| | | |
|---|---|---|
| Sarbanes | Snowe | Wellstone |
| Smith (OR) | Specter | Wyden |

ANSWERED ''PRESENT''—1

Lott

NOT VOTING—1

Smith of New Hampshire

Mr. MCCAIN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

## UNANIMOUS CONSENT AGREEMENT—VETO MESSAGE ON S. 1502

Mr. LOTT. Mr. President, we have cleared this with all concerned parties, including the Democratic leadership.

I ask unanimous consent that the veto message to accompany S. 1502 be considered as read, printed in the RECORD, and spread in full upon the Journal, and further, that it be set aside to be called up by the majority leader after consultation with the Democratic leader.

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

The message of the President is as follows:

*To the Senate of the United States:*

I am returning herewith without my approval S. 1502, the ''District of Columbia Student Opportunity Scholarship Act of 1998.''

If we are to prepare our children for the 21st Century by providing them with the best education in the world, we must strengthen our public schools, not abandon them. My agenda for accomplishing this includes raising academic standards; strengthening accountability; providing more public school choice, including public charter schools; and providing additional help to students who need it through tutors, mentors, and after-school programs. My education agenda also calls for reducing class size, modernizing our schools and linking them to the Internet, making our schools safe by removing guns and drugs, and instilling greater discipline.

This bill would create a program of federally funded vouchers that would divert critical Federal resources to private schools instead of investing in fundamental improvements in public schools. The voucher program established by S. 1502 would pay for a few selected students to attend private schools, with little or no public accountability for how those funds are used, and would draw resources and attention away from the essential work of reforming the public schools that serve the overwhelming majority of the District's students. In short, S. 1502 would do nothing to improve public education in the District of Columbia. The bill won't hire one new teacher, purchase one more computer, or open one after-school program.

Although I appreciate the interest of the Congress in the educational needs of the children in our Nation's Capital, this bill is fundamentally misguided and a disservice to those children.

The way to improve education for all our children is to increase standards, accountability, and choice within the public schools. I urge the Congress to send me legislation I have proposed to reduce class size, modernize our schools, end social promotions, raise academic standards for all students, and hold school systems, schools, and staff accountable for results.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 20, 1998.*

## NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, we have had a good bit of discussion today and two very important votes. I hope that we can move on now to some other amendments that really are important and will determine how this legislation is eventually written.

I thank Senators again for keeping calm and working through this. The managers are working very diligently. I emphasize again to my colleagues, while I think every Senator obviously needs to have the time and will have the time he or she needs to make a statement, I do think it would be wise if you can say what you have to say and we can move on. To go for an extended period of time on an amendment 2, 3, 4, 5 hours is going to make it very difficult to ever get a satisfactory result.

I hope Senators will agree to some reasonable time limits. I am not going to ask for a unanimous consent agreement now. I don't think it is necessary, but I will suggest the form that we might take in a consent agreement as to how to proceed.

It is my hope that Senator GREGG from New Hampshire will be recognized next to offer his amendment, with Senator LEAHY, regarding immunity. Senator GREGG and Senator LEAHY have been circling the area since we started. They are ready to go. The debate should last the rest of this session today. It is my hope that the vote on, or in relation to, that amendment can be scheduled to occur first thing on Thursday morning—I mean early—so we can move to the next amendment, which will come from the Democratic side. Senator DASCHLE and Senator KERRY will have to decide what amendment that will be.

Following the disposition of that amendment offered by the Democrats, then I hope the Senate will consider the farmers' protection issue and debate it, have a vote on that issue or issues in a way, hopefully, that is agreeable and as fair as possible to both sides of that issue. Then we will really have a feel for where we are and can make an assessment about time and where to go from there.

I hope that Senators are comfortable with that. I think that it is a fair way to proceed alternating back and forth. We are not ducking the tough issues. This last amendment was a key amendment. This next amendment is a key amendment. The farmers' amendment is critical to all concerned. So I hope this will be acceptable and we can move in this way. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, that is, I think, a superb way to proceed. It is the way we have been trying to proceed. I thank the majority leader for trying to structure it that way.

There was an understanding prior to that that the Senator from Nebraska will proceed for 15 minutes, at which point Senators GREGG and LEAHY will be recognized for their amendment.

