Let's also look at how this relates to our past debates over tort reform. The motivation behind national tort reform is that our system of justice has been distorted by a group of trial lawyers who caused the litigation explosion in this country.

At a minimum, it is highly ironic that we are now talking about passing a national tobacco settlement bill that will handsomely reward the very same trial lawyers who have so badly corrupted our justice system.

None of us should turn a blind eye to the fact that the debate on tobacco settlement legislation, under the guise of protecting youth, is really a debate about the pot of gold that potentially awaits the trial bar.

And that's not to mention the ''tax and spenders'' who want to fund a host of social programs unrelated to tobacco. Not only are we standing here debating a huge tax increase on working men and women, we are simultaneously opening a can of worms.

We're talking about sanctioning a handful of attorneys' attempts to enrich themselves at the expense of the clients—in this case, taxpayers—they purport to represent. I urge all my colleagues to give this serious thought.

This tobacco bill is not a lottery. This is not ''jackpot justice'' for trial lawyers. The trial lawyers are playing ''Wheel of Fortune'' with the taxpayers money and it must be stopped.

I urge you to support my amendment.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2:15.

Thereupon, at 12:47 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCAIN. Mr. President, I ask unanimous consent that no second-degree amendments be in order to amendment No. 2421 prior to a motion to table to be made at 5 p.m. I further ask unanimous consent that if the amendment is not tabled, Senator HOLLINGS be recognized to offer a relevant second-degree amendment and that the time between now and 5 p.m. be equally divided.

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

Mr. MCCAIN. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 2421

Mr. HOLLINGS. Mr. President, in response to my distinguished colleague from North Carolina, Senator FAIRCLOTH, as the saying goes around here—and it is genuine—I have the greatest respect and friendship for the distinguished Senator. He and I have known each other for a good 30, 40 years almost.

I really am a little dismayed and disappointed to see this assault on attorneys' fees in the context of what is ethical on behalf of trial lawyers. When they put a billboard up with respect to ethical practices and making millions—we will get the board, I guess, and have it displayed.

But let me say a word, Mr. President, about lawyers themselves. A lot has occurred over my few years of public service. In the early days, what we had in the State legislature was about 85 percent of the membership was practicing attorneys. Today, fewer than 15 percent are practicing attorneys. That has come about, in a sense, as a result of billable hours.

When we came out of the war and set up our practices, what really occurred was we had to do services for the client, whether it was in the field of real estate, whether it was in the field of a criminal charge, or whatever. It was an agreed-to fee or, in many instances, a contingent fee on winning the case. That is how I grew up as an attorney, which characterizes me now as a ''trial lawyer''—I hope not an unethical one.

I was listening very closely to the Senator from North Carolina. The best I can tell is he used the expression ''litigation explosion.'' We can get into that. We have debated that, and we found through various studies made by the Rand Corporation for corporate America that there is no litigation explosion.

''Corrupted our justice system.'' The nearest thing I could find out was the fee itself, and it was too large, as the distinguished Senator surmised, and that in itself was unethical.

We know that people make money. I understand that the fellow on Headline News today, William Gates, a very, very successful entrepreneur, never completed college, but he is a genius with a business worth some $39 billion. He makes, doing nothing, just $125,000. I know he has a modest salary, but it would only go to the tax folks. But he operates, and he operates very successfully. They have 21,000 employees there at that Microsoft entity. Every one of the 21,000 is a millionaire due to the leadership and accomplishment of Mr. Gates.

Now, that is what is to be considered when we talk about trial lawyers taking on a noncase and developing a case. That really nettles my corporate friends. Incidentally, I should say this, that the corporate friends have been mine over the many, many years, as they well know from my votes here in the U.S. Senate. And we are very proud of the industrial development we have in South Carolina and the efforts of our Chamber of Commerce there. They are highly regarded, highly respected. But they had not gotten into this limbo, so to speak, of being unethical when you win a case.

Specifically speaking, going to lawyers generally, it is the genius of America that fashioned this great Republic. Lawyers, if you please, you can go back, Mr. President, to the earliest days. ''Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death!''—a lawyer, Patrick Henry.

Or otherwise that 30-some-year-old, with quill in hand, seated at that table, ''We hold these truths self-evident, that all men are created equal.''—Thomas Jefferson, the lawyer.

The most applicable one, Mr. President, to this present day, ''But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable the government to control the governed and in the next place oblige it to control itself.''—that is our problem now—James Madison, a lawyer.

Or the Emancipation Proclamation—Abraham Lincoln, a lawyer. Or in the darkest days of the Depression, bringing about not only economic revival, but equal justice under law, ''All we have to fear is fear itself.''—Franklin Roosevelt, a lawyer. Or giving substance to equal justice under law—Thurgood Marshall.

I know the abhorrence some have for my friend, Morris Dees, down there with the Southern Poverty Law Center, or with Ralph Nader keeping the conscience clear with respect to consumer safety in America. But these are lawyers who are out leading the way.

There is no question, Mr. President, that there is no higher calling for a profession than to eliminate itself. If the ministers could eliminate all sin and the doctors all disease, we lawyers are burdened with the challenge of trying to eliminate injury in cases. When I first came to the Senate that was really what was at hand, what you might call class actions.

Up there in Buffalo, NY, Love Canal, toxic fumes, poisonous air. And as a result of the class actions there, the next thing you know what we had was the Environmental Protection Agency, which in and of itself, despite those who criticize the bureaucracy of it, has

eliminated not only the injury and drinking their own sewage and breathing their own toxic fumes, but eliminated thousands and thousands of individual cases.

Then next, of course, we had the matter of the asbestos cases. We had the cases with respect to the Dalkon Shield, breast implants; we had the cases of the little children burning up in flammable blankets in their cribs. And we got the Consumer Product Safety Commission. I just talked the other day to the chairman there who is doing the outstanding job that she is doing at the Consumer Product Safety Commission looking at all of these particular instrumentalities.

And good corporate America does just that. The J.C. Penney Company—there is no more outstanding firm. I have visited their laboratories where they have instituted safety tests of all the articles to be sold, particularly in the field of children's toys, and what have you. So the trial lawyers brought that about.

And, Mr. President, just this past week I noticed a little squib in the Times. They had down there that Ford Motor Company had recalled an engine. They took the initiative of recalling 1,700,000 pickup trucks because the link bolt on the wheel was loose. The wheel threatened to come off and cause an injury.

Now, Ford Motor Company was not particularly enthused about safety, we know, because back in 1978 Mark Robinson had to bring that Pinto case. And they got a verdict of $3.5 million actual damages and a verdict of $125 million punitive damages. No, they never collected a dime, I don't believe, for those punitive damages.

But I say to the Senator from North Carolina, I can tell you now, that saved a lot of injury and a lot of cases, because Chrysler has just had a recall that I saw in the news. And you can go right on down. That brought about attention to safety and people not burning up and having the wheels lock on them, and those kinds of things, and coming off and causing that injury.

That brings us, Mr. President, to the present case at hand, which, in essence, was not a case at all. I never heard of bringing in, in a class action, the tobacco companies and getting them to agree not to sell their product, but rather to advertise adversely not to sell, not to attract; on the other hand, agreeing, if you please, to a look-back provision whereby they would be burdened with the beauty of diminishing business for themselves, tobacco consumption, particularly in the field for little children, and raising the price of their product whereby the moneys would go then to the attorneys general and the U.S. Government to help pay these expenses, and so forth. That was not a case that was just filed and tried a few weeks later, and they got a verdict.

On the contrary, it was a long, hard, contingency struggle with a guarantee not only to get nothing had it not succeeded—and none have succeeded so far. I repeat, no one has sued a tobacco company and gotten a jury verdict as of this minute, period. But they said, we think we can do it if you let us try; and we will take it on a contingent basis. I do not know what the percentage is down in Florida or Texas or Mississippi where they have settled—somewhere around 10, 15 percent or whatever.

The States, the health community, the U.S. Government had nothing to lose. The lawyers bringing this pioneering, if you please, health care for all of America, they had everything to lose. In fact, a fine attorney general down there, Mike Moore, had to really withstand being sued by his own Governor of his own State of Mississippi trying to prevent him from bringing the case.

Don't give me this billable hours or $180,000 an hour or $5 an hour or whatever it is. This isn't any hourly thing. This is a no-case situation whereby you turn around and have to pay legal fees to defend yourself in order to bring the case, and he withstood that for a year in the courts with his reputation relatively ruined, but holding on. Then after they won that, they literally had to hide the witness and secure his safety because they had a whistleblower in one of the companies who was willing to bring forth the records and say here they are, here is the actual fact within the company records, here is what they stated, here is what their research found, here are their plans on advertising and here are the ingredients they also included in order to bring about addiction. They had to hide the witness.

Don't give me billable hours. I don't know how much hog farmers make. I am waiting for my friend to come back, but I know the lawyers make nothing unless they succeed in bringing this case. Now, of course, having done that, and getting these other lawyers in, his friend, Dickey Scruggs, and Ron Motley from my State of South Carolina, they had an expert approach. If a painter paints a $10 million painting, I don't know how much he gets an hour for painting it, but you have to have expertise.

The ingenuity of using the RICO provision of the distinguished Senator from Utah, that is what they did. They said we can use the RICO provision and really go after them. And that was a wonderful, ingenious approach to the actual trial of this particular class action. You have to understand all along nobody over the 3-year period is paying anybody a red cent when they talk about billable hours. So they brought their case, they struggled along, and they got right to the point where it was going to be exposed, that particular record of the unethical.

My distinguished friend on the other side of the aisle has a sign up there about ethical; it is the unethical conduct of the corporate lawyers, not the trial lawyers. They have not mentioned one thing unethical other than they won the case and they will get a good fee. They deserve every dime of it and more. They ought to get some kind of award from the health community because this will save us billions and billions of dollars in cost, in health care, hundreds and thousands and perhaps millions of lives from cancer deaths.

Not Dr. Kessler, not Dr. Koop, but Mike Moore, Dickey Scruggs, Ron Motley have done more to save people from cancer than Koop and Kessler combined, and Koop and Kessler have tried their best, but there is more than one way to skin a cat. No one in Congress was at that table. There wasn't any Senator—''I introduced the bill.'' There wasn't any Congressman, ''I sponsored, I cosponsored,'' all of this ''I'' stuff. Now they have a lynch mob going on because the polls show that lawyers are unpopular, particularly trial lawyers.

I have a friend in town here, sends me a thank-you note at Christmas, Victor Schwartz. We have been in this routine 20 years. Victor represents the business round table and the Chamber of Commerce, and he gets the conference board and he gets all these retainers so long as he doesn't win the case. It reminds me of Sam Ervin's famous story about the doctor who practiced there in Monroe, NC, for some 32 years all by himself. Finally, he had a young son who graduated from medical school and he turned to him and said, ''Son, I haven't had a vacation in 32 years. I am taking off with your mother for a couple of weeks.'' He comes back and the son walks up to him and he says, ''You know Ms. Smith, Daddy?'' ''What about her?'' He said, ''There is really no arthritis in her back, I got that thing cured.'' He said, ''Oh, my heavens. That is the patient that sent you through med school. Why did you do that?''

You can solve cases, but that is our problem with most lawyers now. As long as they can get a continuance, as long as they can make a motion, as long as they can delay, as long as they bureaucratize the judicial system—and that is the corporate defendant crowd. The plaintiff doesn't win until he concludes a case. He has no time; he has about five or six cases waiting, a lot of time out there, a lot of money, a lot of time investigating everything else. What happens is that he finally scores, but he not only scores for himself, he scores here in this particular case for all of America, because they met last June and they had the sensibility not to be greedy. The inference is that you have a greedy bunch that is unethical; they are getting too much. Not at all.

The fact is, they had the sensibility to say, like Kansas City, there is only so far that we can go. There has to be balance. If we put them out of business, if we continue to pressure and take legitimate companies out of business, then what will happen is that newcomers without these records that are really bringing about the settlements for us, they won't have any records of

any kind of additives. They won't have any records of any kind of lies to Members of Congress or anything of that kind. They won't have any records of agreeing not to advertise or agreeing to advertise adversely to children, or agreeing to a look-back provision. What we will do, like Samson, is pull down the temple walls and ruin us all and we will have gotten nowhere.

Now, we understand here this week we can get nowhere. We can start with lawyer fees. We can start with $1.50, $2 a pack, up, up and away. We can have impossible look-back penalties and everything else of that kind, but this isn't the end of Congress. We will be back and we can always amend what we never have tried before, like look-back and nonadvertising agreements.

But my counsel is let's move on with the provision of the commerce bill which says simply as to the agreements made within the States, we don't disturb them—all of them, as best I can tell, are under arbitration. But as to the new agreements made for lawyers, they are subject to arbitration for both sides and approved by the court itself. Now, there is nothing unethical or untoward or whatever it is. The beginning lawyers who made the case are deserving. The others who are piling on deserve a heck of a lot less. We all know that.

So we are not just setting an example here of $185,000 for nothing but trial lawyers as the thing is depicted at the present time.

I can see we have some others that would like to be heard at this particular time. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. I yield time to the distinguished Senator from Utah.

Mr. HATCH. I am very concerned about this and a whole raft of other amendments as well.

First of all, I think we need to examine the context in which this amendment is being debated.

If the members of this body succumb to the temptation to ''pile on'', to ''out-tobacco'' Big Tobacco—and that is surely where we are headed—we will guarantee that the tobacco companies are not part of the equation.

Why should we care about this? Tobacco causes cancer and a panoply of other serious diseases. The companies have known this for literally decades; they have known nicotine makes their products addictive. They have continued to market their products, and to target their marketing plans and their advertising to children.

That being said, I implore my colleagues to recognize that if the tobacco companies are not part of the equation, then we will not have a meaningful bill that can work. It is as simple as that.

Last June 20, the tobacco companies agreed voluntarily to make payments which will range up to $368.5 billion over the next 25 years. They freely chose to make those payments, payments which will help Congress fund a new War on Tobacco, in exchange for certain changes in the law, such as a more predictable litigation environment.

In order to devise a bill which is workable and which will not be litigated for years, we have to respect the legal boundaries imposed by our Constitution, that great document upon which our Country was founded. Constitutional scholars have examined the provisions incorporated in the Commerce bill, and have found them to be lacking.

For example, public health experts have testified before our Committee that advertising restrictions are an important weapon in any new War on Tobacco. But legal scholars have also cautioned that those restrictions must be drafted in a manner which is constitutionally permissible—which, by the way, this bill is not.

As chairman of the Judiciary Committee and as someone who has been concerned about constitutional principles during my tenure in office, I must caution that unless this bill is changed in some very fundamental aspects, we will wind up in 10 years of litigation over a variety of issues, not the least of which will be constitutional issues that will literally cause more problems than anyone ever envisioned.

During each of those years, one million more kids will become addicted to tobacco and will die prematurely because the Congress is pursuing a constitutional collision course which could ultimately render substantial parts of the Commerce bill null.

It is important to note that, while the tobacco companies voluntarily agreed to the $368.5 billion amount, they have refused to agree to the Commerce bill's $516 billion price tag.

We have all seen estimates that the Commerce bill will add $1.10 to the price of a pack of cigarettes in the next five years. What that Treasury estimate does not take into account are any increases due to State excise taxes, wholesaler or retailer markups, attorneys fees, reductions in volume due to increases in black market sales, or imposition of ''look-back'' penalties.

Let us be real. The manufacturers, for instance, added 5 cents per pack solely because of just one State settlement, the Minnesota settlement.

The $1.10 figure is a myth.

During the course of 10 hearings on the tobacco issue, the Judiciary Committee heard an abundance of evidence on this issue.

We had three financial analysts testify at our hearings, each of whom did independent analyses, using very detailed economic models, and none of them concurred with an estimate as low as $1.10. Their estimates ranged as high as $2.50 to $3.00, for a total cost of about $5.00 per pack.

If that happens, there will be a raging black market. It will be even worse than it is now. We have received testimony that one out of five cigarette packs sold in California today is contraband. Can you imagine what is going to happen if this bill forces tobacco prices up to between $4.50 and $5.00 per pack?

There is an additional implication that, with the exception of our colleague from Texas, Senator GRAMM, and our colleague from Illinois, Senator MOSELEY-BRAUN, no one is focusing on.

Who will bear the brunt of these increased costs, of these new payments intended to curb youth smoking? It is adults at the lower end of the economic spectrum. For example, almost one-third of people with incomes below $10,000 per year are smokers.

It would be better to bring this agreement into some perspective where we can get the tobacco companies on board, however reluctantly.

I would like nothing more than for them to pay $1 trillion per year. But the practical reality is that that will not happen. They will either move offshore or go bankrupt first, and they will be totally beyond our control.

If we design a program which does not have their open opposition, which is modeled on their voluntary agreement of June 20, 1997, we will have effective accountability, because we will have look-back provisions that are constitutional. We will have an effect ban on advertising provisions, because without their compliance Congress cannot enact stringent advertising restrictions. In short, without the reluctant agreement of the tobacco companies, we will not have the comprehensive program that many of us want.

Having said that, I have listened carefully to my colleague from South Carolina.

It is well known that I have been an advocate for legal reforms.

It is well known that I am supportive of product liability reform.

It is well known that I have not been someone who just is a rubber stamp for the trial lawyers of America, even though I have been one myself.

It is well known that I think there are excesses in the law.

But I think we go a long way toward being excessive as a Congress if we start setting fees for professionals in our society, professionals who are not directly participating in a government program.

If we allow ourselves to start dictating what fees have to be paid to certain professions in our society, however tempting, then I think we are starting down a dangerous road.

How can conservatives support setting fees in a free market system? That is as bad as setting prices.

I have extensively examined the tobacco issue. One thing has become evident. We would not be here today debating this legislation were it not for the Castano attorneys.

The distinguished Senator from South Carolina has made some very telling points. Yes, there are excesses. Yes, there are things we can criticize.

Yes, we know that many of the trial lawyers have been associated with one political party.

That irritates some people, and rightly so. But the fact of the matter is that he is right. It has been the contingent fee system that has allowed people who do not have any money to be able to defend themselves, to assert their rights, and to obtain verdicts in their best interests. And without the attorneys being willing to take cases on a contingent fee basis, many of the wrongs in our society would not be righted.

Frankly, I have been on both sides. I started out as an insurance defense lawyer. I tried medical liability defense cases. I know what it is like to have people, plaintiffs lawyers, bringing lawsuits, some of which are trumped up.

But I have also been on the other side where people who were humble, without money, had no recourse other than to hope they could find an attorney who would take their case on a contingent fee.

This meant that if I didn't win the case, I didn't get paid. If I won the case, then I got somewhere between 25 and 40 percent of the verdict. I never had a case where my client got less as a result of the contingent fee paid to me than they would have gotten by a settlement before a verdict—never, at least not to my recollection.

On this particular issue, Senator MCCAIN and those who have written this bill—basically the White House, if you will—inserted a reasonable provision. That provision says that, for the purposes of awarding attorneys' fees and expenses for those actions, the matters of issue shall be submitted to arbitration before a panel of arbitrators.

In other words, they are not going to give the trial lawyers a free ride here. They are going to require them to submit their fees to arbitration. They are going to have to come in and justify those fees.

In any such arbitration, the panel shall consist of three attorneys, one of whom will be chosen by the Castano plaintiffs' litigation committee, that is, the plaintiffs' attorneys who were signatories to the June 20, 1997 settlement agreement.

It seems to me that our distinguished Senator from Arizona did a good job in putting this provision in. A similar provision is in the legislation I filed on November 13.

This represents a reasonable approach to the problem.

The fact of the matter is that I have devoted a lot of study to the Castano group.

And, yes, most of them are Democrats. Most of them are liberal Democrats at that. But there are a number of them who are Republicans, a very small percentage of them.

The fact of the matter is that politics should not play a part in this. Without the Castano group, we would not be debating this issue; we would not have been able to bring national debate to the point of considering a bill which penalizes the tobacco industry anywhere between $368.5 billion and estimates as high as $800 billion over 25 years.

I believe that members of the Castano group alone have spent somewhere between $20 million and $40 million in basic time alone. That is a lot of money. Some have argued that this figure could approach $100 million.

This has been going on for years, in State after State. It has been going on at the expense of the attorneys, without whom we would not be having this opportunity to start a whole new national War on Tobacco.

I have to admit, at times my angst over the trial lawyers' support for one side or another shows at times. That is true for most Senators. And the trial bar has brought a lot of this criticism upon itself, to be fair. They seem to be looking out only for their interests sometimes, which is not unusual in the business community.

But we should not allow that to cloud the facts on this issue. We should think twice before we move toward having the Congress of the United States set attorneys' fees.

What is it going to be next? Accounting fees? What is it going to be? Private doctors' fees? Our public attempts at rate setting already have proven how government interference can distort the marketplace.

But I agree with the Senator from South Carolina—this is the last bastion of freedom there is.

Whether you like the trial lawyers or not, they take cases that nobody else will take. They do it at their own expense many times. Yes, they make a lot of money, if they are good enough. But the fact of the matter is they play a very significant and important role in our society. It is just that simple.

I agree with many of my colleagues on the other side. Large hourly legal fees are a concern. That is why the bill sets up an arbitration panel which will examine fees based on set criteria such as the time spent and the complexity of the case. Attorneys should have to justify their fees; I don t disagree with that position.

I cannot condone legal fees which approach $1,000 per hour. But that is not the real issue. When we start setting attorneys' fees, whether they are $100, $250, $500, or $1,000, it is a very serious matter.

PRIVILEGE OF THE FLOOR

I ask unanimous consent that Bruce Artim and Marlon Priest of my staff be permitted privileges of the floor throughout this session.

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

Mr. HATCH. Let me close with this.

I am very sympathetic to the motivation of this amendment and to the arguments that the Senator from North Carolina has made.

However, there are a number of reasons that I have given here that this amendment is flawed and, in fact, is unlawful.

As much as I dislike this Commerce Committee bill, and as much as I think it is a piling on, the approach it uses to resolve the attorneys' fees issue is far more preferable than an arbitrary price cap.

For Congress to interfere retroactively with private contracts would be, in my opinion, unconstitutional. Congress should not break private contracts.

The June 20, 1997, settlement recognized that a private agreement between a plaintiff and his or her attorney is a legally enforceable contract with which we should not unilaterally interfere, however well-intentioned our motives are.

Such interference by capping a contractual fee might very well constitute a taking under the Fifth Amendment to the Constitution. The Supreme Court cases clearly say that the Federal Government cannot confiscate money or interfere with a lawful contract.

Under any view of federalism, there is no justification whatsoever for Congress, entering the field of pure State activity to alter the rights and remedies of private parties and then dispensing, with no due process, protections guaranteed by the Constitution.

Regulation of attorneys' fees properly belongs in the domain of the States. Such usurpation of State prerogatives may very well violate the Tenth Amendment. Recent court opinions such as New York v. United States and Prinz v. United States have made the Tenth Amendment a shield against Federal imposition on the sovereign authority of the States.

State courts have already shown a willingness to step in and prevent unreasonable and excessive fees in tobacco settlements. For example, in the Florida case, the Court threw out a contingency fee arrangement where it was found to be clearly excessive. This shows that the State courts will be best equipped to address this issue by utilizing the arbitration clause of the Commerce Committee bill.

I think we must also examine the precedent we are setting here in having the U.S. Congress consider singling out any profession for a cap on their earnings. We do not do this for corporate CEOs, although we have tried in the past. We don't do it for sports figures or entertainers, for that matter. Should we consider capping Jerry Seinfeld's pay because he makes tens of millions of dollars a year, or my dear friend Karl Malone because he makes millions of dollars every year as one of the greatest basketball players who ever lived?

No, we don't do that, and we should not be doing it here, even though I do have some sympathy for what motivates the distinguished Senators on the other side of this issue.

I compliment my friend from South Carolina in his statements here today.

They are fair statements for the most part, arguing that, without the trial lawyers being able to take contingent fee cases and to be able to uphold the rights of the downtrodden and those who don't have any money and those who can't afford any attorneys, we would not have nearly the justice ideal we have today.

I also compliment my colleagues from Alabama and North Carolina, who have argued very forcefully and potently for this amendment. They make a number of compelling arguments.

I know I have taken too long and I apologize to my colleagues. I feel deeply about this.

I recognize I have irritated just about everybody in the debate. I haven't meant to. It isn't my desire.

I feel very deeply we need to pass a strong anti-tobacco bill which is constitutionally sound and which will not be litigated for years. The best way to do this is to model it after the agreement reached last year between all the parties.

That, I believe, would be in the best interests of our children.

I cannot tolerate the fact we are going to have 10 years of litigation because we are considering faulty legislation. We should be pulling the companies in, albeit kicking and screaming, and making them be active participants. I want them to be part of the solution. Some may view that as naive, but I am optimistic.

The fact that we are considering legislation with such obvious flaws bothers me terribly. I am also bothered by the fact that we will go so far as to start setting professional fees here in the Congress of the United States.

