to express my support for legislation. In my view, the legislation represents a balanced and constitutional approach to an increasingly important problem. It has been drafted, I believe, to avoid jeopardizing First Amendment values, and has a firm constitutional foundation in the Commerce Power, and also, in my view, in Congress' Section Five power under the Fourteenth Amendment.

The draft bill proposes three changes to strengthen privacy protections nationally. First, the statute establishes a criminal penalty for harassing conduct engaged in for commercial purposes. Second, the statute establishes a civil penalty for trespass for commercial purposes. And third, the statute establishes a civil penalty for invasions of legitimate interests in privacy for commercial

purposes. I consider each provision briefly below.

1. Harassment for commercial purposes

The aim of this provision is to target the repeated and intentional chasing or following of a person in order to record impressions of that person for commercial purpose. The statute would make such conduct criminal, and prescribes enhanced penalties if death or serious bodily harm is proximately caused by such conduct.

A number of points about this provision are important to consider.

(1) The statute is targeting traditionally prohibited conduct, though more narrowly than might ordinarily be expected. The statute is more narrow first because it addresses conduct engaged in for commercial purposes only, and second because it targets chasing or following only for purposes of recording visual and auditory impressions. Both limitations might be said to raise problems of underinclusiveness. In both cases, however, no constitutional problem is presented.

The first narrowing (to commercial purposes) is jurisdictionally required, as the conduct aimed at here is only that affecting interstate commerce. Even if Congress could regulate more broadly, the choice to narrow the scope of its regulation does not reveal any illegitimate content based purpose in selectively proscribing speech conduct. See generally Elena Kagan, *The Changing Faces of First Amendment Neutrality: R.A.V. v. St. Paul, Rust v. Sullivan, and the Problem of Content-Based Underinclusion*, 1992 Sup. Ct. Rev. 29. For the same reason, I do not believe the second narrowing (to visual and auditory impressions) raises any significant First Amendment concern.

(2) This is a criminal statute, so one should expect the courts to read the scope of proscribed conduct narrowly. That means that the statute is likely to be applied only to people who intentionally engage in this form of conduct. I believe the statute makes that clear, since in the definition of "harasses," "persistently" modifies "follows or chases." That modifier will give courts adequate room to narrow the statute to conduct that is properly within its scope.

(3) Finally, because the statute only punishes conduct which proximately causes serious harm, the statute will not penalize conduct which results in serious harm, but is actually, or legally, "caused" by something else. By using the term "proximately," the statute again invites courts to narrow the application of the statute to cases where the legally relevant cause of the harm is the conduct being regulated.

2. Trespass for commercial purposes

The second protection for privacy added by this bill is a protection against trespass for commercial purposes. While the protection of property has traditionally been a function for state regulation, the proposed statute limits the protection to trespasses engaged in for commercial purposes, and by definition, commercial purposes affecting interstate commerce.

There is a long history of support for a provision such as this, especially in the context of civil rights statutes. Congress can well take note of a weakness in the patchwork of state protection against trespass, and supplement such protections with a federal statute. In my view, this statute would fit that form.

3. Invasions of legitimate interests in privacy for commercial purposes

The final section of this proposed bill protects against the invasion of "legitimate in-

terests in privacy" for commercial purposes. While I believe this provision is constitutional, it is the most innovative of the three, and deserves special attention.

The interesting aspect of this statute is its method for specifying the type of invasion that is not permitted. The baseline for the statute's protection is the common law protection against trespass. Historically, trespass law was the foundation of our privacy jurisprudence, and this statute is faithful to that tradition.

The innovation in the statute is to extend trespass law to protect interests that are invaded simply because of technological advances—advances that make it possible to capture visual and auditory impressions that would not have been capturable with older technologies. The statute protects traditional interests against these new technologies.

In a sense, the statute aims at translating our traditional protections of privacy into a context where technology has given eavesdroppers a power that they would not originally have had.

In my view, such an effort by Congress is important, and laudable. It is important because we should not allow constitutional rights to be hostage to technology. If technology advances, jeopardizing our constitutional protections, then it is appropriate to adjust rights to compensate for changes in technology. See Lawrence Lessig, *Reading the Constitution in Cyberspace*, 45 *Emory L. J.* 869, 871-75 (1996).

More importantly, it is laudable that Congress take the lead in this process. Of course historically, the Supreme Court has also taken part in keeping the constitution up to date, translating old provisions to take account of current problems. But it has always done so with hesitation, since the act of updating often requires political judgments that it doesn't feel well positioned to make.

Far better if those judgments are made by Congress. And in my view, this proposed statute does just that. It represents an effort by Congress to take the lead in the protection of privacy against the threats that changing technology presents. Whatever one's view about the Court doing the same, it is emphatically the role of Congress to support this tradition of translation.

If there are other questions, I can answer, please don't hesitate to contact me.

With kind regards,

LAWRENCE LESSIG.

USC,

THE LAW SCHOOL,

Los Angeles, CA, Nov. 26, 1997.

Senator DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: At the request of Mr. Richard Pfohl of your staff, I have reviewed the proposed bill to prohibit harassment for commercial purposes and to create a cause of action for personal intrusion for commercial purposes. The bill is narrowly written and does not violate the First Amendment. Moreover, even in light of the Supreme Court's decisions restricting the scope of Congress' commerce power, the bill is likely to be upheld as within the scope of congressional authority.

At the outset, it is important to note that the bill does not prohibit anything from being published or broadcast. Nor does it create any liability for the publication or broadcast of any image or information. Both parts of the bill expressly state: "Nothing in this section may be construed to make the

sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described in this section in any otherwise lawful manner by any person subject to criminal charge or civil liability."

These provisions are reinforced by sections in both parts of the bill that limit liability to those "physically present at the time of, and engaging or assisting another in engaging in violation of this section." No liability is allowed "because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person."

I emphasize these provisions because they make it clear that the bill does not restrict speech or create liability for any publication or broadcast. Rather, the bill prohibits and creates liability for specific dangerous and intrusive activity. At most, the effect on the press is indirect in limiting certain conduct in the gathering of information.

In general, the Supreme Court has held that content-neutral laws that have the effect of restricting speech must meet intermediate scrutiny; that is, they must be shown to be substantially related to an important government purpose. *Turner Broadcast System v. Federal Communication Commission*, 114 S.Ct. 2445, 2458 (1994). Although I think that there is a strong argument that the bill does not restrict speech at all, even if a court found that it did, intermediate scrutiny would be met. The government has an important interest in stopping persistently physically following or chasing a person "in a manner that causes the person to have a reasonable fear of bodily injury." This is simply an extension of the prohibition of assaults; there is no First Amendment right for the media to engage in an assault in gathering information. Similarly, there is an important interest in preventing trespass or intrusion on to private property, physically or with technology. There is no First Amendment right for the media to trespass in gathering information.

Although the Supreme Court has recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated," *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972), the Court also consistently has refused to find that the First Amendment provides the press any right to violate the law in gathering information. The Court has explained that "the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Id.* at 684. No member of the public has a right to commit an assault or a trespass; nor can the press in gathering information. As the Court declared in *Associated Press v. NLRB*, 301 U.S. 103, 132-33 (1937): "The business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others. He must answer for libel. He may be punished for contempt of court. He is subject to the anti-trust laws. Like others he must pay equitable and nondiscriminatory taxes on his business. The regulation here in question has no relation whatever to the impartial distribution of news."

The Supreme Court expressly held that the press is not exempt from general laws in *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991). A newspaper published the identity of a source who had been promised that his name would not be disclosed. The Court rejected

the argument that holding the newspaper liable for breach of contract would violate the First Amendment. The Court stressed that the case involved the application of a general law that in no way was motivated by a desire to interfere with the press. The Court said: "Generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news. [E]nforcement of such general laws against the press is not subject to stricter scrutiny than would be applied to enforcement against other persons or organizations." *Id.* at 669-70.