Mr. LEAHY. Mr. President, I have no objection to that.

Mr. KERRY. I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I thank both the Senator from Arizona and the Senator from Massachusetts for allowing me to speak.

I have come to the floor to speak about the tobacco bill. I began several months ago to have conversations with Nebraskans about this legislation. The first question I was asked is, Why do we need it? What has happened here? All of a sudden we have a $368 billion to a $516 billion piece of legislation being introduced and people want to know how we got to where we are today.

I would like to describe, at least as I see it, how we got to where we are today in May of 1998, from a point just as recently as 2 years ago when there was no piece of legislation on the floor even remotely approaching something like this. ''Why all of a sudden is Congress taking on something like this,'' is the question I get asked. I will try to give Nebraskans an answer.

The second question I get asked is, ''What are we going to do? What is the purpose here?'' On behalf of 1,600,000 Nebraskans, I will describe what this law is attempting to do, what is the piece of legislation which Senator MCCAIN and Senator KERRY have brought before this body all about.

The short answer to the question ''How did we get to this point?'' is that there was a potential lawsuit. There was litigation that was being proposed by States' attorneys general against tobacco companies. There was an attempt through the discovery process to get internal tobacco industry documents, and one of the tobacco companies said, ''We'll provide you the information you need to proceed with your case because we are concerned that what we know is going to be discovered

anyway, that there was an effort to withhold information from the American people.''

What happened, in addition to some changes in State law, is that on the 20th of June, 1997, there was an agreement—it was not even a year ago—with 40 attorneys general in the United States and the tobacco industry.

What they agreed to, Mr. President, on the 20th of June 1997, is very important, especially now that the tobacco companies have broken off from the settlement and are now advertising against this legislation in our States.

Again, I emphasize that the reason we are debating this tobacco bill today is not because the tobacco industry is afraid of Congress, and what we may do to them. Rather, they are afraid of 12 faceless men and women of a jury. They are worried about the evidence being introduced and now stipulated in court, showing that the tobacco industry knew nicotine was addictive and lied about it. They were, and still are worried about what a jury would do with this evidence. They were, and still are scared that a jury will end up costing them a whole lot of money. That was the power that produced this offer to settle at $368 billion.

That begs a question that Nebraskans need to try to answer. What was in that initial offer to settle? What were the tobacco companies willing to do back on the 20th of June 1997?

First of all, they agreed to pay $368 billion over 25 years. They said they would make annual payments starting at $10 billion, going up to $15 billion by year 5, and every year thereafter.

Although they do not spell it out in terms of a per-pack price increase like you hear them advertising against today, to make the $15 billion-per-year payment, the tobacco industry would have raised the price of cigarettes by approximately 62 cents a pack. Less than a year ago, they, not Congress, were going to raise the price of cigarettes by 62 cents a pack. Yet now, less than a year later, they have launched this huge advertising campaign trying to convince you that Congress is the bad guy trying to raise your taxes. They did this to settle lawsuits that they were afraid of.

Indeed, the next amendment that we are going to talk about is their liability. They were concerned about future liability, and they were willing to pay out $15 billion a year, costing smokers about 62 cents a pack, so they would not have to worry about it anymore.

They also agreed to pay $50 billion up front in punitive damages, meaning for all their past wrongs that they knew they were guilty of about misleading the American people, about nicotine's addictiveness, and marketing to our children.

Next, they agreed to let the FDA regulate nicotine as a drug. Next, they agreed to pay huge fines if goals of reducing teen smoking were not met. And, finally, they agreed to restrict their advertising and marketing to youth.

I say, Mr. President, that almost all of what I have just described is in this tobacco bill. That is what the Commerce Committee has voted out of Committee, and that is what we are debating on the floor today. Yet, less than a year after the tobacco settlement, the tobacco industry is spending millions of dollars trying to convince the American people that they had nothing to do with any of this and that Congress is the bad guy. This is the message they have paid lots of money to convince the people of. I have seen it in their television ads, on postcards that are being mailed in to my office, and from the thousands of phone calls that I have received. Everything that they are objecting to, and convincing others to object to, they agreed to back on the 20th of June 1997.