Having said that, I yield the floor.

Mr. HOLLINGS. Mr. President, I think the distinguished Senator from Utah has made a very, very powerful statement. We are most grateful.

I yield to the distinguished Senator from Illinois 10 minutes.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, let me say to my friend, the Senator from Utah, I appreciated his oration and his irritation. He plays a valuable role in the Senate, and he raises issues that are important to all of us regardless of on which side of the aisle we fall.

This amendment, sponsored by the Senator from North Carolina, Mr. FAIRCLOTH, is one which we should understand what it stands for. This is an amendment to limit the attorneys' fees that will be payable to plaintiffs' attorneys who joined with all the States' attorneys general to bring the lawsuits against tobacco companies.

Now, to paraphrase my friend, the Senator from Arkansas, Mr. BUMPERS, the tobacco companies hate these attorneys like the Devil hates holy water. Were it not for these attorneys, there would be no McCain bill in the Chamber this week. Were it not for these attorneys, there would have been no State lawsuits. Were it not for these attorneys, these tobacco companies would continue to make billions of dollars, would continue to exploit our children, would continue to be the source of the No. 1 preventable cause of death in America month after month, year after year, and decade after decade.

So it is no wonder that the Senator from North Carolina wants to get even with these attorneys. They have upset the applecart for Tobacco Row. These attorneys have joined with States' attorneys general, 42 of them, to bring lawsuits which have successfully brought the tobacco companies to their knees. And if this Senate has the courage this week that I hope it does, we will pass the most comprehensive historic legislation this Nation has ever seen to protect our children from continued exploitation by these tobacco companies.

So here comes the Senator from North Carolina, and he says, well, I think it is only reasonable that we limit these attorneys to fees of no more than $250 an hour. At least I think that is what his amendment says; it has been written over a couple times. But I think that is what he ended up concluding. For most people in America, $250 an hour is an amazing amount of money. To anybody who would think about making $10,000 a week, that is an amazing amount of money. But, ladies and gentlemen, we are talking about attorneys who are playing in the big leagues here.

Isn't it interesting that all of his rancor and all of his anger about attorneys' fees only affect the fees that are being paid to attorneys who are fighting tobacco companies. I have searched this amendment, line for line and page for page, to find some limitation on the amount of money paid to the attorneys for the tobacco companies. No, not a single word of limitation. Pay them what you will. But the plaintiffs' attorneys, representing the children who are being exploited by these companies, the plaintiffs' attorneys who come in here representing flight attendants to try to make sure in a courtroom that they are protected from the kind of secondhand smoke that is damaging, those are the targets of the Senator from North Carolina.

Isn't it an amazing thing that these tobacco companies, when they put their enemies list together, put at the very top these attorneys. Well, why did these State attorneys general bring in these private attorneys as part of the lawsuits? For one simple reason: They didn't have the resources in many States to really go after these tobacco giants, so they brought in the trial attorneys and they said, ''If you are going to sue the tobacco firms, do it on a contingent basis. If you win the lawsuit, which has never been done—never been done—if you win the lawsuit, you will win a substantial fee. If you lose, you go home emptyhanded.'' These attorneys said, ''We will take it on; on a contingent fee basis, we will take it on.'' And guess what. They are about to win. If we do the right thing, they will win. In at least four States, they have won. It just angers the tobacco companies to think that they are going to have to pay the fees of the attorneys who sued them.

Why did we need these attorneys? Because, honestly, ladies and gentlemen, when it came to Congress, when it came to State legislatures, when it came to many Governors' offices, and, yes, even when it came to the White House year after year and time after time, the tobacco companies had a cozy relationship. They knew no one was going to go in and challenge them.

Mr. FAIRCLOTH. Will the Senator yield?

Mr. DURBIN. But in a courtroom, it is a different story. In a courtroom—I will when I finish; I will be happy to yield when I finish. In a courtroom, it is one attorney against another. It is a jury of peers, 12 Americans sitting in judgment, and that is when the tobacco companies are being brought to their knees. They could not buy it through lobbyists. They could not buy it through political contributions. They had to walk into a courtroom. And when it happened in 42 different States, they said, ''It is time to settle. The game is over.'' So naturally they are angry with these attorneys, these trial lawyers who have brought them to their knees.

And think about the limitation of $250 an hour. Not a word about limiting the amount of money paid to the tobacco company attorneys, and certainly not one word about limiting the money paid to the tobacco company executives. Four years ago, do you remember that shameful scene when seven tobacco company executives, under oath, in the House of Representatives swore to God on a stack of Bibles that tobacco was not addictive? Tobacco is not addictive. Imagine they would say that. And these men, who were being paid millions of dollars a year by exploiting our children and selling their products, are not even mentioned in this amendment.

Now, if we are going to work out some moral outrage about how much money we are going to pay people, then let us include not just trial lawyers. Let's include the attorneys for the tobacco companies. Let's include the tobacco company executives. Or let's call this amendment for what it is. This is an effort to get rid of the element that has brought the tobacco companies finally to this Senate floor and brought us finally to comprehensive legislation.

I yield to the Senator from North Carolina.

Mr. KERRY. Not on your time.

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. KERRY. Mr. President, I would ask the Senator to yield on the time of the Senator from North Carolina.

Mr. FAIRCLOTH. I am satisfied.

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

Mr. FAIRCLOTH. Does the Senator have a copy of the amendment?

Mr. DURBIN. I have the amendment 2421.

Mr. FAIRCLOTH. Look at the top of page 2 and line 10 at the bottom. What does it say?

Mr. DURBIN. I am sorry. Page 2?

Mr. FAIRCLOTH. Page 2. Read the top line.

Mr. DURBIN. ''* * * made public disclosure of the time accounting under paragraph (1) and any fee * * *''

Mr. FAIRCLOTH. Now read the bottom, line 10. It clearly includes the attorneys for the tobacco companies.

Mr. DURBIN. I am sorry, Senator. I do not see that reference in here in the copy I have.

Mr. FAIRCLOTH. If the Senator will read, at the top, it clearly says—in the English language it is pretty clear—that it includes all matters, defendant or otherwise.

Mr. DURBIN. I am sorry, but I do not see that reference, unless this is another copy of the amendment.

Mr. FAIRCLOTH. ''* * * who acted at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.''

Mr. DURBIN. Will the Senator clarify then, is he saying that any of the attorneys hired by the tobacco companies and paid by the tobacco companies relative to this litigation will be limited to how much they will be paid——

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. By the tobacco companies?

Mr. FAIRCLOTH. That is exactly what I am saying.

Mr. DURBIN. Whether that money comes through this agreement or not?

Mr. FAIRCLOTH. That is exactly right.

Mr. DURBIN. How will the Senator possibly monitor that and police that in terms of the banks and hoards of attorneys who represent these tobacco companies? In the issue of the plaintiffs, we clearly have a case with an attorney general and we have a law firm that has reached an agreement and contract with them. Is the Senator from North Carolina saying, then, that as to all the activities of attorneys for tobacco companies that he is going to limit their fees to $250 an hour?

Mr. FAIRCLOTH. If they submit a record, they will have to submit a record to the Congress. And of course it would be perjury to lie about it. They have to submit the record. Yes, I am saying they are going to be held responsible. And to the same fees that we are paying the plaintiffs' attorneys.

Mr. DURBIN. What if they have already been paid?

Mr. FAIRCLOTH. Then it will be up to the tobacco companies to make an adjustment.

Mr. DURBIN. The tobacco companies will have to call their attorneys in and make an adjustment under your act?

Mr. FAIRCLOTH. Yes.

Mr. DURBIN. I say to the Senator, I believe that is a very difficult thing to accomplish. I don't think it is going to happen. What the Senator is asking——

Mr. FAIRCLOTH. It is difficult to see $185,000 an hour paid to plaintiffs' attorneys that come out of the working people of this country, too. And that bothers me considerably.

Mr. DURBIN. Mr. President, I say to the Senator the money that comes into this comes from tobacco companies which have made a profit at the expense of children and Americans for a long period of time.

Mr. FAIRCLOTH. I beg to correct you. It comes from the taxpayers of this country. The tax is on cigarettes and cigarettes are smoked by generally people with incomes of less than $40,000 to $50,000 a year. They are going to pay 70 percent of this tax. We are going to buy Lear jets for attorneys out of the working people of this country because 70 percent of this money we are going to pay to these attorneys comes from people making less than $40,000 a year. And how anybody can justify paying an attorney $100,000-plus an hour, and taking it out of the pockets of people making less than $40,000 a year, I don't know.

Mr. DURBIN. Let me say to the Senator from North Carolina, what I understand this bill to include is an arbitration proceeding, if there is any question about the fees to be paid to attorneys, and in the case of the State of Florida, that in fact occurred. The attorneys' fees were reduced. But let's not lose site of the bottom line here. Were it not for these attorneys bring these lawsuits, we wouldn't be here today. We would not be discussing that legislation.

Mr. FAIRCLOTH. I don't know that that is true. But they arbitrated it in Florida down to $180,000 an hour. But I would like to yield the floor now to Senator SESSIONS.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Illinois controls the floor—has the floor.

Mr. DURBIN. How much time do I have?

Mr. KERRY. Mr. President, I believe the time agreement was the time would come from the Senator from North Carolina.

The PRESIDING OFFICER. That is correct.

Mr. FAIRCLOTH. The time was yielded to me, Mr. President. Our debate was on my time.

The PRESIDING OFFICER. Right. The Senator from Illinois does control the floor. The time was charged to the Senator from North Carolina. So the Senator from Illinois still has the floor.

Mr. DURBIN. I believe the Senator from South Carolina recognized me for 10 minutes. Do I have any time remaining on that?

The PRESIDING OFFICER. The Senator has 4½ minutes.

Mr. DURBIN. Mr. President, 4½ minutes? I yield that back to the Senator from Massachusetts, who has been kind enough to wait.

Mr. KERRY. I thank the Chair. I understand the Senator wants to yield some time now. I think we can go back and forth.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. Thank you. I yield the time, I yield whatever time is desired by the Senator from Alabama, Mr. SESSIONS.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. KERRY. Mr. President, point of inquiry?

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. If I could ask the Senator from Alabama how much time he might use so other colleagues can plan, so we can proceed down?

Mr. SESSIONS. Mr. President, 15 minutes.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, this is, indeed, an important issue. We have heard a lot today about validity of contingent fees. Historically, contingent fees have not been favored by the law. They have been scrutinized. Lawyers ethically were supposed to take fees on a paying basis unless the person could not afford to hire a lawyer—but we have always affirmed a contingency fee basis. I am not here to criticize that. I am not. This legislation in no way would stop private attorneys from going forward with contingent fee arrangements with their clients. As an attorney, I have filed cases on an hourly fee basis and on a contingency fee basis. I don't think there is anything wrong with that and I don't mean to suggest there is.

But in the history of litigation, in the history of America, in the history of law, in the history of the world there have never been fees equivalent to the ones we are talking about today. They go beyond anything we can imagine. These fees are beyond any payments that have ever been known in the world of law. I call them the mother of all attorney's fees. This is a serious matter.

The attorneys general of the United States have come to this Congress, this Senate, and they have asked us to approve a settlement, to add things to it, to review it and comprehensively deal with this matter. So one of the things that we have to deal with is attorneys' fees.

Under the Constitution, the Congress is empowered to regulate. We do it when we enact a minimum wage. A person has a contract with somebody at $4 an hour, and we say the wage ought to be $5 an hour; that contract is vitiated. We have a lot of containment of attorney's fees in America.

Indeed, with regard to Social Security cases, there is a limitation on attorney's fees. With regard to the Criminal Justice Act, the limit is $75 an hour. Under the Equal Access to Justice Act, attorney's fees are limited to $125 an hour. Limitation of attorney's

fees is common. We have had a number of research papers written on fee limitations. A professor from Cardozo School of Law has written comprehensively on this legislation and says it is, indeed, constitutional.

To illustrate the amount of money at issue in these cases, I would like the people of this country and the Members of this body to think about this: The yearly general fund budget for the State of Alabama is less than $1 billion. In Texas, a judge has approved payment of $2.3 billion to a handful of lawyers for this litigation. They approved that kind of fee.

In Florida, attorneys are still battling to obtain $2.8 billion in fees—that is two thousand eight hundred million dollars—two thousand eight hundred million dollars. That is absolutely unconscionable, as a judge in Florida said, and as anyone who has any sense of decency ought to understand. We have been asked to pass legislation dealing with this health care problem and try to do something about teenagers and smoking? We have a right to pass legislation dealing with attorney's fees.

Let me share something with you. People may not understand exactly how all of this has occurred. I have a transcript of a recent 20/20 program about the Florida attorney's fees debate. Let me share some of what was said in that program. The segment is entitled, ''What A Deal.''

HUGH DOWNS. What is your time worth? How does $7,000 an hour sound? That's what some lawyers want to be paid for their work on Florida's suit against the tobacco industry. Each and every one of them could become a millionaire many times over, just from this one case.

So, did they really earn their fee? Well, John Stossel tells us how the lawyers came to demand a king's ransom for their work.

JOHN STOSSEL. The children are supposed to benefit from the new money for anti-smoking programs. And later the governor invited in some children and dummied up a check to celebrate the first $750 million payment. But now it turns out that Florida's taxpayers may not get as much of that money as they thought because Florida lawyers are in a legal battle over how much money they should get.

Montgomery, the plaintiff's lawyer in the case, says they deserve $2.8 billion. That's right—billion, says Stossel.

He (referring to Mr. Montgomery) doesn't exactly need the money.

This is his multimillion-dollar house in luxurious Palm Beach right next to the ocean.

The house is so huge, it looks more like a palace. Even his Rolls Royce and his Bentley live in a garage that's bigger than many houses. Montgomery got this rich suing carmakers and hospitals and insurance companies.

BOB MONTGOMERY. So this is my putting green, and this is my sand trap. And what I do is I have these balls, and this is where I drive them.

JOHN STOSSEL. Out into the water?

BOB MONTGOMERY. Out into the water.

He has so much money, he doesn't worry about his golf balls. He hits them out into the ocean.

JOHN STOSSEL. The inside of the house is even more grand. Montgomery has a vast art collection.

Another attorney, Mr. Fred Levin, defends the fees.

FRED LEVIN. It was contracted.

JOHN STOSSEL. So who made this contract?

FRED LEVIN. Well, the State did. It was a valid, legitimate contract.

JOHN STOSSEL. Fred Levin helped the governor put the deal together.

You're a private lawyer? (Asked of Mr. Levin.)

FRED LEVIN. Right.

JOHN STOSSELL. What are you doing there? Just giving advice?

FRED LEVIN. Well, yes.

JOHN STOSSEL. Friendly advice?

FRED LEVIN. Yes, I was a—I'm a good friend of the governor's.

JOHN STOSSEL. Friendship starts to explain how some of these private lawyers were selected and ended up with a contract that says each now is entitled to hundreds of millions of dollars. It began four years ago, when Levin came up with a scheme to use Florida's legislature to make it easier to win a suit against big tobacco.

FRED LEVIN. I took a little-known statute called a Florida Medicaid recovery statute, changed a few words here and a few words there, which allowed the state of Florida to sue tobacco companies without ever mentioning the word ''tobacco'' or cigarettes. The statute passed in both the house and the senate. No one voted against it.

JOHN STOSSEL. Well, did the people know what they were voting for?

FRED LEVIN. No. And if I told them, they'd have stood up and made a—you know, they'd have been able to keep—keep me from passing the bill.

JOHN STOSSEL. This made the suit much more winnable?

FRED LEVIN. Oh, God. It meant it was a slam dunk.

JOHN STOSSEL. And who would get to be the lead lawyer on this slam-dunk offense?

FRED LEVIN. Initially, I was assuming that I would be bringing the case. But then they said, ''Fred Levin's going to make all the money.''

JOHN STOSSEL. Fred Levin's doing a scam here. He's changing the law so he can get rich.

FRED LEVIN. So I went to the governor and I said, ''Listen, let me help you get a group of lawyers together, our dream team, and I'll get out.''

Mr. Montgomery suggests that if he lost the case, he would have been out $500,000. He probably has that much invested in all of his automobiles in this mansion he has. He suggested his cost was $500,000.

JOHN STOSSEL. Am I missing something here? The controversy has become, should the dream team get billions from the 25-percent deal they have with the State or from arbitration? My question is, why do private lawyers get so much of the State's money in the first place? When this construction company got the contract to replace this Florida bridge, they had to compete against other construction companies. There was competitive bidding. To win the job, they had to show they were qualified and submit the lowest bid. All States have such rules to prevent politicians from funneling projects to their friends. But that's not what happened with the lawyers. Here, Fred Levin called some friends. You picked the dream team.

Then Mr. Stossel discussed how the deal was negotiated and the fact that Mr. Levin and the Governor were close, riding in the same car together.

Then Mr. Stossel asked Mr. Levin why the Governor was spending the night at this trial lawyer Montgomery's house.

FRED LEVIN. Well, when he's in Pensacola, he sleeps at my house, so—

JOHN STOSSEL. That week, Levin threw a big party. His estate's so big he buses the guests in from where they've parked their cars. The Governor came, of course.

And they talked about how the Governor's guests had raised a lot of money for him.

As Professor Lester Brickman of Cardozo Law School said:

It's an outrage. It's more than greed, it's a scam.

JOHN STOSSEL. Law professor Lester Brickman, who's an expert on legal fees, says it's not right to hand such a lucrative-fee case to a friend.

This is the issue we are talking about today. I was attorney general of Alabama when this litigation was being suggested. I had groups of trial lawyers come to me and ask me to file the litigation. We had meetings and we discussed it. They wanted a contingent fee, as I recall, 25 percent of the recovery.

I remember saying, ''Well, some of the States are moving along fine in this litigation. If they win, I assume Alabama will be able to win with our own staff. I don't believe we need you to represent us.''

They said, ''Well, you don't just hire us, you can hire some of your law firm friends, too. You can cut them in on the deal.'' That was one of the things they suggested to me.

I said, ''We're not hiring lawyers for friendship. We're not hiring lawyers to pass out funds to people we want to give money to. If we need a lawyer, we'll hire a lawyer.'' I didn't do so.

Basically, what I had predicted came true. When the end came, the tobacco companies settled all over America. Some States had hired lawyers on a contingent-fee basis, lawyers that may have only worked a few weeks or months, and then began to come in and claim 25 percent of $2 billion, $3 billion, $15 billion. This is supposed to be fair and just? I submit that it is not.

My good friend and chairman of the Judiciary Committee, on which I serve, expressed real concern that we ought not attack contingency-fee contracts, as these contracts benefit people who cannot afford to hire lawyers on an hourly basis. I don't intend to undermine normal contingent-fee contracts, and nothing in our amendment does that.

I think everyone needs to know that this McCain bill that the administration has approved and signed off on, and the trial lawyers, I suppose, have signed off on, calls for a panel of arbitrators. It consists of three people: The Castano plaintiffs; I understand one of them may get $50 million out of this litigation. Plaintiffs would have one member on the arbitration panel. The other members of the group would be the manufacturers and the attorney

general. They get to pick the second one.

But you see, there is a problem there, because the accord really is between the manufacturers and the attorneys general and the plaintiffs' lawyers. I submit that they are not defending the best interests of the people—they signed those contracts together.

In this situation, the plaintiff lawyers have placed themselves in—and I don't know any other way to say it—a conflict-of-interest position. When the tobacco companies agreed to settle, they went to the lawyers on the other side and said, ''Now, let's talk about your fee. We won't pay all the money to the State and let you be paid by the State, because that would look bad. We'll just have a little side agreement, and we'll pay your fee, and it won't come out of the State's money.''

The attorneys general agreed to that. So the attorneys general are in on the agreement. And the plaintiff lawyers are in on the agreement. And the tobacco companies are in on the agreement. Anybody who knows anything about economics and thinks realistically about this matter will know there are not two separate pots of money.

The attorneys' fees and the recovery by the States are all payments by the tobacco companies to get these people off their backs. The tobacco companies do not care whether lawyers get the money or whether the children of the State or the children of the United States get the money. They are not concerned about that. They want this litigation over.

So this is what we have. The more you pay the lawyers, the more likely they may be to compromise the interests of the State and the children. Every dollar that goes to them is a dollar that would not go to the children.

The third member of this arbitration panel is picked by the plaintiffs and the manufacturers and the Attorney General. So you have more of the same. This is not an effective arbitration panel. It is a stacked deck. I am not sure some of the people who defended this panel have fully thought that through. We will need to talk to them about that. But this is not an acceptable panel.

Some people say, ''Well, Congress can't undermine contracts.'' We limit the minimum wage. And Florida has limited attorney's fees—at least so far they have tried to. People on the other side say, ''Well, it's not so bad. Florida limited their attorney's fees contracts. So if Florida can limit that contract, why can't we limit their fee?'' But in Texas they did not. In Texas a judge has approved $2.3 billion in attorneys' fees.

I will point this out to you: I have a recent article about the owner of the Baltimore Orioles making over $1 billion from these attorneys' fees, $1 billion—B-I-L-L-L-I-O-N—$1 billion. I suspect he probably is making more off the lawsuit than he has made on all of his other investments.

Do you know how many billionaires there are in the United States according to Forbes? I had my staff check. There are about 60. I wonder how many new billionaires these attorneys' fees will make? Who will pay for this wealth transfer? Who will be making more Montgomerys with multimillion-dollar mansions on the beach, who hit their golf balls out into the water because they have so many they don't care, and have world-renowned painting collections?

I am not weeping at all over the poor state of these attorneys. I think it is time for us to have a clear policy about what we ought to pay. This body voted last year that $250 was a fair wage for them to be paid per hour, and I think it is, too. I support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. How much time do I have left?

The PRESIDING OFFICER. The proponents have 58 minutes 30 seconds.

Mr. SESSIONS. The 15 minutes?

The PRESIDING OFFICER. The 15 minutes have expired.

Who yields time?

Mr. KERRY. I presume the Senator can yield himself more time if he wants to.

Mr. SESSIONS. I will reserve the time on this side.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield myself such time as I use. I will not use that much time.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is time we really talked about what is really happening here. And it is time that we face reality with respect to this amendment.

I am just astounded listening to the Senator from North Carolina and the Senator from Alabama suggest they know better than their own attorneys general, who are elected, after all, who are accountable to the people of their States, just as we are as Senators, and who suddenly, representing the Republican Party, are attacking people because they have made some money and they do not like the way they have made some money.

This is an unprecedented situation as far as I know. The Senator from Utah, the distinguished chairman of the Judiciary Committee, could not have put it more strongly or directly. He asked the question, What is our party coming to if this is what we stand for?

Now, I ask my colleagues just to read this amendment. This amendment says:

> No award of attorneys' fees under any action to which this Act applies shall be made * * * until * * * [they] have provided to the Congress a detailed time accounting with respect to the work performed.

They want to turn the U.S. Congress into an accounting committee for attorneys, private attorneys who have contracted privately with the attorneys general of their States.

But after that, if ever there was a violation of what I thought the Republican Party stood for, here it is. ''This section shall apply to fees paid or to be paid to attorneys under any arrangement * * *'' i.e., retroactively. They are going to go back and say, no matter how many hours attorneys may have worked, no matter how much their firm may have put in, they are going to have to live by a certain fee that may be well below what they have already invested in a case.

But even more importantly, they do this for any attorney ''who acted on behalf of a State or a political subdivision of a State in connection with any past litigation,'' ''who acted on behalf of a State or [any] political subdivision of a State in connection with any future litigation,'' ''who acted at some future time on behalf of a State or a political subdivision of a State in connection with any past litigation,'' ''who act at some future time on behalf of a State or a political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies * * *''

Here is the most extraordinary long-arm reach of the Federal Government into the affairs of States from the very people who are most consistently on the floor of the U.S. Senate saying, ''Keep the Federal Government out of our business. Keep the Federal Government away from intruding. Don't put mandates on the State. Don't preempt State action.'' And here we are with the greatest single preemption, intrusion, and nit-picking, micromanaging that I have ever seen.

That said, they are not even dealing with reality, Mr. President. They are coming in here and talking about $180,000 fees. That is not what they got in Florida. In point of fact, that is what the attorneys may have asked for because that was their agreement, but that is not—they are subject to arbitration.

Every single State is subject to arbitration. This bill honors the notion that there will be arbitration. No one expects attorneys to be paid the kind of money that is being thrown around on the floor of the U.S. Senate. That is not going to happen. And they cannot point to an instance where it actually has happened.

In Minnesota, they settled for 7.5 percent. The Attorney General settled, all of the parties settled. And what is really fascinating is my friend from Alabama says there are not two pots of money. Well, that is not true. In Minnesota there are two pots of money, because they came to an agreement that one pot would pay the people what they get by virtue of a settlement, and the companies, the tobacco companies will wind up paying the attorney fees outside of it. That can happen in each and every other State subject to the determination of the arbitration process, subject to the courts, subject to the attorneys general and others.