The bill prohibits anyone from persistently following another in a manner that reasonably creates fear of bodily injury or committing a trespass for purposes of capturing a visual or auditory recording. There is no First Amendment right to engage in such activity and no First Amendment basis for an exemption to such a narrowly tailored law.

The other possible constitutional challenge to the bill would be on the ground that it exceeds the scope of Congress' commerce clause authority. From 1936 until April 26, 1995, the Supreme Court did not find one federal law unconstitutional as exceeding the scope of Congress' commerce power. Then in *United States v. Lopez*, 115 S.Ct. 1624 (1995), the Supreme Court declared unconstitutional the Gun-Free School Zones Act of 1990 which made it a federal crime to have a gun within 1,000 feet of a school. After reviewing the history of decisions under the commerce clause, the Court identified three types of activities that Congress can regulate under this power. First, Congress can "regulate the use of the channels of interstate commerce." *Id.* at 1629. Second, the Court said that Congress may regulate persons or things in interstate commerce and "to protect the instrumentalities of interstate commerce." 115 S.Ct. at 1629. Finally, the Court said that Congress may "regulate those activities having a substantial relation to interstate commerce." *Id.* at 1629-30.

The bill is limiting to regulating commercial activity in that it prohibits and creates liability for "harrasment for commercial purposes" and "trespass and invasion of legitimate interest in privacy for commercial purposes." Commercial purposes is defined as activity "with the expectation of sale, financial gain, or other consideration." In *Lopez*, the Court emphasized the absence of commercial activity in the law or its application.

Moreover, the bill fits within the categories articulated in *Lopez*. Through fact-finding, Congress should be able to document that those who engaged in such activity are engaged in interstate commerce. This, too, is different from *Lopez*, where the Court stress the lack of any evidence linking the prohibited conduct to interstate commerce.

Please let me know if I can be of further assistance.

Sincerely,

ERWIN CHERMERINSKY.

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, Nov. 24, 1997.

Senator DIANNE FEINSTEIN,
Senate Judiciary Committee,
Technology, Terrorism, and Government Information Subcommittee, Washington, DC.

DEAR SENATOR FEINSTEIN: This letter is in response to your request for my views on the constitutionality of the proposed statute designed to protect against harassment and invasion of privacy by exploitative photographers, sound recorders, and film crews. The

bill would create a new federal criminal and civil offense and two additional grounds for federal civil liability. I believe that the bill is constitutional as drafted. Here is a brief analysis of the legal issues.

The first question is whether the federal government has the authority to enact a measure of this kind. The most likely candidate is the commerce clause. Under the commerce clause, the federal government does have this authority, especially in light of the fact that the bill, as written, requires a clear connection between the interstate commerce and the harassing and invasive action. See the rules of construction in sections 2 and 4. In fact this connection is stronger than that in several of the cases in which the Court has upheld congressional action under the commerce clause. See *Wickard v. Filburn*, 317 U.S. 111 (1942); *United States v. Darby*, 312 U.S. 100 (1941). *United States v. Lopez*, 115 S. Ct. 1624 (1995), is not to the contrary, for in that case, Congress did not require any connection between interstate commerce and the prohibited possession of firearms on or near school property. It is conceivable that the bill might be challenged in some cases in which a photographer did not move in interstate commerce and did not sell anything in interstate commerce but intended to do so (see the rules of construction). But under the cases cited above, it's probably constitutional even under such circumstances, because the photographer would be part of a "class" of participants in interstate commerce.

The second question is whether the bill violates the first amendment. Here it is important to distinguish between a constitutional challenge to the bill "on its face" and a challenge to the bill "as applied." I believe that a facial challenge would fail. The bill is content neutral, see *Turner Broadcasting Inc. v. FCC*, 114 S. Ct. 2445 (1994); its prohibitions apply regardless of the particular content of the underlying material. This is especially important, since the Court treats content-neutral restrictions more hospitably than content-based restrictions. See *id.* Moreover, the bill is directed at action, not at speech itself; speech itself is left unregulated by the bill. In a way the constitutional attack on the bill amounts to a claimed first amendment right of access to private arenas and to information—a right that the Court has generally denied. See *Pell v. Procunier*, 417 U.S. 817 (1974); *Houchins v. KQED*, 438 U.S. 1 (1978); *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980).

To be sure, this is not the end of the matter: A content-neutral restriction on action may create constitutional problems if the action would result in restrictions on the production of speech, as this bill would undoubtedly do. Imagine, for example, a law that defined "trespass" to include any effort to take photographs near the White House or the Supreme Court. Cf. *United States v. Kokinda*, 497 U.S. 720 (1990). In assessing the validity of such a restriction, some relevant questions are whether the restriction is justified by sufficient government interests, whether there are less restrictive alternatives for protecting those interests, and whether the restriction on the production of speech is small or large. See *id.* In most cases covered by the bill, the restriction would be amply justified. If a photographer has chased someone in such a way as to produce a reasonable fear of bodily injury, the government has a strong reason to provide protection, and the bill is a narrow tailored means of doing so. Thus section 2, adding the new criminal offense, seems on firm ground.

Section 4 is designed to ensure that photographers do not engage in trespasses, or the equivalent of trespasses, in order to invade people's privacy without their consent. This section is also supported by the strong government interest in ensuring that people have a secure private realm, one into which those using the channels of interstate commerce do not enter without consent. In most of its applications, section 4 is also likely to be constitutional. Assume, for example, that a photographer has trespassed into the private property of a movie star in order to take pictures of a dinner or a romantic encounter. Since the images are themselves unregulated (see section 4(d)), the government almost certainly has sufficient grounds to forbid this kind of behavior, a trespass at common law. Although the Supreme Court has subjected some common law rules to first amendment limitations, it has never held that the law of trespass, even though it restricts activity that would produce speech, generally raises constitutional questions. Thus I conclude that section 4 is constitutional in most of its likely applications.

There are some contexts in which harder questions might be raised. Assume, for example, that a presidential candidate is engaged in unlawful activity on private property, and that a journalist and a photographer have used technological devices in order to obtain a record of that activity. Under section 4(b)(2), there has been a kind of federal tort, giving rise to compensatory and punitive damages. It is possible that the special first amendment liability in such cases. Cf. *New York Times v. Sullivan*, 376 U.S. 254 (1964). Thus a series of cases might be imagined in which section 4, and conceivably even section 2, would give rise to a reasonable constitutional challenge as applied. This is true, however, of a large range of generally permissible statutes; the question for present purposes is whether the bill would be constitutional on its face. I conclude that it would be.

I hope that these brief remarks are helpful.

Sincerely,

CASS R. SUNSTEIN.

ADDITIONAL COSPONSORS

S. 249

At the request of Mr. D'AMATO, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Oregon [Mr. SMITH] were added as co-sponsors of S. 249, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.

S. 472

At the request of Mr. CRAIG, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a co-sponsor of S. 472, a bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes.

S. 882

At the request of Mrs. BOXER, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a co-sponsor of S. 882, a bill to improve academic and social outcomes for students

by providing productive activities during after school hours.

S. 1021

At the request of Mr. HAGEL, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 1021, a bill to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

S. 1194

At the request of Mr. D'AMATO, his name was withdrawn as a cosponsor of S. 1194, a bill to amend title XVIII of the Social Security Act to clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1298

At the request of Mr. SHELBY, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 1298, a bill to designate a Federal building located in Florence, Alabama, as the "Justice John McKinley Federal Building."

S. 1459

At the request of Mr. GRASSLEY, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1459, a bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for producing electricity from wind and closed-loop biomass.