A lot has happened since that settlement, Mr. President, that has caused significant change to this legislation. First, the tobacco industry settled a suit in Florida for $11 billion, they settled a suit in Texas for $15.3 billion—but the settlement that really changed the level of the playing field that we are on today was the one that happened 12 days ago in Minnesota on the 8th of May. After 3 months of a closely watched trial, just hours before the jury was going to get the case, Attorney General Hubert Humphrey III and the tobacco industry settled the case for $6.5 billion.

There were lots of firsts in this settlement. This was the first settlement with a health insurance provider, in this case Blue Cross and Blue Shield, getting $469 million of the $6.5 billion.

This was the first settlement where the tobacco industry signed a consent promising not to misrepresent the health hazards of smoking.

And perhaps most significantly, this was the first settlement where the State received more money than it would have collected under the $368 billion settlement last June.

The $6.1 billion they settled on 12 days ago is 50 percent more than the $4 billion they would have received under last summer's settlement. This is significant. This is the justification for going from 62 cents to $1.10 per pack. This is the justification for increasing the total amount that we are asking the tobacco industry to pay into the tobacco trust.

Already, the tobacco industries have said they will raise prices to help defray some of their legal expenses. Indeed, in the past 9 months cigarette prices have been raised about 20 percent to help offset the tobacco industry's legal bills.

Again, Mr. President, I tell you the history of this bill because it is important to understand how we got to where we are today. A single tobacco company broke away from the rest and disclosed information that enabled us to get a settlement on the 20th of June 1997. There has been additional settlements in Texas, in Florida, and most significantly in Minnesota that increased the dollar amounts from the base level agreement that was formed on the 20th of June 1997.

Mr. President, the next issue to discuss, this bill and the goals of this bill, is a bit more difficult because things are changing at such a rapid pace. The way I see it, from talking to Nebraskans about this, is that the goal of this legislation is clear. We need to prevent teenagers from starting to smoke and to help those Americans who do smoke and want to quit.

Why, Mr. President? Well, there are a couple of reasons why. The most important one of which is that we now know, stipulated in court documents, that nicotine is addictive. It is not habit forming, Mr. President. It is addictive. And the qualities of the addictive property of nicotine, taken together with the toxins that are contained in the tobacco itself, create a tremendous public health problem.

I have 352,000 Nebraskans who smoke. I do not just want to raise the prices on those Nebraskans to try to decrease the amount of consumption, along with FDA regulation and advertising and other sorts of things, I want to make certain that the money in this bill helps them stop smoking.

Now, that should be our crusade. That should be our cause. Tobacco kills prematurely nearly 400,000 people every year. Approximately 2700 of these are Nebraskans.

Tobacco consumption produces tremendous health problems for the 352,000 Nebraskans who smoke. And the best way for me to mitigate the problem associated with an increased price is to give them a tax cut by helping them stop smoking so their medical costs and lost wages from missed work will be lower. My belief is, as we examine not only what this legislation does in terms of regulation, in terms of advertising, in terms of restrictions on smoking in public places to make sure that we reduce the number of people who become involuntary smokers as a result of inhaling secondhand smoke, is that we pay attention to how the money is spent. This is so we have some confidence that in our individual States those citizens out there who are currently smoking, who are addicted to nicotine as a consequence, that those individuals have a chance to get off this addiction that is reducing the quality of their health and decreasing their life spans.

Mr. President, I examined the numbers in Nebraska. And 25 percent of the men in Nebraska smoke; 19 percent of women smoke; 39 percent of all my teenagers smoke. Nebraskans without a college degree are nearly twice as likely to smoke as those with a college degree. A third of Nebraskans with an income of $15,000 or less smoke compared to only 15 percent of those who earn $50,000 or more.

Again, Mr. President, tobacco is killing my people. And 2,700 of the people who prematurely die every single year in the United States of America are

Nebraskans. It is addictive. It causes a physical compulsion, a physical need. Taken in small doses, nicotine produces pleasurable feelings that make the smoker want to smoke more. A majority of smokers who become dependent on nicotine will suffer both physical and psychological withdrawal symptoms when they stop smoking.

Their symptoms are going to include nervousness, headaches, irritability and difficulty in sleeping, among other things.