Who is the Senator from North Carolina, who is the Senator from Alabama to say that the attorney general of a State does not know what he is doing, that the attorney general of a State is incompetent to decide that he wants to run for reelection based on what he thought was a fair approach to arriving at a settlement?

Why is it fair? It is fair, Mr. President, because no one wanted to take these cases. No one wanted to take these cases. I stand with my friend from South Carolina as somebody who has tried a case and who has taken a contingency case.

When I first got out of school I started a law firm. We did not have the money to carry the case. We did not have anybody supporting us. But about six or seven people who had hairs implanted in their head from rug fibers came to us. It turned out that the hairs were cancer, carcinogenic, and they got extraordinary blisters and reactions to this and spent days in hospitals and being treated.

But how were they going to get redress? Well, they got a couple of young lawyers who took the cases on a contingency. And we took those cases based on the notion that we invested our money in the depositions. We invested our money and the time put into it. And we worked for 2 long years, Mr. President, in order to be able to finally take that case to court, win the case in court, and ultimately force the rest of the cases to settlement. There are countless examples like that.

America is going to have an opportunity to see a movie soon in which John Travolta will play Jan Schlichtmann, a young attorney up in Massachusetts who took a case of people in the City of Woburn, who had been poisoned by toxics put into the well system and their kids were dying of leukemia. This was a case that nobody wanted to take. This was a case that took years to prove, and they brought experts from all over the country. They invested in it themselves to the point, Mr. President, they were floating their own credit cards to the point of bankruptcy. They mortgaged their home to the point of bankruptcy. This lawyer lost his automobile. It was repossessed because he was going to win on behalf of these people. Ultimately, he was able to pay off all the bills and he barely made any money at all.

That is a case you win. Most cases in America are stacked against the plaintiffs. In most cases in America, corporations have all the money. That we have seen from the tobacco industry over the last years. And that is why, as the Senator from South Carolina pointed out, in all the years of litigation, not one single penny has been paid out in the court as a result of a victory won in the court at this point in time.

Who will bring those cases? This isn't the only example of that. There is the most extraordinary misunderstanding in America about contingency fees and what happens for the cases that are won that create a big stir. There are dozens of cases that are lost. There are dozens of cases litigated where people make an effort and they don't win. And that is our system of jurisprudence in America. That is how we provide the average citizen, the person who doesn't have the bucks, access to the courthouse. And here we are with a system that we have worked out in this bill which sets up arbitration which says, in section 1407, that in any case where the State and their litigation counsel failed to agree on attorney fees and related expenses, the matter of attorney fees and extensions shall be submitted to arbitration.

There is no automatic payout in this bill. No attorney walks away with fees that any attorney general or any State thinks are wrong. That is not going to happen. And there are people accountable at the State level if it did happen. It is not the business of the U.S. Senate to step in and suggest that, because the Senator from Alabama finds the lifestyle of a particular individual who may not even have made the money through that case, other cases—finds it onerous, to say we will limit it.

I bet any one of us could find any number of corporate executives, chieftains, in this country who have their airplanes, who have their nice cars, who may or may not choose to hit a golf ball in the ocean. I am sure you could say they have a lifestyle that somehow people find a little bit objectionable or they are jealous of, but since when in this country do we say we will limit their capacity for earnings and step in and become the accounting agency for those kinds of transactions?

I hope my colleagues will measure carefully the capacity in this bill. This would interfere with private contracts. The amendment is not necessary, because a bill has a means of resolving these. The courts have already shown an unwillingness to prevent any unreasonable fee, and these contingency fees preserve the rights of our citizens to be able to have access to the court.

Let me share why that is so important. It was the result of a suit brought on contingency that helped make automatic teller machine operators responsible to put those machines in a way that people weren't attacked or somehow there was a sense of responsibility about the locations. That is one of those victories that you win because people took a case.

Another case, where a $10 million punitive damage award against Playtex removed from the market tampons linked to toxic shock syndrome—those problems had been deliberately overlooked by the company. It was only because of the suit that people were protected.

In St. Louis, a jury returns a $79 million award against Domino's Pizza because of its fast delivery policy. We had a woman, Jean Kinder, who suffered head and spinal injuries when a delivery driver ran a red light and hit her, because the policy was, you have to push delivery. They changed their policy because a lawyer brought that concept to court, and it was rectified.

An 81-year-old died from a fatal kidney ailment after taking an arthritis pain relief drug called Oraflex for about 2 months. The manufacturer had known of the serious problems associated with the drug but failed to warn the doctors, and, in fact, Eli Lilly removed the drug, as a result of that suit, from the world market after it had been available in the United States for less than a year.

Eight punitive damages awards were required before the A.H. Robins Company recalled the Dalkon Shield, the IUD, and we all know what happened with respect to that.

All of these were instances, Mr. President, where American citizens were protected by virtue of the capacity of a lawyer to take a case. I can tell you, if you limit these fees to the level they want, what you are really doing is limiting the access of the average American to the courtroom, because you will make it impossible for lawyers to take those fees under those circumstances—not to mention the unconstitutionality and questionable practice of how you regulate defendants' fees in totally private contractual relationships outside of anything to do with State action, outside of anything to do with a compelling straight interest, with no appropriate rational nexus that the court requires for that kind of test.

This doesn't work. It is not needed. It is wrong. It is an exaggerated problem seeking some kind of solution. This is not the solution.

I reserve the remainder of my time.

Mr. FAIRCLOTH. I yield whatever time is desired to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. I will share a few thoughts as we discuss this thing. I think the feelings are strong on both sides.

I suggest that Federal action is appropriate here because the States have asked for a comprehensive settlement of this matter. The legislation that we have proposed is a comprehensive piece of legislation. It involves where the money goes. We don't agree with the States on everything that they say, and we will be doing things differently in a number of ways. It will represent the consensus of the House and the Senate and the President, if he signs it.

I think it is perfectly appropriate for us to deal with the problem of just how much these litigators make. When you have a young lawyer taking on a big company and winning a contingent fee verdict and making some money off of it—we are not trying to undo that. We are talking about a massive effort, nationwide, that has resulted in incredibly huge profits or windfall attorney fees that ought to be contained by the

very nature of this. We have a right to legislate that.

Whereas at this stage Florida has reduced the attorney's fees that were to be awarded of $2.8 million, one of the lawyers, I think, is still contesting that, and they may not prevail. Or if they do, it is just proof of the fact that courts and legislative bodies have the power to deal with excessive fees in this kind of circumstance.

Finally, they say, well, there is an arbitration panel in this agreement. I must tell you, the configuration of that panel is unacceptable. It is unacceptable for two different reasons, really. It is unacceptable, No. 1, because it doesn't even come into play unless the attorney involved is unavailable to agree with the plaintiff. The plaintiff is the attorney general or, I guess, representing the State, of the people. I am on page 438 of the agreement. It says you can't have arbitration unless the attorney involved—that is, the private plaintiff lawyer—is unable to agree with the plaintiff—that is, the attorney general who employed that attorney—the attorney general, with respect to any dispute that may arise between them regarding their fee agreement.

Why, this is the fox guarding the hen house. These are the same people that agreed to the fees. We don't have a good thing there.

Then, when it talks about submitting it to arbitration, the makeup of the panel shall consist of three persons, one of them chosen by the plaintiff—that is, the attorney general—one of them chosen by the attorney—that is, the plaintiff's attorney—and one of them chosen jointly by the two of them. That is who is making the decision—the same people that got us into this fix. I submit that is not an effective arbitration panel and it is not something that at all deals with the seriousness of the problem.

Lester Brickman, when he was interviewed on ''20/20,'' the professor from Cardozo Law School, made these statements: ''These are politicians involved who are stroking the backs of lawyers because lawyers have stroked their backs before and may yet stroke their backs again. So I think the public perception here, which is probably pretty accurate, is that it smells.''

I want to make one more point. I think this is really important. I can see how that could be of confusion. The Senator from Massachusetts says there really are two pots. This is fundamental when you think about it. It is not two pots. There is one pot of money; that is the tobacco companies; and they will pay it over to get rid of this lawsuit. And they are willing to pay as much to the lawyers to get them to agree to the settlement. It is not a healthy relationship. It is not a healthy relationship. And the suggestion that the tobacco company can go over here to the side and enter into a side deal with the lawyers who are supposed to be representing the State and the people to pay their fee, and that is not going to affect the overall settlement, is not sound thinking. It is the same money, and every dollar they agree to give is one dollar less that goes to the people and victims of smoking.

I believe the present proposal is not effective at all. I object to it. I believe the Senator from North Carolina has a proposal that will fix this matter. It will be a generous fee for these attorneys. They worked on it for 4 years, and they have 10,000 hours. They get paid $250 for every one of those hours. That is perfectly generous.

I yield the floor.

Mr. HOLLINGS. I yield to the distinguished Senator from New Jersey 5 minutes.

Mr. TORRICELLI. Although I have not been in this institution long, I have already discovered one thing about the Senate. Things are not often as they appear. This discussion has been almost entirely about money, what fees are paid, and who pays them.

But in truth, this amendment is not about money, it is about power. It is about whether or not the individual American who has little or no money, cannot afford expert testimony, cannot afford to pay the fees with extensive and complex litigation, can stand in a courtroom face to face with the largest and richest, most powerful corporations in the world and get justice.

Through almost all of the history of this Republic, we have assured that right to every American. But today, this Congress is at a point of judgment about the tobacco industry because those individual lawyers, on contingency fees, representing individual American citizens, have brought us to this point of decision.

Make no mistake about it, Americans are dealing with the reality of health care and tobacco and the financing of our future health care as a result of a potential tobacco settlement, not because of this Congress, not because of the good graces of American industry, not because the leadership of the President, but because of the threat in courts of law that individual attorneys, on contingency fees, have found justice for individual American citizens.

This fight is not about money. There are ample resources in any tobacco settlement. The fees would be paid. It is about whether or not this door to American justice is to be closed. And that is the decision.

The great irony of it is, on the other side of the aisle, the party which has always claimed to represent the rights of the individual, the founding wisdom of our constitutional system, and the prerogatives of individual State governments, would be bringing this amendment at all. If it were to succeed, the Senate of the United States would be setting professional fees, a judgment that not only does not belong here but demeans the institution. The Senate of the United States would be taking prerogatives away from State governments and State attorneys general which have negotiated these decisions or made these judgments.

The McCain legislation deals with this, in what I believe is a proper fashion, in setting arbitration panels where arbitrators can pay what expenses the lawyers had, what they had to pay, the risk they took, the time involved, and then, on a professional, informed basis, decide on proper compensation.

Alternatively, that judgment will be made here, and on what basis? Who here knows the risks involved, what expenses were incurred, what professional judgments were required? Never in my limited experience in this institution would we be making a less informed decision.

Mr. President, I strongly urge the defeat of this amendment. The attorneys general of this country have availed themselves of a right that individual Americans have used for generations. They made a judgment to the taxpayers of this country who could not afford to pay private attorneys the enormous fees, the enormous costs through recent years, to avail themselves of contingency fees to protect the taxpayers just as individual Americans have done for years. Now it is time to ensure that system worked—that freedom to remain with the individual States to reach their own final judgments.

Finally, Mr. President, let me suggest to you this legislation is not only inappropriate for the institution, it is not only denying Americans a power of equal justice against the strong and the powerful, which they have enjoyed for generations, it is also, finally, if nothing else, patently, clearly, unequivocally unconstitutional. On what basis will the Federal Government take this judgment away from the States under the 10th amendment? And on what basis would this Congress decide to take this compensation away from individual Americans in what is clearly an unconstitutional seizure of property without compensation?

Mr. President, this amendment is bad on a variety of bases. Collectively, it is almost unthinkable. I am very pleased that Senator HOLLINGS and Senator KERRY have led us in the debate, and am more than a little proud that the chairman of the Judiciary Committee, on which I am proud to serve, Senator HATCH, once again, as has been his tradition, has come to the floor of this institution in the protection of the prerogative of the institution and the Constitution of the United States.

I thank the Senator from South Carolina for yielding the time.

I yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I do. I yield 15 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 15 minutes.

Mr. McCONNELL. Thank you, Mr. President.

I thank my friend from North Carolina.

The FAIRCLOTH cap is an attempt to insert a bit of sanity into a world of attorney-fee madness. The national tobacco settlement has turned into the ''national lawyer enrichment deal.'' Let me tell you a little about the current ''national lawyer enrichment deal.''

Under the current bill, conservative estimates say that we are about to hand over approximately $4 billion a year to lawyers —$4 billion a year—every year—for at least the next 25 years. This, Mr. President, is absolutely outrageous.

I am sure the friends of the trial bar will stand up and say I am exaggerating. They will say we are stretching this one. Lawyers aren't really asking for that much money, it will be said. They aren't that greedy, some will claim. They just want to be paid a fair wage for a good day's work. Well, let's see if I am exaggerating. Let's see if the trial lawyers just want a fair wage for a good day's work. Let's take a little tour of the ''national lawyer enrichment deal.''

In Minnesota, where a few lawyers are reportedly seeking to rake in approximately $450 million, the lawyers in Minnesota actually took the case to trial, so it is reasonable to assume that they employed more attorneys and put in more hours than some lawyers in other States. So let's assume that 50 lawyers worked a total of 100,000 hours. These 50 lawyers would each take home $9 million for his or her labor—$9 million. And what is the hourly fee for the hard-working plaintiffs' lawyers in Minnesota? It is $4,500 an hour, Mr. President, $4,500 an hour for the plaintiffs' lawyers in Minnesota.

Well, let's take a look at Mississippi. We will stop off in Mississippi on our national tour. The latest reports out of Mississippi are that the lawyers are seeking $250 million. Assuming that 25 lawyers worked on these cases for 25,000 hours, the Congress would be authorizing each lawyer to receive $10 million a piece.

Let's break that down on an hourly basis. If each of these lawyers worked 1,000 hours exclusively on the tobacco litigation, that would enable them to earn $10,000 an hour. Pretty good day's pay, I would say—$10,000 an hour.

Now let's stop off in Florida, and this is better than Disney World. A handful of trial lawyers in Florida are trying to take us for a ride, the ride of our lives. These fellows are looking to receive as much as $2.8 billion. One lawyer has already sued for his $750 million share of the pot. And we don't even have to make assumptions in Florida because the judge has already done the math for us. The judge looked at the greedy grab by the lawyers and concluded that the demands for attorneys' fees—and this is quoting the judge—''Simply shock[ed] the conscience of the court.'' The judge concluded that even if the lawyers worked 24 hours a day, 7 days a week, including holidays, for over 3 years, they would earn over $7,000 an hour—$7,000 an hour. In fact, we know the actual hourly rate for the Florida attorneys is immensely higher because no one can seriously contend that any lawyer, much less every lawyer, worked 24 hours a day, 7 days a week, on tobacco litigation for 3½ years.

But it gets better. The final stop on our lawyer enrichment tour is Texas. There a handful of lawyers are going after $2.2 billion. Well, let's see what kind of hourly fee the lawyers want in Texas. Texas did not go to trial so it is reasonable to assume Texas put in far less time than Minnesota.

Again, assuming that 25 lawyers worked a total of 25,000 hours, then each of these lawyers could earn $88 million. And what kind of hourly fee is that for our Texas trial lawyers? That is $88,000 an hour—$88,000 an hour for the plaintiffs' lawyers in Texas. And if that is not outrageous enough, the $2.2 billion for attorneys in Texas have to be paid out of the Medicare money. So who do we pay, the sick and the elderly or the greedy and the lawyerly?

Let's compare the tobacco trial lawyers to the rest of the world. Let's see how $88,000 an hour compares to the average wage of others in our booming national economy.

First, we know that minimum wage mandates that workers be paid $5.15 an hour. We certainly know that the tobacco trial lawyers are making a heck of a lot more than the minimum wage earner. Senator KENNEDY will have to pass an awful lot of minimum wage hikes this year to keep up with the plaintiffs' lawyers. In fact, we are going to authorize the trial lawyers to earn nearly 50 times the minimum wage under the Faircloth amendment.

Simply put, the tobacco trial lawyer is also making a heck of a lot more money than every other wage earner in our country—everybody. As Senator FAIRCLOTH has pointed out, the baker earns $7.65 an hour; the barber, $8.37 an hour; the auto mechanic, $12.35 an hour; the carpenter, $13.03 an hour; the police officer, $16.65 an hour; the pharmacist, $25.98 an hour; all the rest of the lawyers, $48.07 an hour; and the doctors, $96.15 an hour. That is what everybody else is making. The Faircloth cap would bring the trail lawyers' stake back to the edge of reason. The cap would allow lawyers to recover their costs as well as a reasonable hourly rate as high as $250 an hour.

I might say even the $250-an-hour rate sort of makes me cringe. I suspect if the Senator from North Carolina had his way about it, it would be lower than that. But that is what the amendment states.

I know that amount is not exactly $88,000 an hour. I would not argue that $250 an hour is as good as $88,000 an hour. But it is not exactly chicken feed, and it is way the heck more than anybody else in America is making on an hourly basis. I would say there are a lot of us in the Senate who would like to have that kind of take-home pay. I know there are a lot of folks in America who would be more than happy for $250 an hour.

This cap is extremely generous and eminently reasonable. In fact, the Federal Government has established numerous attorney fee caps over the years that prove the point. Under the Equal Access to Justice Act, the fee cap is $125 an hour; under the Criminal Justice Act, $75 an hour; under the Internal Revenue Code, $110 an hour.

We ought to pass the Faircloth cap. It is fair and it is constitutional. A sweeping Federal regulatory bill cannot leave out the matter of lawyers' fees, especially when omitting the issue would allow for such abuse.

Let me spell this out.

The tobacco bill is an all-encompassing Federal regulatory scheme. The scheme will expand the Federal jurisdiction over tobacco products, regulate the manufacture, advertising, and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between 40-some-odd States and the cigarette manufacturers.

It would defy all logic and reason to pass this type of sweeping Federal regulation without including some type of minimal regulation for the payment of attorneys' fees for civil actions affected by the bill. Basic fairness requires that we not neglect this critical issue.

Throughout the debate over the tobacco settlement, we have constantly heard assertions that the tobacco companies have gone after women, children, and the elderly. If we don't pass this sensible fee cap, then we will not only be creating an exclusive club of trial lawyer billionaires—that is with a ''b,'' Mr. President, billionaires—but we will be unleashing a legion of lawyers to prey upon these very same persons in future tobacco cases affected by this bill. Surely, nobody in the Senate would want such a result.

No one is trying to deny any lawyer a fair wage. Surely, $250 an hour, which is in the Faircloth amendment, is more than a fair wage by the standard of anybody else living in our country.

A vote for the Faircloth amendment is a vote for reason and sanity. Let's stop the National Lawyer Enrichment Tour before it starts.

Mr. President, just a couple of other observations that I would like to make before relinquishing the floor.

Neither the Contracts Clause nor the Due Process clause prohibit regulation of attorney fees as part of a broad, comprehensive regulatory bill.

The Court has pointed out that a ''party complaining of unconstitutionality . . . must overcome a presumption of constitutionality and 'establish that the legislature acted in an arbitrary and irrational way.'''

It is neither arbitrary nor irrational to regulate attorney fees as part of a

comprehensive federal effort to expand federal jurisdiction over tobacco products, regulate the manufacture, advertising and sale of tobacco products, fundamentally affect and alter past, present, and future litigation over tobacco products, and facilitate the implementation of the settlement reached between forty-some-odd states and cigarette manufacturers. In fact, it would defy all logic and reason to pass this type of sweeping federal regulation without including some type of minimal regulation for the payment of attorney fees for civil actions affected by this bill.

Even CRS—when looking at a standalone fee cap last October—determined that ''it seems very likely that the proposal in question would not violate due process.''

Federal courts have routinely upheld laws that abrogate past contracts, so long as those laws have a rational basis. It is certainly a rational basis to regulate fees as part of a broad regulatory package. Moreover, it is rational to ensure that an equitable amount of finite resources will be available to protect the national public health and welfare and to compensate those who suffer from tobacco-related diseases.

In fact, the Supreme Court has declared that ''Congress may set minimum wages, control prices, or create causes of action that did not previously exist.''

In one classic Supreme Court case, the Court held that Congress could retroactively cancel a ''free rail pass for life'' given as part of a settlement of litigation. Moreover, to accept the trial lawyers' takings argument, one would also have to consider it a constitutional violation for Congress to require States to abrogate contracts with state employees in order to increase the minimum wage.

Professor Brickman has explained that ''[i]f individual parties could insulate themselves from congressional legislation by entering into private contracts before such legislation were enacted, then:

the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation, render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of its power to regulate commerce. No power of Congress can be thus restricted. The mischiefs that would result from a different interpretation of the Constitution will be readily perceived.

Finally, the ''constitutionality of the amendment under a Taking Clause analysis is further buttressed by the fact that attorneys affected by the regulation are receiving substantial financial benefits from [the Tobacco Bill].'' (Brickman Letter at 2.) These *substantial benefits for attorneys*, financial and otherwise, include the fact that the federal government is: (1) ratifying the national tobacco settlement, (2) establishing a national trust fund to provide States with Medicaid reimbursements and attorneys with a basis for recovery, (3) removing limits on tort liability in future cases, (4) making it easier for plaintiffs to recover by changing the burden of proof and establishing a presumption that certain diseases are caused by use of tobacco products, and (5) creating a national public database with incriminating documents to use against tobacco companies in present and future litigation.

No court would view these substantial benefits for plaintiffs' attorneys and conclude that they have suffered an unconstitutional taking. Even the CRS document referenced by the opponents of this amendment clearly spells out that ''indeed, the Supreme Court has never found a taking based on federal legislative alteration of existing private contracts.''

Mr. President, I commend the distinguished Senator from North Carolina for an outstanding and important amendment. There should be no tobacco bill at all—at all—unless this unjust enrichment of this select group of lawyers is curbed. The Faircloth amendment would do that. I commend the distinguished Senator from North Carolina for his good work, and I am happy to be a cosponsor of his amendment, and I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). Who yields time?

Mr. HOLLINGS. I yield 5 minutes to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. WELLSTONE. I thank Senator HOLLINGS.

Mr. President, here we go again. Now we find out that this bill covers not only prospective actions but it also has been expanded to cover, and thereby affect, four State settlements that have already been finalized in Mississippi, Florida, Texas, and Minnesota.

We have been through this before in Minnesota. The tobacco industry challenged the State entering into a contingent fee with attorneys. They took this challenge to the trial court, to appellate court, and the Minnesota Supreme Court, and they lost every time. This amendment is another tobacco company amendment, and I believe they will lose again on the floor of the U.S. Senate.

Mr. President, I have to respond to some of what I have heard my colleagues on the other side say about how these attorneys have done so little. That is a bitter irony, from the point of view of a Senator from the State of Minnesota. Minnesota, for instance, from August 1994, when the case commenced, until January 1998—we had numerous, unprecedented pretrial and discovery proceedings. Over 34 million pages of documents were reviewed. The majority of them had never been disclosed. The tobacco companies fought this over and over and over again on privilege claims. They lost.

And the irony, I say to my colleague from South Carolina, is that much of what we know about all of the tobacco companies' tactics of misinformation and deceit come from those documents—from the State of Minnesota, from that case, from that settlement. It has a lot to do with the fact that people in the country want us to pass tough legislation. It has a lot to do with the fact that Minnesota led the way.

What we are really talking about here is something very historic. These States went on a contingent fee basis with lawyers, took on the tobacco companies, and these settlements were historic because these were the first time that this tobacco industry had ever lost in court. Despite the long odds, Attorney General Humphrey and other attorneys general took on the industry, went with contingent fee, and the tobacco industry tried to stop it. They lost in Minnesota. And because of this work, with 34 million documents, additional information, a record of deceit and misinformation by this industry—that is what this debate is all about.

This is not about anything other than making sure that when consumers want to take on a powerful industry like the tobacco industry, or the State of Minnesota wants to take on a powerful industry like the tobacco industry, they won't be able to do so. As a matter of fundamental fairness, this amendment should be defeated. I just have to simply say, I don't know where my colleague from Kentucky gets all of his arithmetic from—I am talking about Senator MCCONNELL from Kentucky——

Mr. FORD. Thank you. Thank you.

Mr. WELLSTONE. Not Senator FORD—dividing up how many lawyers worked on this and how much they got paid and all the rest of it. I never heard any of that before.

Here is what I do know. It is true the State of Minnesota took on this industry. It is true the tobacco industry, just like some of my colleagues, don't want that to happen. It is true they challenged the contingency fee, just like my colleagues are trying to do here today on the floor of the Senate. But the tobacco industry lost in Minnesota in a case that went to the Supreme Court. Minnesota, working with lawyers and working with consumers, unearthed—what is it again; let me make sure I have the exact figure—34 million pages of documents.

Mr. President, this amendment should be defeated. If it is adopted, it would be great for the tobacco industry, but it would not be great for the consumers and people we represent, and I think Minnesota is living proof of that.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Will my colleague be kind enough to give me 10 seconds?