S. 1677

At the request of Mr. CHAFEE, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1677, a bill to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

S. 1864

At the request of Ms. MIKULSKI, the name of the Senator from South Dakota [Mr. JOHNSON] was added as a cosponsor of S. 1864, a bill to amend title XVIII of the Social Security Act to exclude clinical social worker services from coverage under the medicare skilled nursing facility prospective payment system.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to

strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1890

At the request of Mr. DASCHLE, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 1890, a bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 1891

At the request of Mr. DASCHLE, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 1891, a bill to amend the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 1924

At the request of Mr. MACK, the names of the Senator from New Hampshire [Mr. SMITH], the Senator from Indiana [Mr. LUGAR], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 1924, a bill to restore the standards used for determining whether technical workers are not employees as in effect before the Tax Reform Act of 1986.

S. 1957

At the request of Mr. BURNS, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 1957, a bill to provide regulatory assistance to small business concerns, and for other purposes.

S. 2007

At the request of Mr. COCHRAN, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 2007, a bill to amend the false claims provisions of chapter 37 of title 31, United States Code.

S. 2078

At the request of Mr. GRASSLEY, the names of the Senator from Montana [Mr. BURNS], the Senator from California [Mrs. FEINSTEIN], and the Senator from Missouri [Mr. BOND] were added as cosponsors of S. 2078, a bill to amend the Internal Revenue Code of 1986 to provide for Farm and Ranch Risk Management Accounts, and for other purposes.

SENATE CONCURRENT RESOLUTION 94

At the request of Mr. ABRAHAM, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of Senate Concurrent Resolution 94, A concurrent resolution supporting the religious tolerance toward Muslims.

SENATE RESOLUTION 210

At the request of Mr. WARNER, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of Senate Resolution 210, a resolution designating the week of June 22, 1998 through June 28, 1998 as "National Mosquito Control Awareness Week."

AMENDMENT NO. 2393

At the request of Mr. BROWNBACK the names of the Senator from Missouri [Mr. ASHCROFT], the Senator from Wyoming [Mr. ENZI], the Senator from North Carolina [Mr. HELMS], the Senator from North Carolina [Mr. FAIRCLOTH], the Senator from Oklahoma [Mr. INHOFE], and the Senator from Alabama [Mr. SESSIONS] were added as cosponsors of amendment No. 2393 intended to be proposed to S. 2057, an original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENTS SUBMITTED

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

THOMAS AMENDMENTS NOS. 2431-2432

(Ordered to lie on the table.)

Mr. THOMAS submitted two amendments intended to be proposed by him to the bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes; as follows:

AMENDMENT NO. 2431

At the appropriate place, insert the following:

SEC. —. AMENDMENT TO THE SOCIAL SECURITY ACT.

(A) IN GENERAL.—The table set forth in section 1923(f)(2) of the Social Security Act (42 U.S.C. 1396r-4(f)(2)) is amended in the item relating to Wyoming, in the case of fiscal years 2000, 2001, and 2002, by striking "0" each place in appears with respect to those fiscal years and inserting "0.191".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 4721 of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 511).

AMENDMENT NO. 2432

At the appropriate place, insert the following:

SEC. —. CERTAIN HEALTH CLINICS PERMITTED TO PARTICIPATE IN A MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.

(a) IN GENERAL.—Section 1820(c)(2) of the Social Security Act (42 U.S.C. 1395i-4(c)(2))

(as amended by section 4201(a) of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 370)) is amended—

(1) in subparagraph (B)(i), by striking "public hospital" and inserting "public hospital, or a health clinic described in subparagraph (C)"; and

(2) by adding at the end the following:

"(C) HEALTH CLINIC DESCRIBED.—A health clinic described in this subparagraph is a health clinic that—

"(i) operated as a hospital prior to 1993; and

"(ii) is located in a State that promulgated rules for medical assistance facilities on July 15, 1997."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of the Balanced Budget Act of 1997 (Public Law 105-33; 111 Stat. 251).

GREGG (AND LEAHY) AMENDMENT NO. 2433

Mr. GREGG (for himself and Mr. LEAHY) proposed an amendment to the bill, S. 1415, supra; as follows:

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in sub-

section (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later than 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the

various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

GREGG AMENDMENT NO. 2434

Mr. GREGG proposed an amendment to the bill, S. 1415, supra; as follows:

In lieu of the language proposed to be inserted, insert the following:

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the

treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to

the treatment of tobacco related illnesses and conditions, not later than 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco

product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 20, for purposes of conducting a Full Committee business meeting which is scheduled to begin at 9:30 a.m. The purpose of this business meeting is to consider pending calendar business.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 20, 1998 at 10:00 a.m. and 4:15 p.m. to hold two hearings.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. KERRY. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, May 20, 1998 at 10:00 a.m. to mark up the following: S. 1691, the American Indian Equal Justice Act; and S. 2069, a bill to permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation. The Committee will meet in room 485 of the Russell Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. KERRY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized

to meet during the session of the Senate on Wednesday, May 20, 1998 at 10:00 a.m. in room 226 on the Senate Dirksen Office Building to hold a hearing on "S. 1845, the Child Custody Protection Act."

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. KERRY. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 20, 1998 at 2:30 p.m. to hold a nomination hearing on Joan A. Dempsey to be Deputy Director of Central Intelligence for Community Management.

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

SPECIAL COMMITTEE ON AGING

Mr. KERRY. Mr. President, I ask unanimous consent that the Special Committee on Aging be permitted to meet on May 20, 1998 at 9:30 a.m. in Dirksen 628 for the purpose of conducting a forum.

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

SUBCOMMITTEE ON OCEANS AND FISHERIES

Mr. KERRY. Mr. President, I ask unanimous consent that the Oceans and Fisheries Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 20, 1998, at 9:30 am on harmful algal blooms.

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

SUBCOMMITTEE ON TECHNOLOGY, TERRORISM, AND GOVERNMENT INFORMATION

Mr. KERRY. Mr. President, I ask unanimous consent that the Subcommittee on Technology, Terrorism, and Government Information, of the Senate Judiciary Committee be authorized to hold a hearing during the session of the Senate on Wednesday, May 20, 1998 at 2:30 p.m. in room 226, Senate Dirksen Office Building, on: "S. 512, Identity Theft."

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

ADDITIONAL STATEMENTS

RELIGIOUS GROUPS CHALLENGE GROWING INTOLERANCE IN EUROPE

• Mr. D'AMATO. Mr. President, I rise today to comment on an issue that concerns many Americans, religious intolerance in Europe. As Chairman of the Commission on Security and Cooperation in Europe, I chaired a hearing on September 18, 1997, on "Religious Intolerance in Europe Today." We heard compelling testimony on the rise of religious intolerance in Europe from representatives of the Muslim and Jewish faiths, Orthodox Church,

Roman Catholic Church, an evangelical Protestant church, the Church of the Latter Day Saints, Jehovah's Witness, and the Church of Scientology.