Mr. HOLLINGS. I yield 3 or 4 more minutes.

Mr. WELLSTONE. I thank my colleague. I won't need that much time.

PRIVILEGE OF THE FLOOR

Mr. WELLSTONE. Mr. President, I ask unanimous consent that Joe Goodwin, who is an intern, be allowed the privilege of the floor for the duration of this debate.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. FAIRCLOTH. Mr. President, I yield myself 3 minutes.

We have had a lot of conversation today about limiting attorneys' fees, that this would be a new thing, that the Federal Government should never get into limiting the fees that these magnificent saviors of society, the trial lawyers, have done for us.

We limit attorneys' fees to every other attorney under the Equal Access to Justice Act. We limit to $125 attorney fees against the Federal Government in civil rights cases. Now, maybe they are less important than the tobacco case, but they only get $125 an hour.

The Criminal Justice Act has a cap in most criminal cases of $75 an hour, and the Internal Revenue Code limits to $110 an hour a cap for winning parties in tax cases. And here we are talking about $88,000 an hour in Texas, and this is a fixed, done deal. This is not a guess—$88,000 an hour.

I just had to think what that meant. A trial lawyer makes more in an hour and a half than a U.S. Senator makes in a year. Now, maybe he is worth more, according to the testimony we have heard, but in an hour and a half, a Texas trial lawyer makes almost exactly the same amount of money that we pay a U.S. Senator for a full year's work. And they are saying, ''No, you cannot cap these great people, they have saved society.'' Time after time we hear what they have done to save mankind. Well, I don't think they are saving mankind. They are saving their own kind, and that is exactly what they are working on.

We go back to what they are worth. I don't see how anybody can justify this. They say we are setting fees. We set fees on doctors of all types—anesthesiologists. For all doctors, we set fees. We set hospital rates. We set lawyer's fees. But yet, when it comes to these exorbitant, ridiculous fees that the American taxpayers are paying—and I repeat that 70 percent of this tax that is being collected and given to these attorneys is coming from people making less than $40,000 a year. Extrapolated, that is about 26 minutes' work for a Texas trial lawyer.

The PRESIDING OFFICER. The Senator has used the 3 minutes he has yielded himself.

Mr. FAIRCLOTH. I thank the Chair. Does Senator SESSIONS wish to speak?

Mr. FORD. Mr. President, are we swapping sides now?

Mr. HOLLINGS. I yield such time as necessary to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from South Carolina has less than 15 minutes.

Mr. FORD. About 4 minutes.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. I thank the Chair, and I thank my friend from South Carolina. I am not a lawyer, and I don't understand all the work that lawyers do. When I was growing up, my dad said a little knowledge of the law is dangerous. Get yourself a good lawyer and stay with him or her. That is what I have tried to do.

I have been in the insurance business, and I understand that very well. How many times has an independent agent down in some small community—and I have done it on many occasions—been asked to make bids on a piece of property or on a fleet of trucks or liability, or whatever it might be, and the staff in that little agency work for hours, day and night, putting together a comprehensive bid. Lo and behold, we lose. That is part of the game.

Then we get another bid. It may be on a county or on a city, and we work for days and into the nights putting together a comprehensive bid. And we lose.

But lo and behold, one time we submit a comprehensive bid and what happens? We win. It makes us feel good. But then somebody comes along and says, ''Ford, you've made too much money.'' Well, I have lost 100 times and finally win one and they say, ''Ford, you've made too much money, you just can't do that.'' So they limit the amount of money I can make as an insurance agent.

It is the same thing that happened yesterday. Ninety-eight percent of the farmers who have tobacco quotas voted to keep the farm program. But in here, on the Senate floor yesterday afternoon, they said that 98 percent didn't know what they were talking about—''We're going to wipe out the quotas because we know more than you do.'' That is why they don't like politicians in Washington. They don't want to do what their constituents want them to do.

Here we are saying after 98 percent of the people voted one way, ''You don't know what you want, and we're going to take care of you.'' It is the same way with the attorneys general. Over 40 of them took on the tobacco industry. It was a pretty awesome cause, and they have won. They worked out a deal.

Now we say, ''After you have done all that, you can't charge that much.'' You sign a contingency fee. What is a contract for? Are we the ''big brothers'' that vitiate contracts? I don't think so. You talk about protecting little fellows. As I understand the tobacco deal, it came from a little fellow whose secretary lost her mother, and he figured out that the States could sue. A little fellow made it, and he came along and others joined with him.

We are now saying to these 40-some-odd attorneys general, ''You don't know what you're doing, you paid too much.'' We weren't even in on it. We didn't even help. But now in the end, we say, ''No, you can't have that, that's too much.''

They took the chance. How much did it cost? How much did they pay? Everything they have paid comes out of this hourly cap. I am sure that some lawyers do better than others. Lord, when I was in the insurance business, I would have loved to have had a boat. I had a johnboat I fished in, and I was proud of it. I had a decent automobile—I didn't have a jet to fly around in—but I was proud of it. I made it by being competitive. I went to the people who had an opportunity to give me a chance, and I asked them, ''Can I bid?'' We worked it that way.

The PRESIDING OFFICER. The 4 minutes yielded has expired.

Mr. FORD. I ask for 1 more minute.

Now we are saying you can't just do it. If there ever was an intrusion in private practice, private business—I am surprised at the Republican side. Ninety-eight percent of the farmers say we want it one way, and they say, ''You can't have it because you don't know what you're talking about.''

Lawyers go out and win a case, and they say, ''You've got too much by winning, we're going to take it away from you.''

I don't understand what this body is trying to do. I don't want you to take anything out of my pocket, but that is the name of the game, as I see it, and when you win, you win; when you lose, you lose. When you lose, you pay it all. When you win, you get to pay off what it cost you. You don't put all that in your pocket.

So I go back to the insurance business. We spent hours and hours trying to be competitive and win one. But we did not win them all. We lost a lot of them. But when we did win one, I would not want somebody coming along saying, ''You have made too much.''

It is like gambling. You have to pay—they had an amendment around here saying, ''If you win, you have to pay tax on it; but if you lose, you can't deduct it.''

Oh, we are doing pretty good around here, Mr. President. I hope that someday we can come down and have a little common sense and we can try to work this to the advantage of everybody in this country under the basis that we are competitive. It is a free system. And if you come out ahead, Lord, let's don't say, ''You made too much.'' Let us praise them for being good. The prize is being good. You made it work.

So we are saying, ''If you are good, you are going to be handicapped.'' That sounds like a horse race to me. I come from Kentucky. We race thoroughbreds. If you have one that is way out front, you better put 126 pounds on him. If you have one that is light, you put 112 or 114.

So that is what we are trying to do here. If you are a thoroughbred doing a

good job, we are trying to handicap you from running a race.

Well, Mr. President, I hope this amendment is not approved. I hope my friend from South Carolina wins on this one. Then we can get on to other things and help the farmers that have a tobacco quota. Let them win a little something in the days to come.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I would like to make a——

The PRESIDING OFFICER. Does the Senator from Alabama ask unanimous consent to use time from the Senator from North Carolina?

Mr. SESSIONS. I did not hear the President.

The PRESIDING OFFICER. The Senator from North Carolina controls time.

Does the Senator ask unanimous consent that he be allowed the use that time?

Mr. SESSIONS. Yes. I ask unanimous consent that I be allowed to use time from the Senator from North Carolina.

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

Mr. SESSIONS. Mr. President, I would like to mention a few things.

First of all, attorneys' fees do affect the settlement because it is money otherwise available to be paid by the tobacco companies that could be used for health of the children and the good things this bill seeks to do, for that money is directly usable for good things, and it ought not to be given away in unprecedented windfalls for attorneys, many of whom did little work.

I know the distinguished Senator from Minnesota said that his lawyers did a lot of work. And I think that is probably true. Perhaps the Minnesota attorneys have done more work than any other group of attorneys in the country. And they were paid, I believe, $450 million. That is not $2.8 billion. That is 5, 10 times what they made. So they did a lot of work in Minnesota, and they are going to get fees far less than this settlement would call for.

People say we should not mess with the contracts. But the other arguments from the people opposing the Faircloth amendment are: Don't worry about it. Florida reduced their fees. Although Texas hasn't yet, they may yet. And there are arbitration policies to reduce fees.

So they are already admitting it is appropriate to reduce these fees. And as was noted, we contain fees for doctors and lawyers and every other kind of litigation—on many other kinds of litigation in the country. And we are comprehensively dealing with a health problem that is significant.

Now, we are here setting about to pass legislation to control abuses by tobacco. And I submit we can control abuses by attorneys.

Let me make one more important point. With regard to this litigation, States have the right to opt out. They are not required to be bound by this and, therefore, the 10th amendment, in my opinion, would not be implicated. They could opt out and not be bound by this agreement.

But they have sought our legislation to comprehensively deal with this in a fair way. And that would call upon us, I submit, to contain the abuses of the attorneys fees.

Mr. President, I conclude my remarks at this time and recognize Senator ENZI from Wyoming, who I understand wishes to make remarks, unless our time has expired and you want to go back to your side, which you should be entitled to.

Mr. HOLLINGS. We only have about 7 minutes left. So you have a half-hour or more.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Does the Senator from Wyoming ask unanimous consent to take time from the Senator from North Carolina?

Mr. ENZI. I ask unanimous consent.

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

Mr. ENZI. Thank you, Mr. President. And I say thank you to the Senator from North Carolina.

Mr. President, I do rise to support the amendment numbered 2421 which is offered by the Senator from North Carolina, Senator FAIRCLOTH. I am very much in support of this amendment. And part of it is as a protection to the attorneys. I know they are very sensitive to the kind of reputation they get in a lot of instances, and this is one of those ''save the reputation of the lawyers'' amendments. I am sure a lot of people out there are not used to making $88,000 an hour, and as a result they are probably a little upset with the attorneys who might get that in some of these tobacco cases.

One of the things that people are seeing in this country is a new lottery. And this new lottery is one that requires you have an attorney to scratch your card for you. The tobacco situation is probably one of the new easy targets. In fact, I am predicting that the courts are soon going to be clogged with lawsuits, and part of that is because there are attorneys out there who can see this as a retirement bill as well as an easy target. It has been adjudicated, it has been worked, and it is easy to see that the tobacco companies have been hiding documents and doing a number of other things.

Along with these remarks, I want to state I am probably one of the few who has not received any money from the tobacco lobby. I have been very concerned about these issues. I grew up in a house where both of my parents smoked, and my dad paid probably the ultimate price for that, even though he quit before he passed away.

The amendment would only require lawyers to provide an accounting of their legal work to the Congress in relation to the legal actions that are covered by the underlying bill, including any fee arrangements entered into, and it would limit the payments of attorneys' fees to $250 an hour. That is not $250 an hour total for the firm; that is for the lawyers that are involved in this, and there may be more than one lawyer involved in it. So it isn't a complete limitation.

I have heard some comments that this may just be the start of limiting other kinds of occupations. Perhaps it is, and perhaps it ought to be. Again, I think the people would be appalled to find out that people might make up to $88,000 an hour. And that might not even be the highest case in it.

I do have to give some reference to the accountants who were mentioned. In accounting ethics, the amount that you charge cannot be based on what you find or the amount that you are working with. It is based on hours worked. We already have that kind of a limitation.

I don't know of any other occupation where you get to find a pot of money and then, without being injured or damaged in the case, be able to share in that pot of money. Usually you have to have some separate arrangement for it, some kind of a limitation. Part of that is to discourage greed.

What is happening with the tobacco bill is that there are some wealthy and connected trial lawyers that are lining their pockets from the settlement supposedly made on behalf of the American public. This bill would impose one of the most regressive taxes in American history with outrageous legal fees charged by insider lawyers, some of whom become billionaires as a result of their reputation for the States and class actions.

A document here mentions that the attorney general of Mississippi, Mike Moore, got to pick the No. 1 campaign contributor, Richard Scruggs, who received $2.4 million in fees for the State's asbestos litigation. Then he got to lead the Medicaid recovery suit.

Minnesota lawyers might want to know why Attorney General Humphrey chose Robins, Kaplan, with a 25 percent fee arrangement when Texas, Illinois, Indiana, and West Virginia all had lower percentages than that. They were the ones that had to do the harder work, the initial action.

The Wall Street Journal reported last fall that four lawyers who helped to settle Florida's billion-dollar windfall were now demanding 25 percent of the settlement, or $1.4 billion. Florida Attorney General Bob Butterworth has called that enough to choke a horse.

In Texas, Governor Bush has filed a legal challenge to the $2.3 billion contingency fee, part of the recent Texas settlement. He did that in the interests of the taxpayers who may end up paying for that.

This is not a defense of tobacco or the executives who run the industry. It is quite the opposite. In fact, I am getting a lot of comments from folks in my State. One lady said, ''Let's see now, the tobacco companies have been

abusing my body for all of these years while I have been smoking, and now you are going to punish them, and the way you are going to punish them is to tax me?''

They are figuring that out all over this country. It isn't the companies that are going to be paying the tab. In these lawsuits, it isn't the companies that are going to be paying the tab on that either. Sometimes it is the taxpayers.

In a lot of these lawsuits, it comes directly out of the amount of money that the individuals might have gotten. They don't have control over how much those lawsuits are going to be. If that amount of money holds for the State of Texas, those attorneys will earn $88,000 per hour for their legal representation. The American taxpayers are going to be left holding the tab for a number of outrageous fees.

I think it is proper for us, again, in defense of the legal institution, to limit those fees so people aren't seeing these as a lottery for attorneys where everybody else gets the pain and the attorneys get the dollars.

I ask that you support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield 4 minutes to the distinguished Senator from Tennessee.

Mr. THOMPSON. Thank you, Mr. President.

Mr. President, I rise in opposition to this amendment, not because I favor the underlying bill. I do not favor the underlying bill.

I want to specifically address this amendment and what is going on with regard to this amendment. We need to get back to the basic question of what we are all doing here, why we came here, and what we ought to be doing as U.S. Senators. We who pretend to call ourselves conservatives ought to really ask the question, whether or not we want to get into lawsuits that have already been decided pursuant to contracts that have already been executed between private practitioners of the law and sovereign States, and to go in and say that we are going to abrogate what you have done to private citizens agreeing to cases that have already been decided and say we will undo all of that. We, the Federal Government, we, the U.S. Senate, are going to get right into the middle of that and we are going to require you to send billing records to the Judiciary Committee that I sit on.

I did not come to the U.S. Senate to review billing records from lawyers in private lawsuits.

Now, we need to get away from deciding who the good guys are and the bad guys are and just jumping on the bad guys. Nobody likes trial lawyers. You heard a defense already about how great contingent fees are and they are necessary, and all that is true, and so forth. It is beside the point with regard to this. The point is really us. This particular amendment has nothing to do with the tobacco deal. This applies whether or not a company is making a deal with the government or not. It applies to Federal lawsuits. It applies to State lawsuits. This has nothing to do with the tax money we are going to be raising if this bill passes, which I will oppose. It is dipping into a completely different area that has nothing to do with the tobacco legislation because we feel like trial lawyers are getting fees that are too great.

Mr. President, I don't care what the trial lawyers get, if it is something that is agreed to by the parties and is something that is supervised by the courts. It has been pointed out that in one case in Florida the courts found that the fee was outrageous. That is the very point. If a court determines that a fee is outrageous, they can set it aside. It is regulated by the courts. It is regulated by the States. Every State in this Union regulates attorneys' fees. If it is outrageous, if it is not justified, people can take a claim to the States.

Should the Federal Government and should we on our side of the aisle, of all people, be urging the Federal Government to get into the middle of private lawsuits and deciding what fees ought to be in cases where there is a Federal court or a State court that has already decided, and has nothing to do with Federal legislation otherwise? I think that is tremendously bad policy.

I think this whole tobacco approach, quite frankly, is bad policy. I think this idea of taxing waitresses and cab drivers in order to give these same lawyers attorneys' fees of any kind is a bad idea. But the tobacco companies are bad guys, the trial lawyers are bad guys, and we are forgetting the principles that we came up here and are supposed to be supporting; that is, let the Federal Government do what they are supposed to be doing, let individuals have individual responsibility, let sovereign States make the laws, if they want to, and let private litigants go to court and fight it out before a jury of their peers.

Therefore, I oppose the amendment.

I thank the Chair.

Mr. GORTON. Mr. President, I approve the Faircloth amendment that seeks to limit attorneys fees in tobacco cases to $250 an hour. In addition to being impracticable—it makes the United States Congress bookkeepers charged with tabulating every lawyer hour in tobacco cases—the amendment simply is unfair. While $250 per hour may be just compensation in some cases, I do not agree that this arbitrary cap is appropriate in all instances.

Attorneys who took tremendous risks and initiated cases on novel theories deserve, I believe, to be compensated for more than those who filed the just-add-water complaints. Even late-coming attorneys in these groundbreaking cases deserve to be paid at least as much as the tobacco company lawyers. This amendment would not allow this, however, because, while the plaintiff lawyers who have not yet been paid would be subject to the cap, many tobacco company lawyers have already been paid an hourly rate that is significantly higher than $250 per hour.

While I strongly disagree with this one-size-fits-all approach, I share Senator FAIRCLOTH's concern with excessive attorneys fees. I suggest, however, that there are other methods and other limits that are far less burdensome on Congress, and will provide a more equitable outcome. I urge my colleagues to join me in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 15 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator has just under 20 minutes. Does he yield 15 minutes?

Mr. FAIRCLOTH. I yield 10 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say that I always enjoy hearing our colleague from Tennessee speak. I find myself agreeing with everything he said. But it really has no application to the bill which is before the Senate and the amendment which is submitted to that bill. I agree with the Senator from Tennessee. We ought not to be involved in these things. But that is what has brought us to the floor of the Senate today because we are involved in that. We are getting ready, as he said—his words are better than any words I could come up with—we are getting ready to tax waitresses and taxi drivers to collect $500 billion to $700 billion, which will be used, among other things, to pay lawyers.

So to lament that we are in this debate, I think, is something that I agree with but it is not relevant to the debate that is before us, which I want to be engaged in.

I spoke at some length this morning, so I don't need to repeat a speech I have already given. But, in watching this debate unfold, there are several issues that have been raised that I want to answer.

The first issue is we should not be setting fees. I want to ask the Senator from North Carolina a couple of questions, if I could have his attention. Are we not setting the equivalent of excise taxes to be paid by blue-collar workers all over America in this bill?

Mr. FAIRCLOTH. Absolutely we are.

Mr. GRAMM. Are we, in this bill, not setting out in detail, in fact in 753 pages of detail, how we are going to spend every penny of this $500 billion to $700 billion?

Mr. FAIRCLOTH. We have detailed every dime of the expenditure, and now we have opposition to detailing the attorney fees.

Mr. GRAMM. Mr. President, the point I make is that we have set out in detail how we are going to take $500 billion to $700 billion out of the pockets of blue-collar workers.

Let me remind my colleagues that 73 percent of this money will be collected

from people and families who earn less than $50,000 a year, and people who make less than $10,000 a year will see their Federal taxes rise by 41 percent as a result of this cigarette tax. That is set out in detail in the 753 pages of this bill. The 753 pages of this bill set out in detail how we are going to undertake the largest expenditure of taxpayer money since we initiated in the Great Society the year Lyndon Johnson became President, and each and every part is set out in here.

My answer to the question is we shouldn't. We shouldn't be setting these fees. The assertion is we are setting everything else. We are setting an excise tax equivalent. We are setting the expenditure in minute detail for everything else. The legal fees will arise from this settlement, which will be adopted by Congress and signed by the President.

So, if we are doing all of those things, why shouldn't we set fees? Obviously, we should.

Mr. FAIRCLOTH. Will the Senator from Texas yield for a question?

Mr. GRAMM. I would be happy to yield.

Mr. FAIRCLOTH. There is great conversation that we are going into these attorney settlements with tobacco companies; that that is wrong; that we shouldn't do that; we are interfering in a private contract. Yet, we are telling the tobacco companies, without any question, cancel your contracts in advertising, whether it is television, billboards, newspapers, racetracks. All those you cancel. You go back and retroactively do it. And because we are trying to set caps on attorneys' fees, they say we are interfering in the private sector. What is the other part of the bill?

Mr. GRAMM. I would say the argument is even stronger than that. The whole purpose of this 753 pages is to abrogate all of those court settlements. The whole purpose of this bill, the whole purpose of this 753 pages, is to interfere with each and every one of those court decisions. That is the whole purpose.

So if we are going to set out how we are going to collect the money, if we are going to set out how we are going to spend the money, should we not set out how we are going to spend the money that relates to the portion of the settlement that will go to attorneys' fees?

The second statement is we are abrogating contracts. Do we not have in this bill an arbitration panel that is supposed to set these legal fees? The answer is yes. We do. In fact, this bill sets out in some detail an arbitration panel that is going to set legal fees.

So the argument that by setting out in law what the maximum legal fee is we are abrogating the contract, that is a house we passed 15 miles down the road in this bill, because this bill sets up an arbitration panel to set the fees.

All the Senator from North Carolina is doing is saying, having decided that we are going to have fees set, let's let Members of the Senate stand up and cast a vote on this issue. Let's not hide behind some arbitration panel, which will be made up exclusively, I assume, of lawyers to make this decision.

What is really the issue here? The issue here boils down to this: We understand that when we are looking at a payment, which has been estimated—and I think correctly—at roughly $4 billion to attorneys, given the billing records on the cases that have been tried, that comes—there are about 45,454 hours—what this really comes down to is about $88,000 an hour as a potential payment.

Does anybody believe we would pass an appropriation bill paying some $88,000 an hour? Well, maybe some believe it. Maybe we would. But I think that you would be kind of embarrassed if you went back home and it became known that you were going to pay somebody more for working 3 hours than we pay the President of the United States for the entire year. I don't think so. Why do we have this kind of money in this bill? Because we are spending somebody else's money. Because as a prominent Democrat politician in my State said of this whole tobacco issue, ''We won the lottery. We won the lottery.''

All the Senator from North Carolina is doing is saying we are going to set the fee at five times the normal fee that is set. It seems to me that is imminently reasonable. As a matter of principle, if we were debating what our rules should be in this debate, my view is the States have settled these lawsuits and those settlements ought to stand. I believe that the Federal Government ought to be looking at Federal interests and letting the States settle these issues.

If that were the case, then I think setting this arbitrary cap would make no sense. But the point is that is not what we are debating. We are debating this great big, thick bill that goes back in and changes the settlement which sets out the amount of money that is going to be paid, which pays a payment to the States that is not directly related to what they settled for, which sets out in detail how we are going to spend this almost unbelievable amount of money, even for Washington, DC. The idea that we would do all these things and then we would suddenly get squeamish when it comes down to guaranteeing that we are not going to pay plaintiffs' attorneys $88,000 an hour, I think if we are suddenly going to become immodest about what we are doing in this bill, if shame is suddenly going to enter into our thinking, it is a little bit late at this point.

So I agree that this whole exercise has us doing things we ought not to be doing. But this is not my bill. I perfectly well understand this is not the bill of the Senator from Tennessee. His sentiments on the bill are the same as mine. I hope we can improve it. I hope we can find something we can all be for.

But I wanted to make my point, that to say we shouldn't be setting this fee when we are setting everything else doesn't make any sense. To say we shouldn't be abrogating contracts when the bill specifically abrogates contracts, it just does it through this arbitration board, which we shouldn't hide behind.

I think the choice is clear, and I am for the amendment.

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

Mr. GRAMM. If I have the time, I would.

Mr. FAIRCLOTH. I yield whatever time the Senator needs.

Mr. THOMPSON. I have a question. It seems to me that we both agree that we have a bill that we do not like and that we have an arbitration provision in that bill that we do not like. That legislation has not passed yet. The Senator says we are doing all of these things—we might; we might not; that has not passed.

Would it not be better for the Senator from Texas and me to join in trying to defeat that arbitration provision and trying to defeat that bill instead of adding to a bad provision an even worse provision that goes against our principles, that gets us involved in private litigation, and that causes people to have to send billing records up to the Judiciary Committee where we go through and try to justify some kind of an hourly rate?

Mr. GRAMM. Let me respond to the Senator's question. Generally, the case goes directly to the heart of the matter. If I thought that we could correct every problem with the bill, then I don't think there would be a need for this amendment. But my concern is that, given that anyone who opposes the bill is immediately tarred as being the lackey of the tobacco industry, given the head of steam, at least outside the beltway that the bill has, I am not confident we can correct it, and if the bill ends up passing so that my 85-year-old mother has to pay more for her cigarettes, which I wish she would quit smoking, I would at least be able to say that we guaranteed that no plaintiff's attorney is buying a Lear jet with that money.

So this amendment will make the plaintiffs' attorneys millionaires but it will not make them billionaires.

Now, should we have the power to stop them from being billionaires? If this were a State matter and we were not involved in it, my answer would be no. But this bill is a preemption of all those State settlements, so how can we do all those other things, set out in detail where the money is coming from and how it is going to be spent, and then leave the potential that we are going to be reading in the newspaper next month that a plaintiff's attorney got $88,000 an hour from the tax imposed on blue-collar workers? I don't want to risk that happening. That is why I am for the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. I yield 5 minutes to the Senator from Kansas, Mr. BROWNBACK.

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

Mr. BROWNBACK. Mr. President, I thank the Senator from North Carolina for yielding me 5 minutes. I want to stand up and speak on behalf of Grandma Gramm, that her money not go to lawyers as well.

Mr. President, I have been following this debate back in the office. I followed it for some period of time. I serve on the Commerce Committee. I initiated this debate in the Commerce Committee and discussed it there. It seems as if the points have been pretty well made, pretty significantly made and repeated in the true tradition of the Senate about five times, so we all get it pretty clearly.

One thing that I want to point out, though, at this juncture, because the debate has been engaging, is whether or not the Senate should set legal fees, whether we should get involved in this. And I generally, as a principle, would say no, we should not, but the fact is, in this bill we already are setting legal fees. We are setting them in this bill. And so to the extent that we are going to set them, I think the only question for us to ask ourselves is how much.

Should it be nearly $100,000 an hour or should it be $250 an hour? As to the question of whether or not we are setting legal fees, they are being set in this bill. In this bill, we are providing the money. We are setting in place the mechanism to give this money to the trial lawyers.

That is happening. I don't care how you cut it. That is what happens if this bill passes. If this bill doesn't pass, that doesn't happen. We are setting the amount the lawyers are going to get. The only question that remains is how much per hour is good compensation.

Now, I understand the good Senator from South Carolina. He and I debated this in the Commerce Committee. He thinks they are entitled to whatever they can get because they were the ones willing to put forward this litigation. They were the ones willing to put themselves on the line. They were the ones willing to say, I am going to go out here, and I may not get a dime or I may hit the jackpot. I hit the jackpot.

So they are entitled to get that. I understand that. But I can't vote for that. I can't in the Senate say I am going to tax the people so that we can transfer $100,000 per hour in legal fees.

I think Grandma Gramm would say $250 an hour is too much, too, but it is a lot closer and a lot better than $100,000 per hour. And this bill sets those legal fees. No matter how you cut it, it puts the money in place to set those legal fees. Without this bill, that money doesn't go. With this bill, that money does go to lawyers. So it is only a question of how much. I just ask my colleagues to look at it. Which is the more appropriate figure, $100,000 an hour or $250 an hour?

With that, everything having been said four or five times, I yield back the remainder of my time to the manager of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. How much time do I have remaining?

The PRESIDING OFFICER. Three minutes 45 seconds.

Mr. HOLLINGS. Mr. President, if there was any real sincerity or concern about money—and, incidentally, I never have seen my Republican friends ever worry about people making money. You all really are worried about people making money? Come on. You know and I know they would come in here and say, here is the head of Philip Morris—and I got all these things, billable hours—$85,779,000 with stock options there. That is his pay, according to the Wall Street Journal.

But I can play that game of so much an hour. Let's talk about the 5 years with nothing an hour. ''He either fears his fate too much or his dessert is small,'' we say in the practice, ''to fail to put it to the touch and win or lose it all.''

And the lawyers in Florida, in Texas, in Minnesota—nothing an hour as of now. Instead of a jackpot, they are hitting a hijacking on the floor of the Senate by a crowd that is trying to make TV shorts that HOLLINGS is in the pocket of the trial lawyers. The truth of it is, I am trying to get into their pocket. I can tell you that right now. And I might succeed. I got some names here from the different Senators around that seem to know them better than I do.

But in any event, the comeuppance is that blood, sweat, and tears. There isn't any question about it, by gosh, when you take the little lady who came in, and they decided to bring the case, and he got his friends in and they worked it. And I asked them. I said, ''I saw one account they had $5 million invested in the Mississippi case.'' They said, ''Well, they got that from the asbestos cases and everything else.'' Maybe that is what it is; the Chamber of Commerce just doesn't like class actions. But that is cleaning up bad medical devices, the implants, the asbestosis, and now cleaning up tobacco.

This is not a billable hours thing. They haven't got billable hours. Zero hours, 1993; zero hours, 1994, 1995, 1996, 1997, 1998. They haven't gotten a dime. And you all are trying to hijack them on what has been agreed to by the attorneys general, by the Governors, by the clients and everything else, preying around like vultures on agreements made. Ex post facto now, they want to come in and show how concerned they are. If you had been concerned, you would have done something about it. I have been up here 30 years, and they haven't done anything other than put the ad on a packet of cigarettes.

Now we have somebody who has brought tobacco to the bar of justice, and they haven't gotten anything yet—zero hours. And yet you all want to come in here and play this game about you are all worried about who is getting the money.

Mr. President, it is absolutely ludicrous for this group to come in. It is another design. It is just that you take a poll. They don't like lawyers in the poll, so they make the little TV short in the campaign this fall and they say so-and-so is in the pocket of the trial lawyers, yak, yak, yak, and everything else of that kind. But I will show where the attorneys general and the Governors and the parties all agreed and the work did it. And we didn't do it up here in Washington. Now is no time to come in here and start preying on people on an agreement that has already been made.

The PRESIDING OFFICER. All time yielded to the Senator from South Carolina has expired.

The Senator from North Carolina.

Mr. FAIRCLOTH. How much time do I have?

The PRESIDING OFFICER. Three minutes 9 seconds.

Mr. FAIRCLOTH. I yield 2 of those minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, we are looking at a situation that is literally intolerable. It is not acceptable to have these kinds of fees. I know contracts were entered into, but nobody expected it to break the way it did. We have law firms in States that literally did only a few weeks' worth of work; States are going to recover billions of dollars, and they are going to get 15, 20, 25 percent of that recovery. We already have provisions in this bill, agreed to by the President and the trial lawyers and the members of the other party, to contain some of these fees in a poor and ineffective way. I say if we can do it that way, let's do it straight up. Let's have a fair fee per hour: The more hours you work, the more money you get paid. We have evolving all sorts of contracts in this case and abrogating them, and we can certainly make a rational agreement on attorneys' fees.

I yield the floor.

Mr. FAIRCLOTH. I thank the Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. We have been on this now for several hours, and we have come down to two things: Should we abrogate contracts or not? They say they are contracts with these attorneys, they have made these contracts. Well, maybe they have. But we are writing 750 pages of law abrogating contracts that the tobacco companies have written with advertising agencies, every condition conceivable. It is 750 pages of abrogating contracts.

Now, if anyone can sit here and tell me that they believe that $88,000 an hour, which is the established fee on the Texas attorneys, is a reasonable fee, now, this is being paid by taxpayers' dollars; we are collecting this

money from the working people. Seventy percent, as has been said by Senator GRAMM and many others, 70 percent of it is coming from people making less than $40,000 a year. This is Federal tax dollars. It might not have started out to have been Federal tax dollars, but that is what it has become when we tax cigarettes and put the tax on these people.

When I look at the reality, as I believe was mentioned by Senator GRAMM, when a Texas lawyer makes in 3 hours more than the President makes in a year, and a Texas lawyer makes more in an hour and a half than a U.S. Senator makes in a year, there is something wrong with the system. We might not be that good, but we aren't that bad.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator's time has expired.

Mr. HOLLINGS. Mr. President, under the agreement I move to table the amendment. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion by the Senator from South Carolina to lay on the table the Faircloth amendment, No. 2421.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mrs. BOXER (when her name was called). Present.

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 39, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—58

Akaka	Feinstein	Mikulski
Baucus	Ford	Moseley-Braun
Bennett	Glenn	Moynihan
Biden	Gorton	Murray
Bingaman	Graham	Reed
Breaux	Harkin	Reid
Bryan	Hatch	Robb
Bumpers	Hollings	Rockefeller
Cleland	Inouye	Roth
Cochran	Jeffords	Sarbanes
Collins	Johnson	Shelby
Conrad	Kennedy	Smith (OR)
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thompson
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	
Feingold	Lieberman	

NAYS—39

Abraham	Enzi	Kempthorne
Allard	Faircloth	Kyl
Ashcroft	Frist	Lugar
Bond	Gramm	Mack
Brownback	Grams	McCain
Burns	Grassley	McConnell
Byrd	Gregg	Murkowski
Campbell	Hagel	Nickles
Chafee	Helms	Roberts
Coats	Hutchinson	
Coverdell	Hutchison	
Craig	Inhofe	
Santorum	Snowe	Thurmond
Sessions	Thomas	Warner

ANSWERED ''PRESENT''—2

Boxer Lott

NOT VOTING—1

Smith (NH)

The motion to lay on the table the amendment (No. 2421) was agreed to.

Mr. HOLLINGS. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, it is now our intention——

Mr. FORD. I apologize to the chairman. Could we have order? The Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mr. MCCAIN. Mr. President, I have several comments to make.

First of all, it is time we started getting a list of the amendments. So we would appreciate it if on both sides we could have Members get their amendments so that we could start in the process, as we always do, of narrowing down the amendments and seeing which can be agreed to and start looking at time agreements.

Mr. President, the second thing I mention is that we will now be going, as we have agreed amongst us to go, to the other side for an amendment. It is my understanding that amendment will be the issue of raising from $1.10 to $1.50 a pack. We would like to work on a unanimous consent agreement so that it would read that there would be the amendment relative to $1.50, and no second-degree amendments be in order to the amendment prior to the motion to table. Further, we would ask if the amendment is not tabled, it be open to relevant second-degree amendments, and the time between now and that time to be determined be equally divided, with a vote occurring on or in relation to the amendment.

The Senator from New Hampshire wants assurance as to when his amendment will be considered. We are trying to work that out with the majority leader. I know there are people on the other side who also want assurances for their amendments. I believe the Senator from Missouri, Senator ASHCROFT, is also looking for the same. But it would be our intention at this time, after the usual formalities, to move to the amendment on that side.

Mr. NICKLES. Will the Senator yield?

Mr. MCCAIN. I am glad to yield to the Senator from Oklahoma.

Mr. NICKLES. Just for the Senators' information, now the Senate just had a vote on limiting legal fees. That probably is not the only vote that we are going to have on that issue. And the Senator managing the bill, I compliment him for doing a very good job.

I might mention, some of us also have statements we would like to make on the bill. We have been on the bill now for a day. This is a very extensive, expensive bill. Some of us wish to speak on the bill. We wish to tell our constituents what is in this bill, maybe why we have some concerns, maybe so we might be able to influence people on how various amendments might go.

But I just tell my friend and colleague from Arizona, certainly the idea of going back and forth on amendments is acceptable, I think, for all Senators certainly on this side. But in all likelihood, there will be additional amendments dealing with the issue we just debated.

Mr. MCCAIN. I say to my friend from Oklahoma, I greatly fear there are lots of amendments right now that are being contemplated on both sides. That is why I think we have to start through this process.

I ask Members on this side to provide us with their amendments—so we can start through this process.

Mr. HOLLINGS. We are prepared on this side with the Kennedy amendment.

Mr. MCCAIN. IT IS STILL OUR DESIRE TO FINISH THIS BILL BEFORE THE WEEKEND.

I yield the floor.

Mr. GREGG. Reserving the right to object. Is the unanimous consent request propounded?

Mr. MCCAIN. No.

The PRESIDING OFFICER. There is no unanimous consent request.

Mr. GREGG. Mr. President, do I now have the floor?

The PRESIDING OFFICER. Yes.

Mr. GREGG. Mr. President, since I have the floor, I understand there is some comity here on amendments back and forth. But what I would like is to get an understanding, as we move through this process, that those of us who have amendments which have some impact on this bill and which need some time to be debated are going to get a commitment for time and a place when they will be brought up.

I can offer my amendment at this time. It is not my inclination to do that, if I can get an understanding without losing the floor that I am going to get a time to bring up my amendment.

I ask the leader of the bill if he would be willing to agree—and opposing side—if they would be willing to agree that the amendment on immunities, which I think everybody is familiar with and is sponsored by myself and Senator LEAHY, would be available to be brought up at a time specific on Thursday so that there will be a reasonable lead time here, and that time would be at 10 o'clock, assuming that is agreeable to everybody and we have 3 hours on that amendment and no second-degrees be in order and we proceed to vote on it.

Without that sort of an assurance, I am going to offer my amendment at this time.

Mr. DOMENICI. Will the Senator yield?

Mr. GREGG. I will not yield the floor, but I yield for a question. I yield to the Senator from New Mexico for a question.

Mr. DOMENICI. Senator GREGG, doesn't it seem like this is a very important bill? I gather that it is probably, in one fell swoop, adding more money to government than anything we have ever done in any single bill in modern history. Don't you think we have rules and we ought to take our time and do this in a normal manner that befits the Senate for one of the most important spending bills that we have had in decades?

Mr. GREGG. I think that is probably true. The Senator from New Mexico is accurate. The normal manner is to offer my amendment at this time, since I have the floor.

I am willing to wait until Thursday to do that if I get assurance——

Mr. MCCAIN. Will the Senator yield?

Mr. GREGG. I yield.

Mr. MCCAIN. Let me mention, the Senator and I just had a conversation where I said he would achieve his goal of a date certain for his amendment and he said he would agree to a time agreement.

Mr. GREGG. If I have the representation of the Senator from Arizona that sometime on Thursday, hopefully early in the day, we will get this amendment up, it will have a reasonable amount of time and will not be subject to second-degrees, to the extent if that is in the capacity of the Senator from Arizona, and the representation from the other side that that is possible, I am perfectly happy to go forward.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. May I say in response to the Senator from New Hampshire that it has been the custom in this body to go from one side to the other with amendments to start with. We just finished with an amendment from this side and would like to move to that side.

I, again, assure the Senator from New Hampshire that the only reason I cannot assure him right now is the majority leader is making these decisions, but I can assure him that the amendment will be considered. I will work on having it done sometime in the next 48 hours, with a reasonable time agreement, if that is reasonable to the Senator from New Hampshire.

Mr. GREGG. I think that is probably a reasonable statement from the Senator from Arizona, who has a fine reputation in this institution, and I will yield the floor.

Mr. MCCAIN. Mr. President, we need to move forward. I would like to move forward with an amendment, and I hope my colleagues would show that comity. It is the other side's turn.

I ask that after my friend from Texas makes any comment, if we could move forward. I yield for a question.

Mr. GRAMM. Mr. President, first of all, going back from one side to the other is the practice when we have a unanimous consent agreement. The Senate procedure is recognizing people who, in a timely fashion, ask to be recognized, and they are the first on their feet and they are recognized.

I went to great effort to try to see that no one objected to bringing the bill up, because I think the bill needs to be debated and I think we all need to be educated. But I am not going to agree to a time limit on an amendment that I have not seen, nor am I going to agree to not having a second-degree amendment on an amendment that I have not read, nor am I in any way going to limit my ability as one Member of the Senate to have a full debate. So I would be happy to have the Senator be recognized to offer his amendment tonight if we want a gentleman's agreement. It is a major amendment. If the Senator wants to require some debate, we will want to look at it and see if we want to second degree. We may or may not agree tomorrow to having a time limit on it.

Not having seen the amendment and not knowing exactly where we are, I just say to the Senator from Arizona, I am ready to move ahead. I would be happy to have the Senator recognized but I am not ready to waive my right and the right of every other Senator to a full debate to offer second-degree amendments. I want to put people on notice of that.

Mr. MCCAIN. Let me say—I believe I have the floor—that is exactly what we are doing. I just wanted to allow the other side to propose an amendment and then we will work on making sure everybody has their views and this amendment is debated and discussed thoroughly, and then we would look forward, obviously, to a time where we could vote on the issue.

Mr. KERRY. Mr. President, if I could say to colleagues, there has been a request for some colleagues to be able to speak on the bill. Last night, we were here for a period of time and there weren't many Senators here. Again, tonight, depending on the time that Senator KENNEDY is engaged in debate, there will be time, I am confident, for people to be able to speak on the bill. So I hope that Senators who have that desire will take advantage of that.

Secondly, I think there has been no effort whatever to try to limit the debate at this point. It is rather an effort to try to gather all the amendments, find out what the second-degree amendments are, share them with everybody on both sides, and have a sense of how we can proceed in an orderly fashion.

But as colleagues know, the manager of the bill could have come to the floor, filled a tree, held the floor, gone through an alternative process. We are trying to avoid that, trying to do this in a cooperative, bipartisan way, moving from side to side, recognizing the needs of a lot of Senators to be heard. So we hope Senators will take advantage of that.

The Senator from Massachusetts wants to be recognized now as the next Senator to propose an amendment.

Mr. NICKLES. Mr. President, I will be very brief. I am not trying to delay my colleague from Massachusetts.

I am telling my colleague from Arizona—and actually I told him in private what my colleague from Texas just said—I am not going to agree to a unanimous consent. This proposal was to vote on a $1.50 tax increase, and vote on or in relation to the amendment at 10 a.m. tomorrow morning. I am not going to. That is one of the largest tax increases in history. It says no second-degree amendments. Some of us aren't quite ready to go quite that fast.

This idea of saying submit all your amendments—I am working on a bunch of amendments, but I will tell you we just got the bill last night. We were being pretty collegial saying we are not going to object to going to the bill. We could have tied the Senate up for 3 days and had more time to study the bill. Some of us need time to study the bill. Some of us are reading the bill and there are interesting things to find.

On the first day the bill is on the floor to say we will have an amendment introduced at 6 p.m. and we will vote tomorrow morning at 10 a.m. on the largest tax increase, without giving us a chance to offset it, without giving us a chance to amend it, I think is a serious mistake.

Now, we are not going to be railroaded. It takes unanimous consent to pass this kind of amendment or get this kind of agreement. I told my good friend from Arizona he is not going to get it. So we can have the debate. We need to have the debate. We need to talk about whether this is a tax increase or price increase. I think we need to study this thing a little bit further and not try to railroad it through the Senate.

I am happy to yield to my friend from Utah.

Mr. HATCH. This is not some itty-bitty bill. This involves as much as $860 billion, according to some.

Is the Senator aware of that?

Mr. NICKLES. Yes, I am.

Mr. HATCH. Is the Senator aware that there are all kinds of viewpoints about this bill?

Mr. NICKLES. Absolutely.

Mr. HATCH. On both sides of the floor.

Is the Senator aware that, frankly, there is no way of getting voluntary protocols under this bill that would resolve the constitutional issues involved in this bill, especially with regard to the look-back provisions, the ban on advertising, and other issues?

Mr. NICKLES. I appreciate my colleague's remarks, the chairman of the Judiciary Committee. I know he has had hearings on at least tobacco legislation. I don't know that anybody has had hearings on this bill.

Right now we are being asked to vote on some of the most significant amendments of this bill and we really have

had very little time to even debate the general provisions of the bill, to maybe ask the sponsor of the bill and the proponents of the bill to explain some sections.

Just to give you an example, there is a look-back provision. The Senator from Utah said maybe it is unconstitutional. There was a look-back provision that was added that wasn't passed out of the Commerce Committee and that wasn't passed out of the Finance Committee. It was just added. It was introduced last night. The look-back provision says we are going to do sampling and find out. If we don't meet the target for teenage consumption, as specified, there will be a penalty of $1,000 per teenager who smokes specific brands.

It looks very bureaucratic and, frankly, unworkable to this Senator.

Mr. HATCH. Will the Senator yield?

Mr. NICKLES. Yes.

Mr. HATCH. I have to tell the distinguished Senator from Oklahoma that we had constitutional experts come in and say there is no way that look-back provision is constitutional. They are also saying that, of course, they tried to cure the advertising restrictions by adopting the FDA regulation. But we have top-flight, from the left to the right, constitutional experts saying that is unconstitutional.

Then, last but not least, we have a section 14 on here that basically talks about the other advertising restrictions that almost everybody agrees are essential if we want to do something about teen smoking, and, by gosh, those other advertising provisions have got to have a voluntary protocol, have to have the tobacco companies on board in order to be effective, or they are unconstitutional. What are we going to do? Vote for an unconstitutional bill, or work on it, and work, as the Senate should, on a bill that could amount to as much as close to $900 billion?

Mr. NICKLES. I appreciate the Senator's comments. I will yield the floor in just a moment. I just make the comment to my good friend and colleague, I stand willing to work with him. I have no intention of unduly delaying. I know my colleague from Massachusetts has an amendment to increase—I don't know if it is taxes or fees of $1.50. I know there are other amendments dealing with the taxes, or the fees, and we need to address those. We can do so. I just do not think we can do it in that short of a timeframe that was proposed.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MCCAIN. Mr. President, I believe I have the right of first recognition.

The PRESIDING OFFICER. The Senator from Massachusetts has been recognized.

Mr. KENNEDY. The Senator from Arizona, as I remember, had the floor.

Mr. MCCAIN. Mr. President, I seek recognition. I thank the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Just a brief comment: I thank the Senator from Oklahoma for his concerns, and the Senator from Texas, the Senator from Utah as well. We would like to get amendments together so we can move forward. I understand the concerns. They have been made to me, and on this floor. We look forward to a vigorous debate.

I thank the Senator for his willingness to work, all of us together. I thank the Senator from Massachusetts for his indulgence.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

AMENDMENT NO. 2422 TO MODIFIED COMMITTEE SUBSTITUTE

(Purpose: To modify provisions relating to industry payments)

Mr. KENNEDY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY), for himself, and Mr. LAUTENBERG, Mr. CONRAD, and Mr. GRAHAM proposes an amendment numbered 2422 to the modified committee substitute.

The text of the amendment reads as follows:

Beginning in section 402, strike subsection (b) and all that follows through section 403(2) and insert the following:

(b) ANNUAL PAYMENTS.—Each calendar year beginning after the required payment date under subsection (a)(3) the participating tobacco product manufacturers shall make total payments into the Fund for each calendar year in the following applicable base amounts, subject to adjustment as provided in paragraph (4) and section 403:

(1) For year 1—$14,400,000,000;

(2) For year 2, an amount equal to the product of $1.00 and the total number of units of tobacco products that were sold in the United States in the previous year.

(3) For year 3, an amount equal to the product of $1.50 and the total number of units of tobacco products that were sold in the United States in the previous year.

(4) For year 4, and each subsequent year, an amount equal to the amount paid in the prior year, multiplied by a ratio in which the numerator is the number of units of tobacco products sold in the prior year and the denominator is the number of units of tobacco products sold in the year before the prior year, adjusted in accordance with section 403.

(c) PAYMENT SCHEDULE; RECONCILIATION.—

(1) ESTIMATED PAYMENTS.—Deposits toward the annual payment liability for each calendar year under subsection (d)(2) shall be made in 3 equal installments due on March 1st, on June 1st, and on August 1st of each year. Each installment shall be equal to one-third of the estimated annual payment liability for that calendar year. Deposits of installments paid after the due date shall accrue interest at the prime rate plus 10 percent per annum, as published in the Wall Street Journal on the latest publication date on or before the payment date.

(2) RECONCILIATION.—If the liability for a calendar year under subsection (d)(2) exceeds the deposits made during that calendar year, the manufacturer shall pay the unpaid liability on March 1st of the succeeding calendar year, along with the first deposit for that succeeding year. If the deposits during a calendar year exceed the liability for the calendar year under subsection (d)(2), the manufacturer shall subtract the amount of the excess deposits from its deposit on March 1st of the succeeding calendar year.

(d) APPORTIONMENT OF ANNUAL PAYMENT.—

(1) IN GENERAL.—Each tobacco product manufacturer is liable for its share of the applicable base amount payment due each year under subsection (b). The annual payment is the obligation and responsibility of only those tobacco product manufacturers and their affiliates that directly sell tobacco products in the domestic market to wholesalers, retailers, or consumers, their successors and assigns, and any subsequent fraudulent transferee (but only to the extent of the interest or obligation fraudulently transferred).

(2) DETERMINATION OF AMOUNT OF PAYMENT DUE.—Each tobacco product manufacturer is liable for its share of each installment in proportion to its share of tobacco products sold in the domestic market for the calendar year. One month after the end of the calendar year, the Secretary shall make a final determination of each tobacco product manufacturer's applicable base amount payment obligation.

(3) CALCULATION OF TOBACCO PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAYMENT.—The share of the annual payment apportioned to a tobacco product manufacturer shall be equal to that manufacturer's share of adjusted units, taking into account the manufacturer's total production of such units sold in the domestic market. A tobacco product manufacturer's share of adjusted units shall be determined as follows:

(A) UNITS.—A tobacco product manufacturer's number of units shall be determined by counting each—

(i) pack of 20 cigarettes as 1 adjusted unit;

(ii) 1.2 ounces of moist snuff as 0.75 adjusted unit; and

(iii) 3 ounces of other smokeless tobacco product as 0.35 adjusted units.

(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a smokeless tobacco product manufacturer's number of adjusted units shall be determined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

(C) ADJUSTED UNITS DETERMINED ON TOTAL DOMESTIC PRODUCTION.—For purposes of determining a manufacturer's number of adjusted units under subparagraph (B), a manufacturer's total production of units, whether intended for domestic consumption or export, shall be taken into account.