The testimony indicated the following:

Muslims in Europe have been subjected to genocide, mass killings, forced migration and torture, including rape, in the former Yugoslavia; harassment, including police brutality and attacks and other hate crimes by extremist groups against Muslims have been reported throughout Europe, particularly in Germany, France and the United Kingdom; Muslims have been denied permits to build or repair mosques in the Czech Republic, Bulgaria, and elsewhere in Europe; Muslim women are frequently the subject of attacks, discrimination and other forms of abuse and harassment because they choose to wear a head covering;

Struggling Jewish communities in Eastern Europe are often made the scapegoats for the pain of the transition from centrally planned economies to market capitalism; the desecration of Jewish cemeteries and memorials has been on the rise; and anti-Semitic publications, such as *The Protocols of Zion*, and neo-Nazi computer games have received wider distribution accompanied by the rise of skinhead gangs and hatemongers throughout Europe;

The Greek Orthodox Ecumenical Patriarchate has been subject to recurring acts of violence, and faces serious obstacles imposed by the Government of Turkey, including the closing of the Theological School of Halki, which have a detrimental impact on the activities of the Patriarchate and Orthodox believers in Turkey;

Catholic believers face harassment and violence in parts of Bosnia-Herzegovina and Croatia as well as Northern Ireland, and they face serious impediments to the practice of their faith elsewhere in Europe, including in Belarus, Russia, Greece, Turkey, and Romania;

Some evangelical and charismatic Christian churches have been denied registration by the Governments of Bulgaria, Uzbekistan, Azerbaijan, and Greece and have been harassed, as well as have reportedly had religious materials confiscated; at least one charismatic church in Germany has come under intense scrutiny by the local officials and the German Bundestag's Commission of Inquiry on So-called Sects and Psycho-Groups, faced other forms of harassment, and been the target of vandalism and threats of violence;

Jehovah's Witnesses have been denied registration in a number of OSCE participating States, including Armenia, Austria, Bulgaria, Greece, and Latvia; have been subjected to various forms of harassment, including the prohibition on importation of religious lit-

erature and denial of the freedom to assemble for worship services; France's Parliamentary Commission on Sects has categorized Jehovah's Witnesses as a "criminal sect" for its prohibition against blood transfusions; Germany's Federal Administrative Court has denied legal status to the Jehovah's Witnesses;

Mormons have been subjected to continued acts of harassment, including confiscation of religious materials, and assault, in Bulgaria; and are prevented from freely sharing their beliefs in several OSCE participating States, including Greece and Turkey; and

Scientologists, including U.S. citizens, have been subjected to pervasive civil, political and economic discrimination, harassment, surveillance, and orchestrated boycotts in Germany.

In the months following this hearing, the Helsinki Commission has noted a chilling effect on religious liberty from actions taken by national parliaments. A law passed on December 10, 1997 by the Austrian Parliament requires that a religious group prove a 20-year existence, have a creed distinct from previously registered groups, and have a membership of at least 0.02% of the population or 16,000 members before they are granted full rights under law. Concerns over this law were raised in Vienna by a Helsinki Commission delegation this past January. A similar law was passed in 1997 in Macedonia. In January 1998, a Helsinki Commission delegation, led by Co-Chairman CHRISTOPHER SMITH, traveled to Moscow to discuss concerns with the 1997 Russian religion law with Russian government officials, minority religious groups, and the Russian Orthodox Church.

Some governments have passed laws creating government information centers to alert the public to "dangerous" groups. The Austrian and Belgian governments have set up hotlines for the public and, through government sponsored advisory centers, distribute information on groups deemed "dangerous." In official Austrian literature, Jehovah's Witnesses are labeled "dangerous" and members of this group report that the stigma associated with this government label is difficult to overcome in Austrian society. These information centers directly violate the commitments that Austria and Belgium have made as participating States of the OSCE to "foster a climate of mutual tolerance and respect," in paragraph 16 of the Vienna Concluding Document, and represent excessive governmental intrusion into the public discussion on religious matters.

Several Western European Parliaments have or are currently investigating and reporting on the activities of minority religious groups. These parliamentary investigations have also had a chilling effect on religious liberty and appear to cause a public backlash against groups being investigated

or labeled "dangerous." For instance, the German Parliament is currently conducting its investigation into "dangerous sects" and "psycho-groups" and issued an interim report in January 1998. At the Helsinki Commission's September 18 hearing, at least one independent evangelical church reported a direct correlation between the harassment, vandalism and threats of violence they experience and the investigation by the German Parliament's commission. The French Parliament's report contained a list of "dangerous" groups in order to warn the public against them and the Belgian Parliament's report had an informal appendix which was widely circulated, which included allegations against many mainline Catholic groups, Quakers, Hasidic Jews, Buddhists, and the YWCA (although not the YMCA).

On Wednesday, May 20, 1998, a coalition of religious groups, including Hasidic Jews, Hindu, Bahai, Seventh Day Adventist, evangelical Protestant and charismatic Catholic communities, plan to hold a press conference in Brussels to announce that they are about to launch a court challenge to the Belgian Parliamentary Report and the Belgian Government's Advice and Information Center. The premise of the legal challenge is that these actions by the Belgian government violate Belgium's international commitments to religious liberty. I am pleased to see these and other groups such as Human Rights Without Frontiers standing up for this fundamental freedom, and acting to highlight and challenge the actions by European governments that violate the Helsinki Accords and other international commitments on religious liberty.

Mr. President, the recent action by the House adopting the Freedom From Religious Persecution Act, and pending consideration of that bill and parallel measures in the Senate, clearly show that this issue is one that concerns Americans. Many Americans have family or friends who are citizens in countries that have solemnly promised to protect religious liberty, but then restrict it or deny it. Many Americans, through their own religious affiliations, make donations to support the work of their denominations outside this country, or take part in that work themselves as a personal expression of their beliefs. Actions taken by foreign governments that have promised to protect religious liberty and then violate these promises can and do directly affect American citizens during their travels for business or pleasure, when they support the overseas religious efforts of their faiths by donations or personal participation, or through negative effects on their relatives and friends who reside in these countries.

Accordingly, I call upon my colleagues to remain vigilant on this subject, and assure them and all Ameri-

cans that the Commission will remain active and engaged as we seek to document violations and protect the rights of affected persons. •

TRIBUTE TO RABBI MOSHE SHERER

• Mr. LIEBERMAN. Mr. President, I regret to inform my colleagues in the Senate of the death on Sunday, May 17 of Rabbi Moshe Sherer, President of Agudath Israel of America, a vibrant organization of Orthodox Jews in our country.

I was privileged to have known Rabbi Sherer for many years and to benefit from his wise counsel. He lived an extraordinarily righteous and productive life, and was a kindly but driving force in the unprecedented growth of his organization and its perspective within America. Rabbi Sherer was also a very successful bridgebuilder to other faith communities in his effort to spread the light of religious truth throughout our country.

I shall miss Rabbi Sherer, and wish to extend to his wife, Deborah, and his children, grandchildren, and great-grandchildren my condolences and best wishes.

Mr. President, I ask that the full text of two articles from the New York Times of May 19, 1998 be printed in the RECORD. The first describes Rabbi Sherer's remarkable life, and the second the effect of his death on the more than 20,000 people who came to his funeral in New York two days ago.

The articles follow:

[From the New York Times, May 19, 1998]

RABBI MOSHE SHERER, 76, WHO CONTRIBUTED TO RISE OF ORTHODOXY'S RIGHT WING IN U.S.

(By Gustav Niebuhr)

Rabbi Moshe Sherer, who built a relatively small Orthodox Jewish organization, Agudath Israel of America, into a politically and religiously influential force among American Jewish groups, died Sunday afternoon in Manhattan. He was 76 and lived in Brooklyn.

He died after an illness of several months, a spokesman for the group said.

Rabbi Sherer had served since 1963 as president of Agudath Israel of America, an educational and social service organization that also represents hundreds of Orthodox religious schools, or yeshivas in the United States and Canada.

Through his work at Agudath Israel, Rabbi Sherer played a leading role in the rise of Orthodox Judaism's right wing, which has gained in influence and self-confidence since the 1960's, at the expense of Orthodoxy's more moderate wing.

That shift seemed unlikely when Rabbi Sherer joined Agudath Israel as its executive vice president in 1941, when it was a small group with few employees. In an interview last year, he said some people warned him that Agudath Israel's rigorously traditional Orthodox approach had little future in America. But, he said, "it's a growth stock today."