(D) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a tobacco product manufacturer has more than 200 million units under subparagraph (A), then that manufacturer's number of adjusted units shall be equal to the total number of units, and not determined under subparagraph (B).

(E) SMOKELESS EQUIVALENCY STUDY.—Not later than January 1, 2003, the Secretary shall submit to the Congress a report detailing the extent to which youths are substituting smokeless tobacco products for cigarettes. If the Secretary determines that significant substitution is occurring, the Secretary shall include in the report recommendations to address substitution, including consideration of modification of the provisions of subparagraph (A).

(e) COMPUTATIONS.—The determinations required by subsection (d) shall be made and certified by the Secretary of Treasury. The

parties shall promptly provide the Treasury Department with information sufficient for it to make such determinations.

(f) NONAPPLICATION TO CERTAIN MANUFACTURERS.—

(1) EXEMPTION .—A manufacturer described in paragraph (3) is exempt from the payments required by subsection (b).

(2) LIMITATION.—Paragraph (1) applies only to assessments on cigarettes to the extent that those cigarettes constitute less than 3 percent of all cigarettes manufactured and distributed to consumers in any calendar year.

(3) TOBACCO PRODUCT MANUFACTURERS TO WHICH SUBSECTION APPLIES.—A tobacco product manufacturer is described in this paragraph if it—

(A) resolved tobacco-related civil actions with more than 25 States before January 1, 1998, through written settlement agreements signed by the attorneys general (or the equivalent chief legal officer if there is no office of attorney general) of those States; and

(B) provides to all other States, not later than December 31, 1998, the opportunity to enter into written settlement agreements that—

(i) are substantially similar to the agreements entered into with those 25 States; and

(ii) provide the other States with annual payment terms that are equivalent to the most favorable annual payment terms of its written settlement agreements with those 25 States.

SEC. 403. ADJUSTMENTS.

The applicable base amount under section 402(b) for a given calendar year shall be adjusted as follows in determining the annual payment for that year:

(1) IN GENERAL.—Beginning with the fourth calendar year after the date of enactment of this Act, the adjusted applicable base amount under section 402(b)(4) is the amount of the annual payment made for the preceding year increased by the greater of 3 percent or the annual increase in the CPI.

(2) CPI.—For purposes of subparagraph (A), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(3) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of $1,000, the increase shall be rounded to the nearest multiple of $1,000.

Mr. KENNEDY. Mr. President, I want to express my appreciation to the Senator from Arizona, who, as I understand, was trying to work out a decent process so that we might debate this during the course of the evening, and then at least work out some process where we could have a fair allocation of balance in terms of time as we debated it tomorrow. I hope those who support that position would, if we don't get a formal agreement, at least follow that process tonight and also in the morning. Then the leaders and those who are interested in either extending debate, or amendment, or whatever they want to, will proceed and will obviously have the right to do it.

I want to thank the Senator from Arizona, who was trying in his conversations with us to work out a process so there could be an adequate time for debate and discussion, and also balance in terms of time between those who favor this position and those who are opposed to it.

I want to express our appreciation to all of our Members for the opportunity of raising this issue with my friend and colleague from New Jersey, Senator LAUTENBERG, who has been one of the really important leaders here in the Senate on the tobacco issues; also, our friend and colleague, Senator CONRAD, who has been the chair of a task force on the tobacco-related issues, and has been really tireless in terms of developing a command of this issue, and has also been tireless in trying to work out bipartisan support, not just on this issue but on other issues as well; our friend, Senator DURBIN, who has been so involved in this issue, in particular on the price, as well as a number of my other colleagues; my colleague from Massachusetts; Senator REED; and so many others. I am grateful to all of them.

We look forward over the period of these next several hours and hopefully at a time during tomorrow morning to be able to present this issue to the U.S. Senate.

We are very mindful that only a few hours ago, just a few yards from where we gathered this evening, we had the good opportunity to be with Dr. Koop, who is really the foremost public health official in this country and who has been such a leader in protecting the children in this Nation on this issue, as well as many others. I think that all of us who were gathered there were impressed that Dr. Koop was speaking on behalf of all of the public health community. It was really a singular voice in which he spoke for all of the public health communities. We can spell out the reasons why as we get into the debate and discussion on this issue. He was speaking not as a partisan, not as a Republican, not as a Democrat, but for all Americans, because that is what his service has been to this country as our Surgeon General. He has been the defender of the public health, and also as one who is a keen analyst as to what has been the real strategy of the tobacco industry over the period of these past years, who recognized what their strategy was in order to meet their financial requirements, that it was going to have to make a particular appeal to the children in this country.

He spelled that strategy out long before it became evident as a result of the various publications of various documents that have been made available to the American people during the process of the various State suits. He is really one of the great giants.

I took the opportunity at that time to thank him for his strong support of an amendment that was going to raise the price of a package of cigarettes to $1.50, because this would mean anywhere from 750,000 to 900,000 young people who would not be engaged in smoking and anywhere from 250,000 to about 300,000 young people children who would not die a premature death.

I thanked Dr. Koop on that occasion for the families. I thanked him for the children who would not have the addiction. I thanked him for their parents because their children would not be addicted. I thanked him, for all Americans, for his willingness to take a stand on this issue.

Mr. President, the amendment we are bringing here this evening is not an issue which is strange to the Members of this body over the period of these past weeks and months. I think all Americans have probably had the opportunity to listen to the public health community, represented, as I said, by Dr. Koop, and Dr. Kessler, and the representatives of many of those that have been afflicted with the kinds of illnesses and diseases that have been caused by addiction.

We have heard the uniform appeal—the uniform appeal of all of those who have really studied this issue in any detail—that if we are going to have a significant impact on reducing the addiction of children in our country, the best way to do this is by having an increase in the cost per pack of cigarettes, and to do it in a timely way.

By ''in a timely way,'' we mean doing it rapidly. We have devised this amendment to be a stepped-up process over a period of 3 years. There are others who have favored a $1.50 increase a pack in a 2-year period. We have accepted that particular challenge and followed their guidance. This amendment, more than any other proposal or amendment that is going to come in this Chamber, is motivated by protecting the children of this country. That is the reason behind this amendment, clear and simple. If you are interested in public health, you support this amendment. If you are interested in protecting children, you support this amendment. If you are interested in doing something about the problems of addiction and children, you support this amendment. If you are interested in trying to provide some limitation on children being involved in gateway drugs, you support this amendment.

For all of these reasons and many more, this is a compelling amendment, and it is supported overwhelmingly by the American people, by families all over this Nation, Republican and Democrat, North and South alike. We will have the charts available that will indicate what the various data reflect. That is important and useful perhaps for some.

But what we are motivated by and why we are offering this amendment is because of public health. Those who have studied this issue in terms of children believe that this is the first and most important step we can take to reduce the smoking addiction of children.

This chart, Mr. President, points out very quickly and easily for the benefit of the Members the number of children who will be deterred from smoking by an increase of $1.10, 3 million; $1.50, 3,750,000. The difference of the proposal that is in this Chamber will be 750,000. That is what we are talking about by accepting this particular amendment. We will come back to elaborate on that

in a while. We are talking about the number of children whose lives will be saved by the cigarette price increase. We are talking about 125,000 who will have an early death.

I think one of the questions we are going to be asked sometime during this debate is, well, this is fine and well that you talk about increasing the cost per pack to $1.50, but how do we know this is really going to have the impact that you are stating here this evening?

We will have a chance again either later tonight or tomorrow to go through a number of the public health reviews and the studies and the testimony that has been taken by a number of the committees over the period of these past weeks. We have had a number of committee hearings on this very issue. But perhaps one of the most impressive factors has been what happened with the significant price increase in our neighboring country of Canada that moved up to a $5 per pack price increase in 1991 and what happened to youth smoking over that period of time. You see the dramatic reduction of youth smoking as a result of the significant increase in the price of cigarettes.

I hope we will not have to take a great deal of time to review that particular phenomenon. It is irrefutable. It is absolutely irrefutable. The public health information is irrefutable; that with a dramatic and significant increase in the price we see a significant reduction in youth smoking. This is one of the clearest examples to demonstrate what we hope will be achieved.

We have set a goal of a 60-percent reduction in youth smoking over 5 years by increasing the price per pack of cigarettes. That is a national goal, and that has been one that has been stated and reaffirmed by many, even those who do not support this particular proposal. The only way we will get the 60-percent reduction over the 5-year period is by going to $1.50 per pack. That is basic and that is fundamental. But I just mention here that after a period of time we saw there was a growth in terms of the black market in Canada.

Mr. President, 85 percent of the Canadian people live proximate to the United States. There was an increase in smuggling, and there was a decision that was made by the Government of Canada to basically leave it up to the Provinces as to whether they were going to maintain their increase in the higher cost per pack. So they left it up to the particular Provinces, and the result from leaving it up to the Provinces is in the Provinces that maintained the higher cost, we saw the continuation of a significant reduction in youth smoking—a significant reduction.

We will have a chance perhaps, if necessary, to go Province by Province, but, nonetheless, that was the result. We cannot make the case any clearer than has been made, that this particular amendment is the amendment that deals with children; this particular amendment is the amendment that deals with addiction. If you are interested in trying to do something in the interest of public health, this is the amendment, with all due respect to the other amendments. We understand the relationship that they have to each other, and I am a strong supporter of the other provisions of the legislation. With the dramatic proposals that we are making here on the increase in the cost, when you have the other programs that are built in to deter individuals from beginning smoking and the other reductions in advertising, all of it has a symbiotic effect that will have an important impact on children. We are doing everything we can.

The basic support for the proposal we are advocating today is a culmination of everything that has been recommended to us by the public health community. We have taken their recommendations and now are bringing them to the Senate. We know the American people are for it. The question is going to be, are we going to have the support of the Members or is the power of the cigarette and tobacco industry, which has been reflected in so many ways over the period of recent months and in recent years, going to be again demonstrated in this Chamber in terms of resisting these issues.

Senator CONRAD, who has held hearings with regard to the issues of smuggling and what will the impact of this be on the tobacco industry. All of these issues are important, but make no mistake about it, Mr. President, those of us who are advocating this amendment are advocating it for a very fundamental reason, and that is to protect children in our country and in our society, and we believe that the kinds of protections we are offering here are the kinds of protections that are going to have the most important impact for our country.

We offer this amendment which is really one we believe the Senate should move towards and be willing to accept. We can go back in terms of the time and understand what is really happening out there in America, the impact that tobacco has on the young people of this country.

I see my colleagues from New Jersey and North Dakota are here and ready to address this issue, but let me just take a few moments to go through the way children become involved in the addiction of tobacco.

Smoking begins early, Mr. President. 16 percent of adults who are daily smokers began smoking—and these are the cumulative figures—by age 12. Just think about it. By the age of 12, 16 percent; by the age of 14, 37 percent. By 16 or under, we are talking about 62 percent. These are the children who become addicted. These are the children who do not have the benefit of being able to make a balanced and informed judgment about going ahead and involving themselves in the use of tobacco.

We are talking about very young children who begin the utilization of tobacco and move on through. By the age of 16, 62 percent of those who eventually are going to become addicted have already started down that path, and they are the ones who have been targeted by the tobacco industry for marketing—for addiction. It is for these children that the studies demonstrate that the increase in the costs of tobacco, because of the limitations in their purchasing power, will be a very, very powerful and important disincentive to these young people. Added to the other features of the program, it will be a serious disincentive for them to get started smoking.

Mr. President, I will wind up now to let my colleagues speak. I hear often: Isn't this really a disservice to those families who may be involved in smoking, that they will have to pay, really, a disproportionate share because we will have an increase in the costs of these cigarettes? I must say, that is an argument that you hear out here occasionally on the floor of the U.S. Senate, but the fact is I don't hear that back home in my State of Massachusetts. People, even in blue-collar areas, who perhaps smoke more than others in a community, are saying we are not less concerned about our children than those who may come from a different socioeconomic background. Those working families are concerned about their children. Time in and time out, when you ask working families, ''Do you want to do something about reducing the opportunity for your children to start smoking,'' their answer is yes, and overwhelmingly yes. Because they understand, as all of us understand, that these children, once they get started down the path towards addiction, find it extremely difficult if not impossible, to begin to get control.

Mr. President, I will yield the floor now. I look forward to our continued discussion of this.

I ask unanimous consent to add the names of Senators HARKIN and WELLSTONE as cosponsors of the amendment.

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

The Senator from Arizona.

Mr. McCAIN. Mr. President, I do not support this amendment. I don't doubt that the goals of the Senator from Massachusetts and those who support this amendment are the same as those who support the underlying bill, which is $1.10. I reject the notion that more is automatically better. There is a point at which we have gone too far. Some believe strongly we have already passed that threshold. We just had a little discussion while we were waiting, while the Senator from Massachusetts was waiting to propose his amendment, that amplified the concerns of many who believe this legislation has gone too far. On the other side, there are some, including the sponsor of this amendment, who believe we have not gone far enough. I don't want us to engage in a bidding war. If $1.50 is acceptable, then why not $2 or $3 or $5, et cetera?

I point out to my colleagues a very important point here. The bill already has a mechanism for increasing the price of tobacco if other methods fail. That is what we call the look-back provisions. The look-back provisions are penalties that are both company specific and industry wide, if there is not a decrease in teenage smoking.

If our goal is to reduce teenage smoking, which it is, then these look-back provisions achieve what the amendment of the Senator from Massachusetts seeks. I have not been around as long as some, but too often our fidelity to a cause is measured only by how high a price we can extract and how much we are willing to bid up.

It was back in March when the Commerce Committee began work on this issue. We worked for a long time and we came out with a package by a 19 to 1 vote. As part of that package, it was determined that $1.10 was the appropriate cost—the price of a pack of cigarettes. I might add that was also the position of the White House, the administration, that $1.10 was the appropriate number.

Since then, we have toughened the look-back provisions. We have raised the cap on how much liability the tobacco companies would have on an annual basis. We have toughened up this bill to the point where it has been of great concern on the other side of the aisle. The $1.10 was part of a carefully negotiated package. In and of itself it was not a magic number. The $1.10 was a tradeoff in return for a cap on liability, in return for the look-back provisions, in return for a number of other things—the language concerning the authority of the FDA. So, this was all put together in a package.

I say to the Senator from Massachusetts that he was not part of those negotiations because he is not part of the committee. That is very understandable, although I noted during the time we were doing those negotiations the Senator from Massachusetts was very vociferous in his opposition to almost anything that we did. In fact, he was quoted in the newspaper, much to my surprise, as criticizing the committee, which I chair. I was somewhat intrigued by that, but that certainly is the right of the Senator from Massachusetts to question the credibility of the Commerce, Science, and Transportation Committee.

I respect the commitment of the Senator from Massachusetts to the children of America. I respect his belief that $1.50 will do more than will $1.10. But I urge my colleagues to understand that the $1.10 was not plucked out of the air. The $1.10 was the best expert advice we could get and with the concurrence of the administration. There are those in the public health community who agree with the Senator from Massachusetts that it is not high enough. There are others in the public health community who say that $1.50 is not enough. There are those on both sides of the aisle who think we should have no protections of any kind nor anything for the tobacco industry. Frankly, I believe that would just kill the tobacco industry.

We are not in the business of trying to kill the tobacco industry. Let's keep that in mind. Because, if 40 million Americans are going to smoke, they are going to continue to smoke, and we are not going to be able to prohibit that. We tried that with alcohol many years ago. But if we are trying to attack the issue of kids smoking, we do have a problem with too high a cost for a pack of cigarettes. That has been highlighted by the Senator from Utah concerning the possibility of contraband. There is a problem, obviously, with too high a cost for a pack of cigarettes, that there would be a black market that would spring up in America. We used the best advice that we could get from throughout the administration, from the public health community, and from many others, which allowed us to come up with $1.10 as the cost of a pack of cigarettes to achieve the goal of reducing teenage smoking, along with the other aspects of this comprehensive settlement.

I point out again to my colleague from Massachusetts, we have a look-back provision in the bill. For every child over the quota in the percentage that is not reduced by the tobacco companies, there is a $1,000-per-child penalty provision in this bill. That effectively achieves the goal which I believe this amendment seeks.

Mr. President, I know there are many other speakers. We will probably discuss this some more between now and final passage.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Missouri.

AMENDMENT NO. 2427 TO AMENDMENT NO. 2422

(Purpose: To strike provisions relating to consumer taxes)

Mr. ASHCROFT. Mr. President, I rise today to offer an amendment. My amendment addresses this massive tax that is to be imposed on the people of this country, particularly on hard-working, poor people in America. My amendment strips this legislation of the provisions which will impose $755 billion in new taxes on the American people.

More precisely, my amendment strikes the upfront payment of $10 billion. Tobacco companies won't bear the cost of this payment; consumers will.

This bill, which purports to vilify the tobacco companies—and I am certainly not here to defend them. As a nonsmoker, and having watched a number of my friends die as a result of smoking, I am not here to defend the tobacco companies. But the bill specifically provides that tobacco companies will not bear the cost of these payments, consumers will. This bill requires and would make law the fact that tobacco companies can't bear this cost of $755 billion. This bill requires that consumers bear this cost. They will bear the cost in the form of higher prices, and there are actually penalties in this proposed law for the companies if they do not transfer to the consumers any of these costs.

''Section 405. Payments to be passed through to consumers.'' Here is the text of the law itself:

> Target price. Each participating tobacco product manufacturer shall use its best efforts to adjust the price at which it sells each unit of tobacco products in the domestic market or to an importer for resale in the domestic market by an amount sufficient to pass through to each purchaser on a per-unit basis an equal share of the annual payments to be made by such participating tobacco product manufacturer under this Act and the Master Settlement agreement for the year in which the sale occurs.

The specific law of the statute requires that these so-called penalties are really not penalties on the tobacco companies at all—that these so-called penalties penalize the consumers. It is strange, indeed, to say to individuals, ''The tobacco companies have been misbehaving. For years, they have been targeting you unduly, they have been providing you with a product which is deleterious to your health, and what we are going to do to them is nothing, basically, except to protect their markets, make sure their market shares are locked in, and give them protection from civil prosecution. But because you have been the recipient of the disease and the difficulty you have from smoking, we are going to pass through the payments to you.''

This is adding insult to injury in the most classic of all ways. Remember, these are not penalties on tobacco companies, they are taxes levied on the users of tobacco products.

Tobacco companies will still pay hefty penalties if teenage smoking targets are not met, but consumers will be safe from hundreds of billions of dollars in new taxes if my amendment is adopted.

The so-called look-back provisions of this proposed law say that tobacco companies are going to have stiff penalties to pay if teenage smoking doesn't decline, and those stiff penalties are left in place by the amendment which I am offering.

It is only the consumer, who is being asked to pay substantially higher prices by way of what really amounts to a tax, who will be saved the $755 billion which will otherwise be occasioned on those consumers in the event my amendment is not adopted.

Americans today are working longer and harder than ever to pay their taxes. The Federal budget is in surplus. Congress should be debating how to return money to the taxpayer, not how to siphon more out of the pockets of working Americans.

This is nothing more, nor less, than a massive tax increase on the American people—$755 billion, which the law requires to be passed through to consumers. Not that they receive $755 billion; the law requires that consumers end up

paying $755 billion more as a means of punishing the tobacco companies—three-quarters of a trillion dollars in penalties to consumers whom we are trying to protect.

As currently drafted, the proposed tobacco bill is nothing more than an excuse for Washington to raise taxes and spend money. It seems strange that, in this town, virtually anything will be an adequate excuse for raising taxes. Bad decisions by free people become excuses for massive tax increases in this country.

This is the largest proposed increase in Government since President Clinton proposed his health care scheme. Oddly enough, his health care scheme was greeted initially with a relatively high level of support. But as the public learned more about the health care scheme, they understood that it was more scheme than health care, and, frankly, as the public learns more about this so-called tobacco settlement, they will realize that it is far more tax and Government than it is anything else—17 boards, commissions, and agencies.

This huge tax increase will be levied against those who will be least capable of paying. According to the Congressional Research Service, right now we know that tobacco taxes are perhaps the most regressive tax levied in America. Tobacco taxes are perhaps the most regressive taxes levied in America. About 60 percent—60 percent, 59.4 percent I think is the number; yes—59.4 percent of the new $755 billion tax will land on people who make less than $30,000 a year.

These are young families. They are working families. To take a three-pack-a-day figure from those families, some $1,600 a year, is to take their capacity to provide for their families and require it to be spent in Government on something else, something that the bureaucrats in Washington will consume, something that will not go to benefit their families.

Sixty percent of the tax will fall on families earning $30,000 a year or less. Households earning $10,000 will feel the bite of this tax increase most of all.

Listen to this: The Joint Committee on Taxation estimates that these households will see their Federal taxes rise by 44.6 percent. As currently drafted, this legislation will cause someone who smokes two packs daily to pay the Government an annual additional fee of $803—an additional $803. Smoking is already an expensive habit, and the collection of this money is predicated upon the fact that people will not quit, not that people will quit. You can't get these kinds of numbers, $755 billion, from people who quit. You are going to get this amount of money because you know people won't quit and can't quit, and the reason by those who come forward with this tax is, it is necessary, they say, because this is addictive.

They say people can't quit. That is what is wrong with tobacco. And yet they say that people will choose to pay this because they choose to continue to smoke. Whether they choose to or not, someone who earns $10,000 a year, already spending a couple hundred, maybe $1,000 of that $10,000 on cigarettes, now has to pay the Government of the United States an additional $803 annually. Frankly, my amendment would prevent that from happening.

As currently drafted, this legislation allows tobacco companies to deduct the mandatory payments ultimately paid by consumers as a regular business expense. So what we have here is really an implied subsidy of the tobacco industry, tobacco companies being able to pass through costs to the consumer which the tobacco company then gets to deduct.

Again, we find ourselves, here in this setting, subsidizing tobacco companies, megatobacco companies, the cash cows of American industry, we are subsidizing these companies by placing on ordinary human beings, working families—we are subsidizing them by placing this $755 billion tax on working families. Over 5 years, that write-off would be worth about $36 billion to the tobacco industry. I cannot imagine anything more inappropriate than to take money from the hard-working families of America and then to use that money which we have taken from the hard-working families of America to provide a $36 billion subsidy through special write-off provisions for the tobacco industry.

By eliminating the annual payments, my amendment would prevent the tobacco companies from claiming the deduction. I think we should stop the subsidy for tobacco, in particular for tobacco companies, especially providing a subsidy for them by allowing them to deduct payments that are not really going to be made by them—payments that are going to be passed through to consumers, hard-working families with children to feed and clothe, families with payments to make, families of individuals who might want to quit smoking but cannot. This bill is predicated upon the fact that these families will continue.

This massive Government bureaucracy that is planned and the massive amounts of spending that are projected are all based on this willingness expressed in this bill to tax ordinary working families—ordinary working families—massive amounts. And 59.4 percent of the money will be paid by families under $30,000; 3.7 percent by families making $115,000 or more. This is the most regressive graph of taxation that I have seen since I have had the opportunity to serve in the U.S. Senate.

Before we consider passing a massive tax increase like this, it would behoove us to review the Government's record thus far with respect to taxes, spending, and Government employment. In Washington, DC, taxes and spending are more addictive than nicotine.

In the 15 years prior to 1995, Congress passed 13 major tax increases. Let me refer to the chart which has just been set up here. The Crude Oil Windfall Profit Act of 1980; the Omnibus Reconciliation Act of 1980; the Tax Equity and Fiscal Responsibility Act of 1982; the Social Security Amendments of 1983; the Deficit Reduction Act of 1984; the Consolidated Omnibus Budget Reconciliation Act of 1985; the Omnibus Reconciliation Act of 1986; the Omnibus Budget Reconciliation Act of 1987; the Technical and Miscellaneous Revenue Act of 1988; the Omnibus Budget Reconciliation Act of 1989; the Omnibus Reconciliation Act of 1990; the Energy Policy Act of 1992; the Omnibus Budget Reconciliation Act of 1993—15 years, 13 major tax increases.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. ASHCROFT. I will yield for a question.

Mr. KERRY. Didn't most of those also have tax cuts in them?

Mr. ASHCROFT. I think it is pretty clear that the amount of money being taken from the American family is going up and up. This year, for example, the average American family had to work until the 10th day of May—we just passed it—for Government. That was the time it took for people to satisfy the obligation to Government. That time has been extending into the year very rapidly through this entire time period.

It is true that very frequently the Congress gives a little bit here and takes a lot here, so that there are in this time setting different changes in the taxes. But if you want to look over the period of time—and I think it would be a fair thing to do; and I will be happy to do that; and I will bring information about that to the floor—that over time—over time—the Congress of the United States has taken a bigger and bigger and bigger bite of the income of workers in the United States. And, as a matter of fact, this would be another huge bite it would take out of the workers, especially of low-income families.