Sociologists say that Orthodoxy's strict traditionalists have benefited from charismatic leadership, a high birthrate and anx-

iety among many Orthodox Jews over signs of moral turmoil in society.

Today, Agudath Israel, with headquarters at 84 William St., Manhattan, has branches throughout the country and a Washington office that lobbies the government on religious issues. It belongs to the Agudath Israel World Organization, of which Rabbi Sherer was appointed chairman in 1980. In Israel, it is associated with the strictly Orthodox United Torah Judaism Party, a member of the governing coalition.

Among Agudath Israel's earliest projects under Rabbi Sherer's leadership was sending food shipments to Jews in Nazi-dominated Eastern Europe and producing affidavits to help refugees immigrate to the United States. After World War II, the organization shipped food and religious articles to Jews in displaced persons camps and assisted those who wanted to immigrate.

With Agudath Israel's constituency of religious schools, Rabbi Sherer served a world that prizes scholarship. Born in Brooklyn on June 8, 1921, he was educated at Torah Vodath, a Brooklyn yeshiva, and Ner Israel rabbinical college in Baltimore. He told associates that his main mentor was the late Rabbi Aharon Kotler, who founded a highly regarded yeshiva in Lakewood, N.J.

Yet Rabbi Sherer was known as an organizer rather than an intellectual, with diplomatic and political skills that enabled him to forge coalitions within the decentralized and contentious world of Orthodox Judaism, and with other religious groups.

"He was able to take disparate groups, bring them together and get them to cooperate in the areas where they would agree," said Rabbi Nosson Scherman, general editor of ArtsScroll, a major publisher of Jewish texts.

Rabbi Steven M. Dworken, executive vice president of the Rabbinical Council of America, which represents about 1,000 Orthodox rabbis, said Rabbi Sherer "was responsible in many, many ways for placing Agudath Israel on the map."

As the most strictly observant of the Orthodox community became more visible and organized politicians took note. In January 1994, Rabbi Sherer delivered the invocation at the first inauguration of Mayor Rudolph W. Giuliani of New York. Vice President Al Gore was the speaker at the organization's 76th annual dinner, held in New York the day Rabbi Sherer died.

But the organization was also considered important earlier. When The New York Times described the growing influence of local religious groups in a 1974 article, it quoted Rabbi Sherer as saying about Agudath Israel, "There is hardly a legislator from any Jewish neighborhood in the city who does not know how we stand on issues that concern us and how thorough we are about informing our constituents about positions the legislators take on these issues."

Still, he did not have the visibility of some of his counterparts at other Jewish organizations. "He wasn't a headline-maker," said Samuel C. Heilman, professor of Jewish studies and sociology at the Graduate School of the City University of New York. Instead, Professor Heilman said, Rabbi Sherer worked quietly "to keep the channels of communication open" between Agudath Israel and other Jewish organizations.

What helped is that Agudath Israel reached out to the entire Jewish community with its programs promoting Jewish identity and learning. Last September, for example, the organization sponsored a celebration for men who had completed a seven-year program of

reading the entire Talmud, the Jewish civil and religious law, at the rate of a page a day. An estimated 70,000 people participated, filling Madison Square Garden and other arenas.

Rabbi Sherer sometimes took positions at odds with non-Orthodox organizations. He supported aid by Federal and state governments to religious schools, a stand that placed his organization on the same side of that issue as the Roman Catholic Church but nettled some Jewish groups that supported a strict separation of church and state.

Testifying before Congress on this issue in 1961, he said, "Classical Judaism has, from the very inception of the Jewish people, placed religious education in sharp focus as the centrality of life itself."

More recently, he helped lead an effort to counter attempts by Reform and Conservative Jews to gain official recognition of non-Orthodox rabbis in Israel. Last November, he announced that Agudath Israel would spend \$2 million for newspaper advertisements to promote the view that within Israel, conversions and other rites should remain under Orthodox control.

Agudath Israel's spokesman, Rabbi Avi Shafran, said Rabbi Sherer's stand stemmed from the conviction that "the only unifying force for the Jewish people is the Jewish religious heritage."

Rabbi Sherer is survived by his wife, the former Deborah Portman; two daughters, Rochel Langer of Monsey, N.Y., and Elky Goldschmidt of Brooklyn; a son, Rabbi Shimshon Sherer of Brooklyn, and many grandchildren and great-grandchildren.

BOROUGH PARK MOURNS JEWISH LUMINARY
(By Garry Pierre-Pierre)

The armada of yellow buses that usually clog the narrow streets of Borough Park, Brooklyn, shuttling students from yeshivas to their homes, was nowhere in sight yesterday. Instead, the streets were filled with thousands of people mourning the death of Rabbi Moshe Sherer, whom many considered the elder statesman of the American Orthodox Jewish community.

The mourners crowded the streets, stood on rooftops and sat in their living rooms to listen to eulogies, broadcast throughout the neighborhood by loudspeaker, for a man known for his tireless efforts to unite Jewish sects and to reach out to the secular world.

Within hours of his death on Sunday afternoon, his followers had begun gathering on the streets around the modest brick building of Congregation Agudath Israel of Borough Park. By late yesterday, more than 20,000 had lined up to pay their respects.

When Rabbi Sherer's white coffin, draped with a black velvet cloth, was carried from the hearse into a sun-soaked street, a huge cry of grief rose from the crowd. The coffin was supported by about 20 men and seemed in danger of toppling as the men jostled for position.

"He had the power and charisma to bring the secular and religious groups together," said Joseph Rappaport, an officer with Congregation Agudath Israel. "He was able to create bridges."

Rabbi Sherer, who died at age 78, had for more than 30 years headed Agudath Israel of America, an advocacy organization that he helped transform from a small group into a formidable movement that claims 100,000 members and has branches around the country.

Among those paying respects yesterday were Gov. George E. Pataki, Mayor Rudolph W. Guiliani and other politicians and dig-

nitaries. The crowds grew so big that the police blocked car traffic from 13th through 16th Avenues and 43d through 50th Streets.

One mourner, Morton M. Avigdor, leaned against a police barricade in front of the congregation building and explained how Rabbi Sherer had fought for government benefits and services for children in nonpublic schools by allying himself with Catholic school advocates.

"He felt that people of all faith should be entitled to education," said Mr. Avigdor, a lawyer. "It is truly a great loss."•

TRIBUTE TO NICHOLAS "NICK" LEIST

• Mr. BOND. Mr. President, across our great nation there are thousands of teachers dedicated to the development of young minds. In Missouri, as a former Governor and U.S. Senator, I have had the opportunity to meet many educators and have a great deal of admiration for their commitment to our youth.

I have found, however, some teachers are special and go beyond the call of duty to lead their students toward a rewarding and productive life. Today, I rise to speak about one such teacher who is retiring this year, Nicholas "Nick" Leist.

For thirty-six years Mr. Leist has dedicated his life teaching music to young people in Missouri. Mr. Leist has not only been an educator, he has been a friend and inspiration to literally thousands of students. Over the last thirty years, he has taught more than 9,000 students at Jackson High School, and his musicians have had a phenomenal record, having achieved twenty-seven consecutive number one ratings at district music contests. More than eight dozen students have gone on to become teachers themselves, following in the steps of their mentor.

On May 5, 1998, Mr. Leist conducted his last Jackson High School band concert which brought tears to the eyes of students and their Mr. Leist. They will miss Nick Leist at Jackson High School next year; however, the impact he had on students will live on for generations through the people he inspired to greater personal heights. I join the many who wish Mr. Leist happiness in the years to come.●

HONORING TIMOTHY CORDES

• Mr. HARKIN. Mr. President, I would like to bring to the attention of Members of Congress and the country a young constituent of mine.