Mr. KERRY. Mr. President, I appreciate the Senator being willing to yield. And I just wanted to make it clear that the record was clear in his answer that there were tax cuts of significance. You can make adjustments as to who might have benefited and who did not, but those were not just tax increases. I think that is an important point.

I thank the Senator.

Mr. ASHCROFT. I thank the Senator from Massachusetts.

These items, which I have listed here, are times when the taxes were raised on American families and American industry. I think over time most of us understand that we are paying more in taxes now than ever before. As a matter of fact, right now Americans work harder and longer in peace and prosperity than we have worked at any time in history to pay our taxes.

So whether or not there were a few things in this list where someone was

given a tax break while someone else had a tax increase, that may have been the case, but the truth of the matter is, we have been taking two steps backwards at least for every step forward. Government has been taking a bigger and bigger and bigger share. And now Americans work further and further into the year every year in order just to satisfy the appetite of Government rather than to provide for themselves.

Last year's Taxpayer Relief Act was the first meaningful tax cut since—well, since about 1981. And the tobacco tax increase would more than erase every bit of what we did last year in terms of taking more from the American people. It seems to me that what we need to do is not go back on what we did last year; we need to extend what we did last year. We do not need to increase taxes. Taxes are at an all-time high.

Tax freedom day, as I mentioned, was May 10 this year. Federal, State, and local taxes claimed 37.6 percent of the income of a median two-income family in 1997. Now, these taxes were more than the couple spent on food, shelter, clothing, and transportation—more than they spent on their cars, their houses, their food, and their clothing.

It seems to me that we ought to be wondering about how we could reduce taxes. During Bill Clinton's first 5 years in office, the Federal Government collected 29 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 President Clinton—from Presidents Eisenhower to Bush—was 19%.'' We are now taking 29 cents of each dollar increase in domestic product.

Obviously, the Federal Government has yet to reject the sentiment expressed by King Henry IV nearly 600 years ago. He put it this way: ''You have gold. I want gold. Where is it?''

Well, I think we have a bill here that says, ''You have gold. We want gold. And we don't care how poor you are. We don't care how you're struggling to make ends meet.'' As a matter of fact, we will make a very repressive tax, but we want to spend. Tax-and-spend as tax-and-spend—it does not matter which party sponsors it, who does it. Tax-and-spend is the invasion of Government in the province of the lives of individuals, and we have every reason to want to reject it.

To collect this bounty, the Federal Government has developed a complex system. A recent report by the Heritage Foundation reveals just how complex.

Mr. President, 136,000 employees at IRS and elsewhere in the Government who are responsible for the tax laws; $13.7 billion is the amount of tax money spent by the IRS and other agencies to enforce and oversee the code; 17,000 is the number of pages of IRS laws and regulations, 12,000 not including Tax Court decisions and IRS letter rulings—12,000.

And 5.5 million is the number of words in the income tax laws and regulations; 820, the number of pages added to the Tax Code by the 1997 Budget Act; 250 is the number of pages needed to explain just one paragraph in the Internal Revenue Code; 271 is the number of new regulations issued by the IRS in 1997; 261 is the number of pages of regulations needed to clarify the Tax Code's ''arms-length standard'' for international intercompany transactions, and on and on and on.

Incidentally, 293,760 is the number of trees it takes each year to supply the 8 billion pages of paper used to file income taxes in the United States.

Many years ago, Senator Everett Dirksen quipped, ''a billion dollars here, a billion dollars there, and pretty soon you're talking about real money.''

Unfortunately, because of Washington's profligate ways, what was once real money has become little more than a rounding error. The budget resolution passed by the Senate last month recommended the Federal Government spend $9.15 trillion over the next 5 years. That is a 17.3-percent increase from the previous 5 years.

According to a recent Cato report, the Government's fiscal record is nothing to brag about. Over the past 10 years, the Federal domestic expenditures have soared by 79 percent. After adjusting for inflation, this is an enormous 34-percent increase. Over that same period, family income adjusted for inflation has grown by 9 percent. There is the contrast. There is the problem: a 34-percent increase in Government, Federal domestic expenditures; a 9-percent increase in the income of the average family.

So today I provide an opportunity for this body, the Senate of the United States, I provide an opportunity for the Senate to say to the American people, ''Enough is enough.'' Even if you make a bad decision as a free person to smoke, we are not going to decide that we are going to take from you the capacity to spend money and resources on your own family. We are not going to say that the tobacco companies are bad operators and bad companies, and as a result of their problems and their poor conduct, we are going to punish you, the individuals who smoke.

We are not going to provide that 59.4 percent of all the $755 billion to be collected by individuals trapped in the habit of smoking is to be provided by individuals who make less than $30,000. We are not going to continue to inflict that kind of harm on individuals who are low income and compound the problem. Now Government will come in and sweep from them their capacity to provide for their own families.

That is not something that we are interested in doing. We are interested instead of saying we don't really agree with this bill, in saying that everything has to be passed on to the consumer, that as a way of punishing tobacco companies we will take money from consumers. We are going to try to make it very difficult. If a guy smokes a couple of packs a day, we are going to make sure that he spends 800 bucks more a year just for the Government, not to be able to address the needs of his family, not to provide for his family, not to provide for himself. But we are going to just say because tobacco companies have done things that are improper, we are going to punish hard-working American citizens.

My own view is that is a misplaced effort. If we really want to try to make sure that we curtail teen smoking, there are a lot of things we could do. I don't even think this bill makes it illegal for teens to possess tobacco. I don't think it even makes it illegal to possess tobacco in the District of Columbia. This bill doesn't even curtail, in my understanding, doesn't curtail smoking in the Capitol. We criticize Joe Camel, a cartoon character. We criticize a cartoon character for being a role model for young people who want to emulate and smoke. But we don't curtail, I don't believe—and I would be glad to be corrected—I don't think we stop smoking in the U.S. Capitol. In the District of Columbia, we don't make it illegal for teens to possess tobacco. Now, it is virtually uniform around the country that it is illegal to sell tobacco to teens, but there are things we can and ought to do to curtail tobacco use among teens.

And I leave with this amendment, I leave in the bill the penalties on tobacco companies for failure to meet the targets. I simply, with this amendment, take the penalties against consumers out of the bill. I simply do not provide for the punishment of poor American families, working families. I do not provide for their punishment for what the tobacco companies have done. I think it is inappropriate.

So I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. ASHCROFT] proposes an amendment numbered 2427 to amendment numbered 2422.

Mr. ASHCROFT. I ask unanimous consent 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:

(1) Amounts equivalent to penalties paid under section 202, including interest thereon.

(c) REPAYABLE ADVANCES.—

(1) AUTHORIZATION.—There are authorized to be appropriated to the trust fund, as repayable advances, such sums as may from time to time be necessary to make the expenditures authorized by this Act.

(2) REPAYMENT WITH INTEREST.—Repayable advances made to the trust fund shall be repaid, and interest on such advances shall be

paid, to the general fund of the Treasury when the Secretary of the Treasury determines that moneys are available in the trust fund for such purposes.

(3) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the anticipated period during which the advance will be outstanding.

(d) EXPENDITURES FROM TRUST FUND.—Amounts in the trust fund shall be available in each calendar year, as provided by appropriations Acts, except that distributions to the States from amounts credited to the State Litigation Settlement Account shall not require further authorization or appropriation and shall be as provided in the Master Settlement Agreement and this Act, and not less than 15 percent of the amounts shall be expended, without further appropriation, notwithstanding any other provision of this Act, from the trust fund for each fiscal year, in the aggregate, for activities under this Act related to—

(1) the prevention of smoking;

(2) education;

(3) State, local, and private control of tobacco product use; and

(4) smoking cessation.

(e) BUDGETARY TREATMENT OF TRUST FUND OPERATIONS.—The receipts and disbursements of the National Tobacco Settlement Trust Fund shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(f) ADMINISTRATIVE PROVISIONS.—Section 9602 of the Internal Revenue Code of 1986 shall apply to the trust fund to the same extent as if it were established by subchapter A of chapter 95 of such Code.

SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.

(a) IN GENERAL.—There is established within the trust fund a separate account, to be known as the State Litigation Settlement Account.

(b) TRANSFERS TO ACCOUNT.—From amounts received by the trust fund under section 403, the State Litigation Settlement Account shall be credited with all settlement payments designated for allocation, without further appropriation, among the several States.

(c) REIMBURSEMENT FOR STATE EXPENDITURES.—

(1) PAYMENT.—Amounts credited to the account are available, without further appropriation, in each fiscal year to provide funds to each State to reimburse such State for amounts expended by the State for the treatment of individuals with tobacco-related illnesses or conditions.

(2) AMOUNT.—The amount for which a State is eligible for under subparagraph (A) for a fiscal year shall be based on the Master Settlement Agreement and its ancillary documents in accordance with such agreements thereunder as may be entered into after the date of enactment of this Act by the governors of the several States.

(3) USE OF FUNDS.—A State may use amounts received under this subsection as the State determines appropriate.

(4) FUNDS NOT AVAILABLE AS MEDICAID REIMBURSEMENT.—Funds in the account shall not be available to the Secretary as reimbursement of Medicaid expenditures or considered as Medicaid overpayments for purposes of recoupment.

(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO STATES.—The Secretary of the Treasury shall transfer amounts available under subsection (c) to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

( ) PROVISIONS RELATING TO AMOUNTS IN TRUST FUND.—

(1) CERTAIN PROVISIONS NULL AND VOID.—Notwithstanding any other provision of law, the following provisions of this Act shall be null and void and not given effect:

(B) Sections 402 through 406.

Mr. MCCAIN. Mr. President, for the information of all Senators, I have been authorized by the majority leader to announce there will be no further votes this evening. The Senate will remain in session for those Members interested in debating this important issue.

By mid to late morning tomorrow, I intend to move to table the pending Ashcroft amendment and the Kennedy amendment, all in an effort to move this bill along. Again, the next vote should occur around 11 a.m. on Wednesday.

While I have the floor, Mr. President, I make one comment. I am the father of four children. I come from a high-income bracket. I love my children. I believe that low-income Americans love their children, as well. And I have talked to many low-income Americans, both in person and by mail and on talk shows, who have said, ''Senator MCCAIN, I smoke. I wish I didn't smoke. My children are beginning to smoke. Please do everything you can to stop it.''

Mr. President, to believe somehow that low-income families aren't as concerned about their children and whether they are going to smoke or not, frankly, is not something that I agree with, nor I believe is it fair to low-income families all over America. Low-income families in America love their children as I love my children.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

AMENDMENT NO. 2421

Mr. LAUTENBERG. Mr. President, this obviously is going to be a fairly long debate. We are going to hear about everything from tax policy to love of country to how we deal with our budgets. We are going to hear all kinds of things.

Mr. President, I join with my distinguished friend and colleague from Massachusetts in proposing the $1.50 amendment, if I can call it that, that both he and I have had a longtime interest in. I want to make some comments on the entire bill before I go into the specifics of the $1.50.

Senator KENNEDY has been the leader in all matters of health and concern for young people, always out in the front, helping to defend what is right in our country. I have great respect for him and I am pleased to share this particular interest in reducing teen smoking.

Today we begin consideration of legislation that is long overdue. It tackles one of the most important health issues of our time, because today we begin the questions to finally reform the way tobacco products are sold in this country and the way the tobacco industry operates.

Getting to this point has not been an easy journey. Despite the fact that the tobacco industry has for decades engaged in shameless corporate conduct, the Congress has never acted in a comprehensive way to get this industry under control. However, we have now reached a point where the American people no longer tolerate inaction on this issue.

I have been fighting to protect Americans from the dangers of smoking for over a decade in the U.S. Senate, along with the distinguished Senator from Illinois, Senator DURBIN. We authored the first ban on smoking in airplanes in 1987. Just a few weeks ago, we celebrated the tenth anniversary of the implementation of that legislation.

Frankly, I believe that ban, that opportunity for people to fly and to travel in that close space free of tobacco smoke, was a catalyst for further antitobacco activity. They saw how pleasant it was. When people rode on airplanes, they saw how nice it was to have smoke-free travel, freedom from other people's tobacco smoke. Many who suffered from allergies, or had respiratory problems, or just couldn't endure being trapped in a smoking airplane cabin finally felt free to travel by airplane in what they considered a personally safer environment.

But, despite the wishes of the American people, we had a tough time getting that legislation in place. It was a long, tough battle. We argued. We negotiated. We finally settled for a 2-hour ban, with the promise that we would wait 18 months for studies to come in. But the interest of the public was so overwhelming that we didn't have to wait 18 months. It began to become a cry across the country: Please, if you are going to ban smoking in airplane flights for 2 hours, for goodness sake, if it is a 6-hour flight, give us a break. And we immediately changed what had been a 2-hour ban to a 6-hour ban and now all flights across this country and many across the ocean.

But despite the wishes of the American people, the tobacco industry has been able to use its power and its influence to stop real reform of tobacco industry behavior until this week.

Now, we are poised to finally act in a comprehensive way to tackle the major problems this industry has caused our Nation. First and foremost is the issue of teen tobacco use.

Mr. President, newly released industry documents show how the tobacco industry specifically and deliberately targeted our kids for addiction. They knew what they were doing. They put up fancy drawings and beautiful pictures of healthy people riding horseback and playing sports. They knew what was happening. They knew very well they were creating addiction for

the children. They were seducing them into picking up the smoking habit.

In addition, the industry's very own documents talk about ways to further entrap young smokers into a lifetime of addiction by manipulating the quality of nicotine in these cigarettes. The documents recently revealed also contain strategies on how to spread fake science to confuse their customers about the health effects of tobacco products.

Mr. President, not only did the industry commit these acts but it came before the Congress and lied about it. Now these very same companies have decided that they are going to fight back against the popular will. They are going to fight back against the Congress' final awakening to the evils of smoking and to do something about it. They have decided that they are going to take a chance and spend $50 million or more for deceit with a misleading advertising campaign to stop the Senate action this week. You have seen it on TV. You hear it on the radio. You see it in print: After all, we were willing to pay $500 million. After all, we want to be proper citizens. But the Senate and the House want to take away our right. They want to invade people's lives.

It is for that very reason that we have to act now and pass strong comprehensive tobacco legislation. The Senate must prove to the American people this week that we have broken from the past; we will no longer trade the future of our children for cold, hard tobacco industry campaign cash. This is effectively our Bastille Day. The reign of the tobacco industry on Capitol Hill must end today, now. We have an opportunity to prove to the American people that big tobacco's free ride is over.

Mr. President, there are going to be lots of votes for us this week to prove our good faith.

The chairman of the Commerce Committee, Senator MCCAIN, and the committee itself have given us a foundation to build on. I congratulate them and thank them for this and commend them for all of their hard work.

But we have more heavy lifting to do, because what we see in front of us has to be amended and has to be expanded in order to do the job that we want to see done. Our Nation's leading health experts tell us that we have a way to go this week before this bill should be approved by the U.S. Senate. Names that Americans trust, like Dr. C. Everett Koop, Dr. David Kessler, tell us that this bill needs improvement.

That is why it is imperative that the Senate adopt amendments that will be offered to put some more teeth into this bill. We will have votes this week on the Kennedy-Lautenberg amendment that would call for a $1.50 price increase on a pack of cigarettes to really discourage youth smoking.

We will also vote on whether Congress should provide this industry with special protections on legal liability. Additionally, we will likely vote on look-back surcharges to see whether or not the companies will use all of their skills and knowledge to reduce teen smoking. And we will likely vote on preemption of local laws and on advertising restrictions. These will all be key votes, and the American people will be watching.

I will not make my final decision on this legislation until I see the outcome of these votes and see what difference the amendments make in the quality and the extent of this bill. I hope, Mr. President, we can head into the Memorial Day weekend proud of what we did this week.

As we remember our brave men and women who sacrificed their lives fighting for our country, I ask my colleagues to join the fight to protect our people from premature death and sickness as we would have if a foreign invader was to declare war on us and in 1 year killed more than 400,000 Americans—400,000 Americans. It is more deaths in 1 year than all of the combat deaths in all of the wars fought by Americans in the 20th century. We are looking at World War I, World War II, Korea, Vietnam, and other wars fought in this century. Once again, more Americans die each and every year from tobacco-caused disease than died in combat in all of the wars that I have just mentioned.

So we want to fight back against the attackers, as we should. What if we were invaded by a foreign enemy? Now is the time to respond to a call to arms.

Mr. President, this $1.50 amendment will test whether or not we are serious about cutting teen smoking or whether we are going to once again appease the industry. If we are serious about cutting teen smoking, then we must raise the price of cigarettes by at least $1.50 a pack. We have to get to that level quickly, within 3 years.

I want to point out on this chart what we understand. The source of this is the Department of the Treasury. It says the number of children who will be deterred from smoking based on these prices: A $1.10 increase will stop 3 million kids from picking up the smoking habit; a $1.50 increase will stop 3.75 million children from picking up the smoking habit. We know that once they start—we have seen it on the chart displayed by the Senator from Massachusetts about when people start smoking at a very young age. I know I did. It took me some 25 years to recognize what a foolish thing I was doing. I didn't recognize it until my youngest daughter said one day, ''Daddy, we learned in school today that if you smoke, you will get a black box in your throat, and I love you, and I do not want you to have a black box in your throat. Daddy, please stop smoking.'' Within 3 days I stopped smoking, after numerous attempts.

The number of children whose lives will be saved by the cigarette price increases is 1 million at $1.10; $1.50, 1.25 million people—1.25 million children whose lives will be saved by responding to that pressure from the price increase.

We have heard everything here today about tax increases and how we are taxing those unfortunate people of modest income.

The Senator from Arizona said everybody loves their children just as much regardless of their income class. The fact is we would like, all of us, to see the cessation of smoking or the reduction of smoking among children.

One of the things that happens as we discuss this $1.50-a-pack possibility is that we would then be extracting from those whose use costs us more because of their habit to pay for some of the costs that they incur. If someone wants to use their car more often, they buy more gasoline. They pay a higher price. If they want a bigger house, they pay a higher price. If they want to use more fuel to warm or cool their house, they pay a bigger price. If they use more of the health care system, they should pay a bigger price. It is an unfortunate reality, but smoking costs this country $50 billion a year in increased health costs—$50 billion a year. And we are talking about something that is considerably less of a tax, less of a cost on those companies and the individuals who pick up the smoking habit.

We want to stop people from smoking. Just think about it. We heard talk about the fact that this is a tax increase on hard-working families. Well, hard-working families ought to be interested in the money that they save. Imagine if we stopped people from smoking. Here we say a million and a quarter people. It will cost them over $2,000 a year, or they will save $2,000 a year as a result of dropping the smoking habit. Two packs of cigarettes a day, estimated at the lowest, perhaps $4 a pack, if the $1.50 increase goes into effect. But let's say it is $3 a pack. Three dollars a pack, twice a day; $6 times 7, $42 a week, times 52 weeks a year; over $2,000 a year that poor, hard-working families could very well use to buy other things they need far more than cigarettes.

Smoking among children and teens has reached epidemic proportions. Three thousand children begin smoking each and every day, and a third of them, 1,000, will die prematurely as a result of the smoking habit. Every year we lose over 400,000 Americans to tobacco-related illness and over 90 percent of them started as kids.

The managers' amendment claims to raise the price of a pack of cigarettes $1.10 in 5 years, but the public health community tells us that $1.10 just won't do the job. The goal we have set in Congress is to cut teen smoking in half, and if you examine the $1.10 proposal, it is clear that it doesn't cut it. Independent economists tell us that a $1.10 increase will only result in a 33-percent reduction in teen smoking over 5 years.

Hallelujah, I would love to see that happen—even that. But on the other

hand, these same economists say a $1.50 price increase will result in the 50-percent reduction target in 5 years. What an accomplishment that would be. Imagine that in a few years when those kids who would have started smoking are not smoking. More than 200,000 Americans who would have otherwise died would be alive. Families would not be grief stricken at the loss of someone they care about because of the smoking habit, or watch someone who was a good athlete unable to function, unable to run, unable to breathe without lots of labor because we were in this early stage able to stop teen smoking.

The reason we are not focused on adults so much in this as teen smoking is because it doesn't have the same impact on adult smokers. We have over 40 million people who are addicted to tobacco. I never met anybody who is a smoker who will not tell me about the number of times they stopped and how long. They remember those as key moments in their life: I once stopped for 2 weeks, for 2 solid weeks I didn't have a cigarette. What do you think? And then I was watching the ball game or my friend Charlie at the office had a problem and got sick and I started smoking again. And I will be darned; I just haven't been able to stop. But one of these days I am going to do it, I promise you that. I wish I could.

Talk to people who stand outside buildings all over America who are prohibited by the rules from smoking in the building and you see them puffing away. I was one. I don't make fun of them, I promise you that. See them standing out there in the cold weather freezing to finally get that puff on the cigarette.

The other day I took the train from Philadelphia to Newark, and I watched a fellow get off the train, light up quickly on the platform, take two or three drags on the cigarette and chuck it and get back in the train. He is not happy with his habit. He may have been happy to have a puff on that cigarette, but I assure you, when that man thinks about what he is doing, he is not happy that he is an addict. No addict, whether illegal drugs or tobacco, is happy with the condition, but they are committed to it.

And so our mission is to stop them before they start, because it is unrealistic to say stop after they have been doing it for a long time. You can never get to it. So what we will do is make an investment now that will start to pay off 5 years from now, 10 years from now, 20 years from now, when we will see our costs for health care and our costs for lost productivity will diminish considerably, and maybe even end, and we will be looking at a Nation that is considerably healthier.

Why should the Senate stand for half measures? Public health organizations and Drs. Koop and Kessler agree that the price of tobacco products must be increased by at least $1.50 in 3 years, and be continuously indexed, by the way, for inflation. Otherwise, we will fall short of meeting our goals of cutting teen smoking in half.

A variety of factors contribute to a teenager's decision to try that first cigarette or chew that first bit of spit tobacco, as we call it. But the price of tobacco is a critical factor. The higher the price, the less likely the child will be to continue to use tobacco.

Again, the U.S. Department of the Treasury says it—the number of children who will be deterred from smoking if we adjust the prices, according to this chart.

I would also like to ask my colleagues not to be fooled by the industry's deceptions that this price increase will bankrupt them. I remind my colleagues that these are the same folks who testified before Congress under oath that nicotine is not addictive. The tobacco industry made $7.2 billion in profit in 1997. And according to an MIT analysis, a $1.50 price increase would not bankrupt the industry by any stretch of the truth or imagination. In fact, the MIT analysis shows an industry profit of $5.2 billion with a $1.50 price increase.

And further, the industry claims that this price increase will create a black market. Well, this black market looks like a red herring to me, I must tell you. We can pass tough antismuggling laws that will prevent a black market. It doesn't, unfortunately, hurt the tobacco companies if their product is sold in a black market. I want everybody to keep that in mind. If company X sells its products and it gets by without the $1.50 user fee imposed on it, they still get the same profit back in Winston Salem, NC, or wherever they are based. So that black market, so to speak, is not something that, frankly, I see making the tobacco companies very unhappy. In fact, the managers' amendment includes antismuggling language that I coauthored. This language is tough. It will go a long way towards cracking down on smuggling—the same way we have cracked down on alcohol smuggling in recent years.

This $1.50 proposal has bipartisan support. I offered it as a sense of the Senate in the Budget Committee, and it passed overwhelmingly. It passed in the Budget Committee. A similar proposal passed with a bipartisan vote last week in the Finance Committee. There is a bipartisan Hansen-Meehan bill in the House that also increased the price by $1.50 over 3 years.

Mr. President, this amendment has bipartisan support because the American people strongly support it. A recent poll by the American Cancer Society showed that 59 percent of the American people support a $1.50 price increase—people who are going to be affected by it.

I think it is time for the full Senate to pass a $1.50 price increase and protect our children once and for all. We are going to see it in the voting. That voting is a public document that everyone can see, a public action that everyone can see.

I am going to close in just a couple of minutes here. I listened to the debate. I listened to the cries that this is just another scheme, a scheme to tax the public so those of us who are responsible for legislation and operation of Government can spend the money. That is the biggest hoax in the world.

Nobody, this Senator or any other Senator, on the right, on the left, in the Republican Party or the Democrats, enjoys spending the public's money. That is pure baloney, as we say in polite circles. We don't like taxing anybody. But people who smoke cause this society to spend $100 billion a year as a result of their smoking. We have the unfortunate experience of seeing a loved one die, or with a tracheotomy, as we saw last week at a hearing here. We heard a woman who was induced to represent a tobacco company as a model when she was 17 years old, and she said her employer said unless you smoke also, actually smoke, you don't quite have the real action that shows the satisfaction a smoker gets. And now she smokes through a tracheotomy in her throat. She was barely able to utter the sounds. It was pathetic, Mr. President, to see that happen.

I also had the benefit of a hearing where we had a famous male model for one of the tobacco companies who said he is dying. He said he was so ashamed of himself, when he went into the doctors office, went in for surgery, and the doctor said to him, ''For goodness sake, don't smoke for a couple of weeks before you get to the hospital, whatever you do,'' and his doctor caught him smoking in the waiting room, waiting to be admitted to the hospital so he could have a lung taken out. That is how addicting tobacco is.

We ought not feel sorry for the people who run the tobacco companies. They ought to be ashamed. They ought to pay the price. It is time for them to come clean with the American public and say, ''OK, we have done it wrong. We have made a mistake. We want to cooperate.'' Instead, they are mounting all kinds of spurious campaigns to try to deceive the public that the Senate, that the Congress, is trying to hurt them or hurt their families. It is not true. We ought not let them get away with it. So when I hear the stories, oh, we are going to just tax the American public, and a recitation of when these tax increases go through—I would like to recite just a few numbers in response.

There has never been a time in the history of this country when the economy is better than it is these very days, and it is better because we took some specific actions. It is better because we had a balanced budget on our agenda, and we approved one last year. I am a member of the Budget Committee and we saw it happen. We decided we were going to control our expenses. And the economy is booming. Look at the stock market. Look at interest rates—low; stock market, high. Interest rates, low; mortgage rates, low;

home ownership high—we have not ever seen that kind of affluence in this society.

Everybody is not participating. I am not saying that at all. But to suggest that we have done things wrong in this country, in the management of this economy, and that what we have done is just picked people's pockets and taken the money and thrown it away is nonsense and the public will see through it. They are not going to believe that stuff. They have heard it before. They have seen it before. They know their children have a chance at a good job, they have a chance to get an education, that health care for their grandparents is going to be more assured, Social Security has moved up in its solvency— 2032 is the prospect. It is incredible. People can feel a lot better about their lives.

And longevity? Mr. President, I hate to admit how old I am, but I can tell you if you want to run or jog or go skiing or do all the other things, I am there, because there is an opportunity in this country to have a full life as one ages. I was a soldier in World War II. I served 3 years in the Army. I count my blessings every day for the good health I have seen and the five—and sixth grandchild, maybe today or maybe tomorrow that child will arrive. I can't wait for my daughter to say, ''Hey, Dad, we have a new one in the family.'' I can assure you that child will never smoke if the parents or the grandparents have anything to say about it.

We want our children to be healthy. That is the purpose of this. It is to bring health to the younger part of our society so that, as they age they, too, can enjoy their grandchildren, enjoy their life, be in good health, do whatever they want to do—run, dance, whatever, and feel good about the life they have led. That is the kind of America we have today. That is the kind of America that developed because it had leadership and a willingness to pay the price with some tough votes, some which I didn't make that I wish I had.

So I want to see us pass this to tell the American people we are finished fooling around. We mean it when we say we want to stop teen smoking. We mean it when we say we are going to eliminate this scourge from our society. And we mean it when we stand up here and we vote and we say: OK, let the public see how we are doing it.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleagues, Senator KENNEDY and Senator LAUTENBERG, for offering this important amendment. I would like to start by answering some of what our colleague from Missouri, Senator ASHCROFT, was referring to in terms of tax increases. The Senator from Missouri, Senator ASHCROFT, was referring to tax increases that have occurred. He was discussing what he termed the very high tax rates we currently face.

I wanted to bring some historical perspective to that question. This chart shows the outlays of the Federal Government in blue, the receipts of the Federal Government in red, over the last 20 years. As one can see, the spending of the Federal Government as a percentage of our national income has been coming down since President Clinton came into office. Spending has been coming down. Yes, revenue has been going up. And the result has been balanced budgets. That is how you balance a budget. We had $290 billion deficits, and it required cutting spending and, yes, revenue coming up to balance the budget.

We heard a lot of talk about balancing the budget before the 1993 budget deal was passed that, in fact, cut spending and, yes, raised revenue to balance the budget. But what happened? All we got was rhetoric. Let's just look at the record here. If we want to start talking about budgets and deficits, if that is what this debate is going to be about, let's have the debate. Here is what happened under President Reagan. The deficit skyrocketed. We had a lot of rhetoric about balancing the budget, but what we got were a lot of deficits, a lot of red ink, tripling the national debt. What we got under President Bush was even worse. The deficit nearly doubled from already high levels.

Now, what happened when President Clinton and the Democrats passed a budget plan to reduce the deficit? Yes, we did cut spending. Yes, we did raise revenue from the wealthiest 1.5 percent of the people in this country to balance the budget. And that is what has triggered this economic resurgence in this country—that is what I believe. I think the record is absolutely clear. Here are the facts. The deficit each and every year came down after we passed that 1993 budget plan, and now they are actually talking about budget surpluses this year.

That is the record. Those are the facts. But it doesn't tell the full story. Because while revenues went up, overall revenues went up, what happened to the individual tax burden—the individual tax burden? This shows, in 1984, the tax burden for a family of four with a median income level of $54,900 in 1999.

This is income plus payroll tax burden. These are the Federal taxes people are paying. In 1984, that burden on a family of four was 17 percent of their income. In 1999, it will be 15.1 percent. The tax burden on a family of four at the median income in this country has gone down. It has gone down, because while revenues are up, we have changed the distribution by giving targeted tax relief to moderate-income people.

That was our plan. That is what passed. That is what has made that difference in the lives of American families. Their tax burden has gone down, looking at the income and payroll taxes that they pay.

By the way, these are not KENT CONRAD's figures, these are the figures of the U.S. Treasury Department. That is for a family of four earning about $55,000 next year. That is what their tax burden is going to be.

For a family of four at half the median income, at $27,450, their tax burden will have been cut in half. These are facts. In 1984, a family of four earning $27,450 paid 13.2 percent. In 1999, they are going to pay 6.5 percent. Their tax burden, income and payroll taxes combined, has been cut in half. Now, those are facts.

Let's start talking about the issue that is in front of us.

The tobacco industry has a history of making statements that, frankly, are false. I don't know how else to say it. I don't know how to say it diplomatically when somebody is saying something that just ''ain't'' so. Let's look at the record.

I talk about these as the top 10 tobacco tall tales and the truths.

Tall tale No. 1: They came before Congress and they said tobacco has no ill health effects.

The truth: This is from their own documents. This is a 1950s Hill and Knowlton memo quoting an unnamed tobacco company research director. And he said:

> Boy, wouldn't it be wonderful if our company was first to produce a cancer-free cigarette. What we could do to the competition.

This is the industry that says their products cause no ill health effects.

Tall tale No. 2: Tobacco has no ill health effects.

Truth: From a 1978 Brown and Williamson document:

> Very few customers are aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison.

These are the industry's own words. This is why this industry has no credibility anymore, when they come up with all this scare talk about black markets and bankruptcy and all the rest. And we will get to those issues one by one. This is their record for credibility.

Tall tale No. 3: Nicotine is not addictive, they told the American people.

The truth: From their own document, a 1972 research planning memo by R.J. Reynolds Tobacco Company researcher Claude Teague:

> Happily for the tobacco industry, nicotine is both habituating—

Addictive—

> and unique in its variety of physiological actions.

That is tall tale No. 3.

Tall tale No. 4: Again, the industry says nicotine is not addictive.

This is from a 1992 memo from Barbara Reuter, 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.

I don't know how these guys can run around the country saying their products aren't addictive, which their own

documents—which we only received through the disclosure of the lawsuit in Minnesota—reveal that they know perfectly well they are addictive. They have known it a long time, and they have run around the country saying things that just aren't so. That is tall tale No. 4.

Tall tale No. 5: Tobacco companies did not manipulate nicotine levels.

The truth, from a 1991 R.J. Reynolds report:

We are basically in the nicotine business. . . . Effective control of nicotine in our products should equate to a significant product performance and cost advantage.

They are in the nicotine business, and nicotine is addictive. Their previous document, it is like cocaine, it is like morphine—who are they kidding? We know better. We have read their documents. That is the problem with the credibility of this industry. We have now actually had a chance to read their documents that they had hidden away for so long.

This is tall tale No. 6: Tobacco companies did not manipulate nicotine levels.

The truth can be found in a 1984 British-American Tobacco memo:

Irrespective of the ethics involved—

That is an interesting way to begin a memo—

Irrespective of the ethics involved, we should develop alternative designs (that do not invite obvious criticism)—

You've got to love these guys—

which will allow the smoker to obtain significant enhanced deliveries of [nicotine] should he so wish.

''Yeah, let's go out and give them double doses of nicotine so we hook them even further.''

Tall tale No. 7: Tobacco companies don't market to children.

They came up to Congress, and they said, ''We don't target children. We wouldn't do that.''

Here is a 1978 memo from a Lorillard tobacco executive:

The base of our businesses are high school students.

They don't target kids? What is that? That is their own words in their own documents. Of course, they were hidden away a long time, but now that we have them, we know what these folks have been up to. We know what these companies have been up to.

Tall tale No. 8: Again, their claim tobacco companies don't market to children.

Let's just look at their own words again. A 1976 R.J. Reynolds research department forecast:

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

I don't know what could be more clear than the industry's own words.

Tall tale No. 9: Again, their claim they 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- to 17-year-olds.''

These are the industry's words. These are their words. This is their credibility that they have shredded. I don't know how many more examples we need to understand that this industry comes before us and they don't have clean hands. They don't come here with credibility, because they have undermined their own credibility with their statements of the past.

Tall tale No. 10: Again, their claim tobacco companies don't market to children.

This is from a Brown and Williamson document.

The truth:

The studies reported on youngsters' motivation for starting their brand preferences, as well as the starting behavior of children as young as 5 years old—

Five years old—

the studies examined young smokers' attitudes toward ''addiction'' and contain multiple references to how very young smokers at first believe they cannot become addicted, only to later discover, to their regret, that they are.

Well, it seems to me the record on the credibility of this industry is quite clear.

So that brings us to the question of this amendment. And the importance of this amendment has everything to do with reducing youth smoking. That really is the reason for this amendment, because we have held over 24 hearings in our task force and we have heard repeatedly from the experts. And we have looked at the evidence.

The evidence shows, first of all, that the percentage of teens who smoked in the past month is going up. It has gone from 28 percent of 12th graders in 1991 to this year, 36 percent. The pattern is the same for 10th graders and 8th graders. Smoking among high school seniors is at unprecedented levels. The percentage of seniors who smoked in the last month: in 1991, it was 28.3 percent; 1997, 36.5 percent. Teenage smoking is going up. Eighth graders, 10th graders, 12th graders, the pattern is the same.

The question before the body is, well, is there any indication that a price increase will change that? And the evidence is overwhelming. Our own Congressional Research Service tells us for every 10-percent increase in price, you will get about a 7-percent reduction in teen smoking; a 10-percent increase in price, a 7-percent reduction in youth smoking.

It is not just the Congressional Research Service. The studies that have been done on the econometrics of demand versus price show the same thing. Dr. Chaloupka did the breakthrough study. He concluded much the same thing as the Congressional Research Service: for every 10-percent increase in price, about a 7-percent reduction in youth usage.

But we do not have to rely on studies. We do not have to look at econometrics analysis and we do not have to listen to the Congressional Research Service. We do not have to listen to Drs. Koop and Kessler. All we have to do is look to our neighbors to the north. Here is what happened there. Youth smoking declined sharply when they saw a significant price increase. This isn't some academic study. This is what happened in the real world.

Well, the experts, as I have said, have all testified to precisely that fact. And here is what two of the noted experts tell us about different levels of pricing and what it will mean to reductions in youth smoking.

The Treasury Department tells us over 5 years that under the proposed settlement we would get an 18-percent reduction in youth smoking. Under the legislation before us, by Senator MCCAIN, we get a 32-percent reduction. Under the amendment before us, we would get a 40-percent reduction. Now that is the Treasury Department.

Dr. Chaloupka, who is perhaps the most widely recognized expert because he has studied all the studies, has concluded that the proposed settlement would reduce teen smoking 20 percent, the work by Senator MCCAIN and the bill before us would reduce youth smoking over 5 years by 33 percent, but the amendment before us would reduce youth smoking by 51 percent. These are what the experts are telling us.

I ask unanimous consent to have printed in the RECORD a letter I have just received from Dr. Koop and Dr. Kessler. It is addressed to me.

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

THE ADVISORY COMMITTEE ON TOBACCO POLICY AND PUBLIC HEALTH,
May 19, 1998.

Hon. KENT CONRAD,
U.S. Senate, Washington, DC.

DEAR SENATOR CONRAD: I am writing to urge that you and your colleagues support an amendment to the Commerce Committee bill to raise and accelerate the price increase on tobacco products. I do so because I believe that such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or using spit tobacco.

The Advisory Committee on Tobacco and Public Health Policy that we chaired last summer recommended that the price per pack increase by at least $1.50. This in itself was moderate and realistic: Other studies have recommended that the price increase by $2.00 or more. But the message is clear: Raising prices reduces youth smoking.

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56%

decline. The amendment would result in a 22% further decline in children smoking.

So we urge you to move decisively and to act on the behalf of the Nation's children. Increase the price. Lower the demand. Save children from this addictive and deadly product.

Sincerely,

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

Mr. CONRAD. The letter says:

[We are] writing to urge that you and your colleagues support an amendment . . . to raise and accelerate the price increase on tobacco products. [We] do so because [we] believe such an increase will be one of the most effective means available to the Senate to reduce the number of children who start smoking or use spit tobacco.

They go on to point out:

It is as simple as this: Price affects demand, and price affects demand steeply among children. Study after study has demonstrated that when prices go up, fewer children start to smoke. This is important because children are not yet addicted and they can refrain from tobacco use. Moreover, there is good evidence that if people do not start smoking by the age of 18, they do not start at all.

This is Dr. Koop, the former Surgeon General of the United States, and Dr. Kessler, the former head of the Food and Drug Administration. They go on to say:

And the size of the price hike matters. The most prominent experts on tobacco sales, estimate that a price increase of $1.10 will result in a 34% decline in children smoking, while an increase of $1.50 will result in a 56% decline. The amendment would result in a 22% further decline in children smoking.

That is from Dr. Koop and Dr. Kessler, men who have served both Republican administrations and Democratic administrations, telling us to support this amendment.

Now, what does it mean when we talk about more teenagers not smoking? What does it mean in terms of lives? Well, here is what it means: A $1.50 price means 2.7 million additional teenagers not smoking, that is over the bill before us. And it means 800,000 children over time not dying because of the use of tobacco products.

What we are talking about in this amendment is not just dollars and cents. It is much more important than that. It is children's lives. We are talking about a vote that means 800,000 more people will live if we pass it. So the choice before this body is really very simple: Do you want 800,000 more people to live or do you want them to die?

This is going to be an important vote and an important question before every Member of this Senate. I hope it is on everybody's conscience tonight: What are we going to do? How are we going to vote? What difference are we going to make? What are we going to say? Are we going to save 800,000 people—800,000 children—or are we going to condemn them to death by using the only legal product in America, when used as intended by the manufacturer, that addicts and kills its customers?

Mr. President, 400,000 people are going to die this year because of tobacco-related illnesses. It is by far and away the biggest health threat that is controllable. So this vote tomorrow is going to be a vote on 800,000 American lives. Are we going to save them? Or are we going to condemn them to death? And it is an awful death.

At hearing after hearing we have heard the stories of those who have been through the agonizing experience of being told they are dying of cancer. The last hearing we had we had a man who had been a Winston model. Now he has lung cancer. We had a woman who had been a Lucky Strike spokesperson, and by the terms of her contract was required to start smoking. Now she speaks through a voice box.

Over and over, we had the testimony of people, the devastation of using tobacco products, what it has meant to their families and to themselves.

I can remember very well being in New Jersey at a hearing Senator LAUTENBERG organized. We had a young woman there named Gina Seagraves. And she testified telling of the effect on her family of the loss of her mother at an early age, how it devastated their family. She broke down and cried. And she said, ''Please have the courage to stand up to the tobacco companies and do what you can to keep kids from getting hooked.''

Well, that is what this debate is about. That is what this vote is about.

And when the industry says, ''Well, you're going to bankrupt us,'' here is what the experts at the Treasury—the secretary for Financial Markets testified before our task force. And I quote, ''We do not believe that the proposed legislation will materially affect the industry's risk of insolvency.''

He went on and said in the very next sentence, ''Even under conservative assumptions with respect to price, domestic sales volume, and operating margins, the tobacco industry will remain very profitable.'' They are not going bankrupt. They are going to have their profits nicked a little bit. They are not going bankrupt.

In fact, here is what is going to happen to them. When you do a financial analysis of these companies—this was done by the U.S. Treasury Department—under a $1.10 increase, their profits in the year 2003 will be $5 billion. If, instead, we raise the price to $1.50, their profits will be $4.3 billion in the year 2003. They are not going bankrupt.

That is flawed. They run around the country saying they will be bankrupted. Every objective analyst has said they are not going bankrupt. Their profits will be somewhat reduced, but they will still enjoy massive profits. If fact, this industry is three times as profitable as the average consumer goods industry in America today. Their profit margins are 30 percent. The average consumer goods company has a 10 percent margin.

Let's not cry any crocodile tears for this industry. When they come before us and say they will be bankrupted by $1.10 under the McCain bill or $1.50 under the Kennedy-Lautenberg amendment, they are not telling the truth, just like they didn't tell the truth when they said their products didn't cause health problems, just like they didn't tell the truth when they said their products weren't addictive, just like they didn't tell the truth when they said they didn't market to kids, just like they didn't tell the truth when they said these products were not manipulated to further addict young people.

Look, the record is clear on every issue: They are not telling the American people the full truth.

When we investigate this question further, they say it will bankrupt them. They say it will create this massive black market. Let's look. Let's look at where we fit in terms of tax and prices and where the rest of the industrialized world fits in.

This chart came out of the Washington Post last Saturday. These are not my numbers; these are from the Washington Post last Saturday. Prices in Norway on a pack are well over $6, about $7 a pack in Norway. In Britain, prices are about $5 a pack; in Denmark, just under $5 a pack; in Finland, just under $5 a pack; in New Zealand, about $4.20 a pack; in France, about $3.75 a pack; in Canada, about $3.50 a pack; in the Netherlands, about $3.30 a pack; in Singapore, nearly $4 a pack; in Brazil, Thailand, and the United States, under $2. Our average price, about $1.94.

So they talk about this massive black market. How is it that these countries that have much higher prices don't have much of a black market problem? And even if we added $1.10 to $1.94—which is in the McCain bill, taking it to $3.04—we would be well below most of the rest of the industrialized world in terms of a price. Even if we had $1.50, we would be well below the average price in the rest of the industrialized world.

Again on this question of black market activity, we had an international expert before our task force. He provided us with this chart. It showed the price of cigarettes and the level of smuggling in the countries of the European Union. It was a very, very interesting report. This man is an international consultant to countries on how to combat smoking. Here is what his report shows. Countries with high smuggling levels are in red; medium are in yellow; low smuggling rates are in green. On this axis, we have the price per pack.

What you find is very interesting. The countries with the highest prices have the least smuggling. The countries with lower prices have the smuggling problem. Spain has the lowest price, yet it has the highest smuggling problem of any country in Europe. Portugal has a medium level of smuggling and has among the lowest prices. You can see right up the line. But the countries with the highest prices have the lowest rates of smuggling—France, Ireland, U.K., Finland, Denmark.

Now, these guys come around and say there will be this massive black market—massive black market. It hasn't developed in these other countries in the European Union that have much higher prices than we do. Why not? Because they have control mechanisms. They have labeling. They have licensing of those who sell.

Here is what the Treasury Department, Larry Summers, Deputy Secretary, said just at the end of last month: ''The black market can and should be minimized through careful legislation.'' He said, ''By closing the distribution chain for tobacco products, we will be able to ensure that these products flow through legitimate channels and effectively police any leakages that do take place.''

I close as I began. This is a question of saving children's lives. This vote tomorrow is a question of, do we save 800,000 lives or don't we? A very simple choice—a profound choice, but it is very simple. That is what this vote will be tomorrow. Are we going to keep an additional 2.7 million kids from taking up the habit of smoking? That translates into 800,000 lives saved. Or do we miss the opportunity to throw those kids a lifeline and prevent them from taking up a habit that will addict them, that will create disease in them, and that will ultimately kill a third of them? That is the record.

The factual base could not be more clear. Every health expert that came before our task force said that is the issue. That is why Dr. Koop and Dr. Kessler have written us this day and urged us to have the courage to act. I hope our colleagues will have the courage to act.

I want to commend Senator MCCAIN. I want to commend Senator KERRY and the other Members of the Commerce Committee who have done a Herculean job to get us an excellent package to begin deliberations on. They have done a superb job and have shown remarkable public courage. I think every American should stand up and commend them for what they have done. They have brought to this floor the most sweeping, the most comprehensive, the most profound bill in terms of tobacco policy we have ever had before us. They have done it against long odds. We are in their debt. But it is also true we have an opportunity to make this bill somewhat better. I hope we take that chance.

I yield the floor.

Mr. MCCAIN. I want to thank the Senator from North Dakota for not only his kind remarks but for the enormous contributions he has made to this effort. He has worked tirelessly. He has appeared with our committee—not before our committee, but with our committee, where we had one of the most stimulating, I think, dialog and exchange of views since I have been a member of that committee.

I want to thank him. I know there will continue to be areas where we are not in agreement. The fact is, we disagree very agreeably.

I also want to mention again our friends, the attorneys general who began this process. Forty of them settled a suit with the industry back on June 20. This legislation that we are considering now is a direct result of that initial effort on their part. They have been extremely helpful as we moved this process along.

It is my understanding that the Senator from Massachusetts has agreed to conclude his remarks after the wrap-up. Is that correct?

Mr. KENNEDY. That is correct.

Mr. MCCAIN. I yield the floor.

Mr. KERRY. I thank the Chair. I will be very brief. I join in thanking Senator CONRAD for his very generous comments about the Commerce Committee and about Senator MCCAIN's and my efforts in it.

The truth is that so much of the energy of the Senate has been focused as a result of Senator CONRAD's leadership. The task force effort that he put together was really exemplary. It reached every corner of every community that has anything to do with this issue. It is one of the most thorough and exacting pieces of work that I have seen in the Senate. I think Senator MCCAIN would agree with me that there are significant components of the product that has been brought to the floor as a result of his efforts and leadership and his vision about this issue. So I think the quality of the presentation he just made to the Senate and to the country is a tribute to the groundwork he has done in order to get us here.

Likewise, for years, my colleague from Massachusetts, the senior Senator from Massachusetts, has been at the forefront of all of the health issues with respect to children and, particularly, leading the effort with respect to the awareness of tobacco, and his leadership on this has been essential to our ability to have this product. So I thank them for that. I will say more about this particular issue tomorrow.

Very quickly, I might say to the Senator from North Dakota that a few weeks ago there was an article in the New York Times that showed that the smuggling, to the degree there was a problem, has fundamentally been between countries, our cigarettes going out from the United States to Europe as a consequence of the price differential. If anything, as a result of the increase in price, there is a potential of closing that gap, No. 1.

No. 2, with respect to those who worry about Mexico or an infusion into this country, we have an increase in the law enforcement and inspection capacity. Most people in the law enforcement community accept that the returns on heroin and cocaine are so much more significant than the bulk difficulties of transferring cigarettes, and that is a deterrent to those becoming a problem.

Most people want the quality of the American cigarette. They are not particularly prepared to smoke Chinese or other kinds of cigarettes. There are a whole lot of ingredients that work against the smuggling argument, and we will get to that.

I thank the Senator for his efforts.

REGARDING PLACEMENT OF THE REQUIRED INSCRIPTIONS ON QUARTER DOLLARS ISSUED UNDER THE 50 STATES COMMEMORATIVE COIN PROGRAM

Mr. McCAIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3301, which was received from the House.

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

The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3301) to amend chapter 51 of title 31, U.S. Code to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States commemorative coin program.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. McCAIN. Mr. President, I ask unanimous consent that the bill be considered read the third time, and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

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

The bill (H.R. 3301), was considered read the third time, and passed.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, May 18, 1998, the federal debt stood at $5,497,225,027,113.83 (Five trillion, four hundred ninety-seven billion, two hundred twenty-five million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents).

Five years ago, May 18, 1993, the federal debt stood at $4,284,320,000,000 (Four trillion, two hundred eighty-four billion, three hundred twenty million).

Ten years ago, May 18, 1988, the federal debt stood at $2,523,270,000,000 (Two trillion, five hundred twenty-three billion, two hundred seventy million).

Fifteen years ago, May 18, 1983, the federal debt stood at $1,268,788,000,000 (One trillion, two hundred sixty-eight billion, seven hundred eighty-eight million).

Twenty-five years ago, May 18, 1973, the federal debt stood at $453,126,000,000 (Four hundred fifty-three billion, one hundred twenty-six million) which reflects a debt increase of more than $5 trillion—$5,044,099,027,113.83 (Five trillion, forty-four billion, ninety-nine million, twenty-seven thousand, one hundred thirteen dollars and eighty-three cents) during the past 25 years.