Some of you may have read about Timothy Cordes in Monday's Washington Post. For those of you who didn't, Tim—who is from Eldridge, Iowa—just received a bachelor's degree in biochemistry from Notre Dame, with a 3.99 grade point average. Tim was the valedictorian of his class and will begin medical school at the University of Wisconsin this summer. These would be

outstanding accomplishments for any young person. They are especially remarkable in this case, because Tim is blind—only the second blind person ever admitted to a U.S. medical school.

Tim has a genetic condition that gradually diminished his vision until he was blind when he was 14. Doctors diagnosed him with the disease when he was two. They talked about how blindness would limit Tim's life. But his parents wouldn't accept that for their son. His mother said that after talking with the doctors, "I went home and just ignored everything they said." Thank goodness for that!

I have spent much of my time in the Senate working toward a society in which all Americans, those with disabilities and those without, have the same opportunities to succeed. That's what all people with disabilities want—an equal opportunity to succeed. Some will succeed and some won't, but it will be because of their abilities, not their disabilities. Tim personifies the fact that when society accommodates people with disabilities to allow them to reach their full potential, we all benefit.

At Notre Dame, Tim overcame his blindness by asking fellow students to describe the molecular structures they were studying and by using his computer to re-create the images in three-dimensional forms on a special monitor he could touch. In addition to his academic achievements, Tim earned a black belt in tae kwon do and jujitsu, went to football games and debated with this friends whether the old or new "Star Trek" is better.

Tim's biochemistry professor called him a remarkable young man and the most brilliant student he's ever had. One of Tim's roommates said that he was "simply amazing to be around."

Tim doesn't mind being an inspiration to others, but he doesn't think of himself that way. In his words, "[i]t was just hard work." Well, that's for sure!

For my part, I am honored to represent Tim and his parents and to be able to take this time to congratulate him and his parents for all their great work. Congratulations!

Mr. President, I ask that the full text of the Washington Post article be printed in the RECORD.

The article follows:

[From the Washington Post, May 18, 1998]
BLIND VALEDICTORIAN IS HEADED TO MED SCHOOL; NOTRE DAME STUDENT CREDITS "JUST HARD WORK" FOR HIS SUCCESS

(By Jon Jeter)

SOUTH BEND, IN.—Sure but sightless, Timothy Cordes arrived on the University of Notre Dame' campus four years ago, an 18-year-old freshman from Eldridge, Iowa, who wanted to enroll in the biochemistry program. Faculty members tried, politely, to dissuade him. Just how, they wondered aloud, could a blind student keep up with the rigorous courses and demanding laboratory work of biochemistry?

Cordes graduated today from Notre Dame with a degree in biochemistry and a 3.991 grade-point average. He was the last of Notre Dame's 2,000 seniors to enter the crowded auditorium for commencement. His German shepherd, Electra, led him to the lectern to deliver the valedictory speech as his classmates rose, cheered, applauded and yelled his name affectionately.

Cordes starts medical school in two months, only the second blind person ever admitted to a U.S. medical school. He does not plan to practice medicine. His interest is in research, he said: "I've just always loved science."

His life has been both an act of open, manly defiance and unshakable faith. And this unassuming, slightly built young man with a choirboy's face awes acquaintances and friends.

Armed with Electra, a high-powered personal computer and a quick wit, Cordes managed a near-perfect academic record, an A-minus in a Spanish class the only blemish. Two weeks ago, he earned a black belt in the martial arts tae kwon do and jujitsu.

"He is really a remarkable young man," said Paul Helquist, a Notre Dame biochemistry professor. Helquist at first had doubts but ultimately recommended Cordes for medical school. "He is by far the most brilliant student I've ever come across in my 24 years of teaching," the professor said.

If others find some noble lessons in this life, Cordes perceives it more prosaically: He's merely shown up for life and done what was necessary to reach his goals.

"If people are inspired by what I've done, that's great, but the truth is that I did it all for me. It was just hard work. It's like getting the black belt. It's not like I just took one long lesson. It was showing up every day, and sweating and learning and practicing. You have your bad days and you just keep going."

Despite his academic accomplishments, Cordes led a fairly ordinary life in college, debating, for example, the merits of the old and new "Star Trek" series with Patrick Murovsky, a 22-year-old psychology major from Cleveland who roomed with Cordes their sophomore year.

"The thing about Tim is that he's fearless and he just seems to have this faith. Once we were late for a football game and we had to run to the stadium. He had no qualms about running at top speed while I yelled 'jump,' or I would yell 'duck' and he would duck. And we made it. He is simply amazing to be around sometimes," said Murovsky.

Cordes has Leber's disease, a genetic condition that gradually diminished his vision until he was blind at age 14.

When doctors at the University of Iowa first diagnosed the disease when he was 2, "it was the saddest moment of my life," said his mother, Therese, 50.

"The doctors . . . told us: 'He won't be able to do this, and don't expect him to be able to do this,'" Therese Hordes recalled. "So I went home and just ignored everything they said."

The ability to conceptualize images has greatly helped Hordes in his studies, Helquist said. The study of biochemistry relies heavily on graphics and diagrams to illustrate complicated molecular structures. Hordes compensated for his inability to see by asking other students to describe the visual sides or by using his computer to re-create the images in three-dimensional forms on a special screen he could touch.

Cordes applied to eight medical schools. Only the University of Wisconsin accepted

him. (The first blind medical student was David Hartman, who graduated from Temple University in 1976 and is a psychiatrist in Roanoke, Va.)

"Tim has always exceeded people's expectations of him," said Teresa Cordes, who, with her husband, Tom, watched Tim graduate. "He really does inspire me."•

TRIBUTE TO DR. JOHN H. MOORE JR.

• Mr. SANTORUM. Mr. President, I rise today to honor Dr. John H. Moore Jr. for his humanitarian efforts on behalf of Operation Smile, an organization that provides free medical care to children around the world.

Dr. Moore distinguished himself when he started the Philadelphia Chapter of Operation Smile in 1988. Since then he has expanded this group to provide annual missions to Nicaragua, the Philippines, Vietnam, Liberia, Kenya and other third world countries. Locally, Operation Smile provides free care for school children in the Philadelphia area. Working with philanthropic organizations, the group brings physicians from other countries to Philadelphia for advanced training in techniques used to reconstruct child deformities.

Operation Smile consists of reconstructive surgeons, professional nurses and concerned citizens who have dedicated themselves to providing relief for children suffering from congenital and acquired deformities.

Through a spirit of selflessness, Dr. Moore has given both his heart and time to Operation Smile. He has served as the President of the chapter's local board and is currently its medical director.

Mr. President, Dr. Moore's dedication is a great source of pride, not only for Pennsylvania, but for the United States. I hope my colleagues will join with me in honoring Dr. Moore for his spirit of community and faithful service. •

AMTRAK BOARD OF DIRECTORS

• Mr. DURBIN. Mr. President, I rise as a strong supporter of Amtrak, recognizing the tremendous potential that advanced rail-passenger technology can play in developing our nation's 21st Century economy.

Amtrak has a distinct and important relationship with the state of Illinois. Chicago is the headquarters of one of Amtrak's three Strategic Business Units and the Intercity Business Unit, which manages all passenger trains in America with the exception of the Northeast Corridor and West Coast services. Downtown Chicago is also home to one of the three nationwide Reservation Call Centers. Amtrak also operates over forty trains per day in Illinois, with a total ridership in excess of 2.5 million passengers. Illinois has first-hand experience with Amtrak's

current services and recognizes its future potential.

The Congress has also understood Amtrak's potential. In last year's Taxpayer Relief Act, the Senate and House provided \$2.3 billion in Amtrak capital investment to make our federally owned rail passenger carrier a strong contributor to our nation's mobility. Congress also worked diligently to enact the Amtrak Reform and Accountability Act of 1997. With the authority conferred on it by this legislation, Amtrak now has the ability to undertake the organizational restructuring and operational fine-tuning necessary to realize the full benefits promised by the \$2.3 billion in capital funding.

An integral component of the reform envisioned by this legislation was the timely selection and seating of an "Amtrak Reform Board" comprised of directors with fresh ideas and experience in dealing with the business world. We must ensure that the Administration moves swiftly enough to avoid the consequences of failing to appoint a new Amtrak Reform Board by the statutory deadline, July 1, 1998. Quick action on this matter will allow Amtrak to maintain the authorization mandated in the law signed last December.

I am hopeful that the President will move quickly to appoint the seven directors required under the new law. These appointments should include professionals experienced in the leasing and financing of hundreds of millions of dollars worth of equipment and people familiar with debt rescheduling and refinancing, which are among tasks tailored to Amtrak's business needs.

I would also encourage the Administration to make certain that these appointments fairly represent the various regions of the country, and Illinois is certainly deserving of such representation. Amtrak provides service to over thirty cities in Illinois. In addition, Amtrak employs some 2,200 Illinois residents, with earnings totaling over \$50 million per year. Regional representation will also ensure that the diverse interests of our regional economies can be brought to the table for equitable decision making in the Amtrak Boardroom.

Mr. President, I hope my colleagues who support Amtrak will join me in encouraging the Administration to submit qualified candidates, women and men with the knowledge and experience required to strengthen our national system of passenger transportation, to the Senate as soon as possible. •

RECOGNITION OF THE LEADERSHIP TRAINING INSTITUTE FOR YOUTH

• Mr. BOND. Mr. President, I rise to pay tribute to an exemplary program

in Missouri, the Leadership Training Institute for Youth (LTI). Every year at Southwest Baptist University in Bolivar, Missouri this leadership camp is held for youth from all over America. This camp inspires youth to work toward their goals and to achieve personal excellence.

With the leadership of Dr. Pat Briney, the attendees learn leadership skills through Christian values. LTI helps to guide youth through their most confusing years and teaches them coping mechanisms for future problems.

LTI represents the kind of spirit, honor and integrity that belong with today's youth leaders. I commend LTI staff and participants for their energy and faith to Christian values and hope they continue their important mission for years to come.●

TRIBUTE TO THE HONORABLE FRANK CAPRIO

● Mr. REED. Mr. President, I rise to pay tribute to Frank Caprio of Providence, Rhode Island, who will be honored at the 37th Annual Verrazzano Day Banquet this Saturday.

A respected and admired Rhode Islander, Frank Caprio was born in Providence in 1936, the son of immigrants. His father peddled produce and delivered milk in the Federal Hill neighborhood, while his beloved mother cared for Frank, his two brothers, Antonio Jr. and Joseph, and dedicated herself to her Church and community.

Frank Caprio epitomizes the American dream. From his humble beginnings, he is today a respected lawyer, successful businessman, and Chief Judge of the Providence Municipal Court. At Central High School he was an all-state wrestler who was encouraged to learn a trade, but he aspired to attain a college education. And he did. He worked his way through Providence College, earning his Bachelor of Arts. He later earned his education certificate from Rhode Island College.

Frank taught American government by day and attended Suffolk Law School at night. Inspired by President Kennedy, he ran for Providence City Council in 1962 and served for eight years. He was a delegate to the Rhode Island Constitutional Convention in 1973, and he has been elected a delegate to the Democratic National Convention five times.

Frank Caprio has practiced law for more than 30 years and has a remarkably diverse practice. He has served as special counsel to Cookson America, a fortune 500 corporation, and as legal counsel to the Providence Redevelopment Agency and the Rhode Island Department of Transportation. But perhaps Frank's most revered clients are neighbors and friends, many of humble means, who seek out Frank as their defender, advocate, and voice. They cher-

ish his friendship and offer trust in return, which is a wonderful tribute to Frank and a testament to the way he has led his life.

Through initiative, hard work and tireless energy, Frank has attained much success in business. He is a principal owner of the Coast Guard House, a historic waterfront restaurant in Narragansett and another popular restaurant, Casey's, in Wakefield. In addition to his success as a restaurateur, Frank is a principal owner of Cherry Hill Housing in Johnston.

Despite all of his success in law, government, and business, Frank has always understood the importance of community and public service. He serves on the board of Federal Hill House and as a volunteer at Nickerson House. He is a fellow of the Rhode Island Community Food Bank, and is a member of both the Bishop's Council and the State Board of Governors for Higher Education.

In honor of his own father, he established the Antonio "Tup" Caprio Scholarship at Suffolk University, and is the 1997-1998 Chairman of the Providence College Alumni Fund. He holds an Honorary Doctor of Law Degree from Suffolk and has been recognized by countless organizations for his spirit of community and his humanitarian efforts.

Mr. President, I am pleased today to salute Frank Caprio on receiving the prestigious Annual Verrazzano Day award, and I extend best wishes to Frank, his wife, Joyce, and their wonderful family on this momentous occasion.●

CHILD SUPPORT PERFORMANCE AND INCENTIVE ACT OF 1998

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House of Representatives to accompany H.R. 3130.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 3130) entitled "An Act to provide for an alternative penalty procedure for States that fail to meet Federal child support data processing requirements, to reform Federal incentive payments for effective child support performance, to provide for a more flexible penalty procedure for States that violate inter-jurisdictional adoption requirements, to amend the Immigration and Nationality Act to make certain aliens determined to be delinquent in the payment of child support inadmissible and ineligible for naturalization, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. MCCAIN. I ask unanimous consent that the Senate insist on its

amendments, agree to the request for a conference, and the Chair be authorized to appoint conferees on the part of the Senate.

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

The Presiding Officer appointed from the Committee on Finance, Senators ROTH, CHAFEE, GRASSLEY, MOYNIHAN and BAUCUS and from the Committee on Labor and Human Resources, Senators JEFFORDS, COATS and KENNEDY conferees on the part of the Senate.

ORDERS FOR THURSDAY, MAY 21, 1998

Mr. MCCAIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, May 21. I further ask unanimous consent that on Thursday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate then resume consideration of the pending amendments to the tobacco legislation.

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

PROGRAM

Mr. MCCAIN. Mr. President, for the information of all Senators, tomorrow morning at 9:30 the Senate will resume consideration of the Gregg-Leahy amendment pending to the tobacco legislation. It is the chairman's intention to move to table the Gregg-Leahy amendment at approximately 11 a.m. I add at this point, it could be later than that because we have had numerous requests to speak on this amendment. So it could be later than that.

Following that vote, it is hoped that the Democrats would be prepared to offer an amendment under a short time agreement. Following disposition of the Democrat amendment, it is hoped the Senate could then consider the farmers' protection issue. At the conclusion of debate on the protection issue, the Senate would proceed to a vote on a motion to strike the Ford language, followed by a vote to strike the McConnell-Lugar language. Therefore, the first vote of Thursday's session is expected at approximately 11 a.m. or later, and Members should expect rollcall votes throughout Thursday's session in order to make good progress on this important tobacco legislation.

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

ORDER FOR ADJOURNMENT

Mr. MCCAIN. Mr. President, if there is no further business to come before

the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator LAUTENBERG.

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

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

Mr. LAUTENBERG. Mr. President, I thank the distinguished Senator from Arizona for allowing time for me to make a few concluding remarks here, because I want to discuss an amendment that is one of those offered and pending. It is the Gregg-Leahy amendment. I want to express my opinion on this because I think this is a cornerstone issue in terms of this piece of legislation, the tobacco bill altogether. I simply do not believe that we should provide special legal protection to the tobacco industry.

This isn't a vote about holding together a coalition, as is often described, or some other purpose other than determination as to how this country conducts itself vis-a-vis its tobacco policy. This is going to be a straight vote, up or down, about providing this industry with unprecedented legal protections.

Now, I described it before as kind of a cornerstone issue, because if these special protections that are being talked about in this bill, eliminating immunity for this industry that certainly doesn't deserve immunities in my eyes, tobacco companies, if the bill stands unmodified, unamended, tobacco companies will get special legal protection for having such things as arsenic in its products. But another industry that might use arsenic in its products would not enjoy such protection. They would have to list their product, be very specific, get permission to use it, et cetera. Why in the world would we want to do that—because arsenic is a very dangerous material among the many materials, 500 items, that are included typically in a cigarette.

Why, of all the industries that we have in the United States, would we want to provide special legal protection to the tobacco industry? We are talking about an industry that has continuously lied to Congress, lied to the American people, deceived them about what might happen if they picked up, started smoking cigarettes. The average person wouldn't have the foggiest idea—warnings could be dangerous to health. It doesn't say it is almost guaranteed to make you an addict. It doesn't say if you took these ingredients apart, there are many that are quite toxic. If the labels on the package said you might die if you do this, you might die early, you might die at a prime time in your life when you would like to be with your family and

your friends, when you would like to be able to enjoy life, be able to do the things that you do athletically or functionally or vocationally, it doesn't say on there, hey, listen, if you start this, first of all, you will be spending thousands of dollars a year to support this habit.

Having been a smoker, I am somewhat of an expert on the subject. I am not a zealot. I don't say that just because I took the cure, so to speak, that other people have to take it. But I know what it is that got me around to ceasing my smoking habit, and it was the love of a child. It was when my youngest daughter of three children, who was about 7 or 8 years old, came up to me one night when I lit a cigarette after a meal and said "Daddy, why do you smoke?" And I said, "Well, I enjoy it. It is restful, makes me feel good." And she said—this is a child in first or second grade—and she said, "Today we learned if you smoke you get a black box in your throat." She said, "Daddy, I love you. I don't want you to have a black box in your throat." This is after I had been smoking some 20 years.

I smoked before I went in the Army and I made sure I smoked when I was in the Army. When I was overseas during the war, I was used to trading butts with my friends. I would take a puff, they would take a puff. Smoking was part of your life—not only part of your life, it was part of your resources. It was a currency. You could trade it for some fresh fruit. You could trade it for a bottle of water—we didn't drink much bottled water in those days, but whatever you chose to have. It was currency. It was more valuable than the French franc or the Dutch guilder—places I was stationed—or the Belgium franc, or the mark, for sure.

So here I smoked and this child brought me to my senses, my daughter. I tried to stop, I would say at least a dozen times. She convinced me in that little message—"I love you. I don't want you to have a black box in your throat." All I could think about were those beautiful big eyes looking at me the next couple of days and that was the end of my smoking. Thank goodness that child did me an enormous favor.

But the industry didn't let me know that. The industry didn't let me know at the time that I might develop an illness, emphysema, some other respiratory problem, maybe a fatal heart attack that couldn't be predicted because of smoking. They never told me anything about those things. They said life is more beautiful, life is glamorous. You could be a cowboy on a horse or a great skier. I happen to be, it has nothing to do with my smoking, but the fact of the matter is that all of those things give you images that are deceitful, dishonest, and shouldn't be allowed to be out there with impunity, because if someone falls for that story, some-

one falls for that image, they wind up in deep, deep trouble, killing 400,000 people a year in this country. That is not a very credible industry. I must tell you. They don't tell you that.

So this industry knew that its products caused cancer. They wouldn't acknowledge it. I sat at hearings galore. I was part of one hearing where we had the scientist in front of us from one of the tobacco companies, a man with incredible credentials if you looked at his curriculum vitae. He had gone to great schools and he had done wonderful things. I asked him what happened when they tested the products on humans, and he said, "We didn't do human research." I almost fell off the chair. I said, "You didn't?" All of these studies, by then 60,000 reports on the dangers of smoking had come out. But this company, one of the biggest, said scientists representing him said, "Oh, no, we didn't." I said, "What did you do in your research?" He said, "We did some research on animals." I didn't pursue that because I am sure those animals didn't fare very well.

This is an industry that deliberately targeted our children, not for a good purpose, not for better health, for worse health, to try to addict them. If it was an illegal drug, we would be after these guys and they would be thrown in jail for long, long sentences. But they targeted our kids. They went to your children and my children and said: "Smoke and you are going to be a hero among your peers. Smoke and you will be beautiful. Smoke and you will be desirable." All deceit, all lies, all determined, at no matter what cost, to grab that child, get him or her smoking. They knew they could put money in the bank. They could probably take it to the bank as collateral for loans very easily, because that person, with rare exception, was hooked.

That is why we have over 45 million people today who can't quit. I say they can't quit because I never met a smoker yet of any duration—not once—and I meet people all the time, but not once have I met a smoker who didn't say they would like to quit smoking. They tried. They have gone to clinics, wore patches, and they have done this and that. But every time they stop for a while, something else comes up, some situation comes up, and they start all over again.

That is what they want our kids to do. They want our children to be their marker. In all kinds of testimony given—some of it willingly and some unwillingly—by edict of the courts, especially in Minnesota, information has come out that they new bloody well they were targeting kids, and they new doggone well that they alter the nicotine content and make that addiction even firmer. They knew very well that people got cancer and they knew very well that people got sick. They didn't give a darn. They had one thing in

their eyes: Cash. And they went after it, and they were willing to seduce children to do it.

In many other cases, if anybody touches a hair on a child's head, they go off to jail. If they dare say something improper to a child, they get punished. These guys wanted to seduce 3,000 kids a day, a million a year, to start smoking because they knew that they made that cash register ring. This industry, that purposely pushed its product on to all American children, focused often on African Americans, or minority children, who seemed to be a little susceptible. Now they find out it is not just the minority children, it is all children that are susceptible.

This industry is being investigated by the Justice Department. What kind of precedent does that set? Because what we are talking about in this bill is immunity from lawsuits for damage created by the smoking habit which they were fooled into beginning. So with all of that, and being investigated by the Justice Department, we say we want to protect them in the event of a lawsuit? We don't want to protect anybody else, like car manufacturers, food

manufacturers, or house builders. Food manufacturers have to list everything. They are all subject to redress of their rights through the courts. That is the way it ought to be.

But here we want to do something different. So if this is a condition, why shouldn't we give all white-collar criminals special protection? We could extend it to drug dealers as well.

The Gregg-Leahy amendment will keep the legal system right side up. It will prevent Congress from rewarding the corporate outlaws who are the tobacco industry. Unless we pass this amendment, we are going to undermine the rights of Americans who have been harmed by the tobacco industry's deliberate conduct. These people are dying of lung cancer, heart disease, and they are often debilitated in wheelchairs or in hospitals. They become sick because they were nicotine addicts, which has the same pharmacological qualities as cocaine and heroin. Mr. President, these people should not have their rights abridged, and the tobacco industry should not get unprecedented legal protection.

I ask my colleagues to support the Gregg-Leahy amendment. Don't let the tobacco industry get away with this, because, again, I think this talks about the value of having this legislation. If they are free of their appropriate responsibility under the law, if they are free by virtue of a limitation on immunity, they are going to have a bonanza here, and we ought not to permit it. This amendment is not a deal-breaker, but it breaks a sweetheart deal for the tobacco industry. I hope that when the votes are counted here, the American people will be watching to see what the favorite industry of this body is.

With that, Mr. President, I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m. on May 21.

Thereupon, the Senate, at 8:25 p.m., adjourned until Thursday, May 21, 1998, at 9:30 a.m.