Mr. President, a couple of weeks ago I met with 10 or 12 high school students in Burke High School in Omaha, NE. And I talked to them about this problem of addiction. I think about 7 of the 12 were smokers. One of the students explained to me that ''A cigarette,'' she said, ''is my friend.'' She is 16 years old. ''A cigarette,'' she said, ''is my friend . . . it is always there for me: When I'm driving in my car, when I'm stressed out, when I'm going through a crisis . . . cigarettes don't go out of town, I can count on them no matter what.''

I asked about 100 students to fill out a questionnaire about tobacco. And one of the more disturbing results in their answers was that the overwhelming majority of the current smokers said that although they smoked today at age 16, and though some may continue smoking until they are 18, the overwhelming majority of these students said, ''We're going to quit.''

Well, Mr. President, because unbeknownst to them—and until recently the tobacco companies were not stipulating that nicotine is addictive; now it is universally recognized that it is—unbeknownst to these students, they are addicted. They have a physical craving for something and it is going to be very difficult for them to stop. Unbeknownst to them, 90 percent of the 352,000 Nebraskans who smoke started smoking when they were teenagers. That is when it began.

So unbeknownst to them, they may think they are going to quit, but unless we intervene, and unless we help them—and hopefully through this legislation we can help them—they are going to have a heck of a time kicking this addiction.

Mr. President, cigarette smoking is harmful. Cigarette smoking, we now know, is not only addictive, but taken as directed it is likely to decrease your life span, likely to shorten not only your ability to work, but shorten your time on Earth as well.

Mr. President, I intend during the course of the debate on this legislation to focus my attention on a number of things.

One, this legislation must prevent teen smoking. It must reduce the amount of teen smoking. I think perhaps one of the most important things we are doing is giving FDA the authority to regulate.

I was practicing pharmacy back when dinosaurs roamed the Earth in 1965, when Congress was debating whether or not to regulate Dexedrine, 15 milligrams. This was a weight loss pill. It was the most rapidly moving pharmaceutical in my drugstore in 1965. You could get a prescription from a doctor and refill it every other day if you wanted to for 500 Dexedrine. And the pharmaceutical industry was saying, ''No. It is habit forming; it is not addictive.'' Today, through FDA regulation, Dexedrine 15 milligrams is available only for narcolepsy, and only small amounts are sold. I think the most likely reduction of teen smoking is going to occur not through the price increase, but through FDA regulation.

In addition, Mr. President, I intend to bring amendments to the floor to say that we have to make certain that we have community-based efforts in our States to reduce smoking of the adults out there who are also addicted. It has to do that. It cannot be a top-down effort. It has to be a community-based effort. The citizens are more likely to know what needs to be done. I believe every single State needs to have some kind of a research scholar connected to NIH to lead us in this effort.

This is a tremendous public health problem. It has come upon us, the history of the bill and the seriousness of this problem, relatively quickly. I am hopeful we can make certain this legislation gives us a fighting chance in my State, at least not just of increasing prices and increasing the regulatory action, but of engaging the citizens themselves and the smokers themselves in a serious challenge of trying to break themselves from this habit.

Finally, I know we are going to be debating on this floor the provisions relating to the tobacco farmers. I am of the opinion that tobacco farmers need some assistance. It was not in the original settlement. I praise Senator FORD and Senator HOLLINGS for their work in trying to get provisions in there, but I believe these provisions are too generous and we need to scale them back. It is difficult for me in a State that grows corn, soybeans, wheat, barley, and lots of other products—under the Freedom to Farm Act they are getting substantially less than what tobacco farmers will be getting out of the program. I can make a case tobacco farmers ought to get more, but I cannot make a case they ought to be given all that is in this bill.

It is my hope that during the course of this constructive debate we are able to pass a piece of legislation that will increase regulation, that will increase the price, will increase our involvement in our community and decrease the consumption and the addiction to a substance which is killing our people.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 2433 TO MODIFIED COMMITTEE SUBSTITUTE

(Purpose: To modify provisions relating to civil liability for tobacco manufacturers)

Mr. GREGG. Mr. President, I send an amendment to the desk on behalf of myself and Senator LEAHY.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for himself and Mr. LEAHY, proposes an amendment numbered 2433 to the modified committee substitute.

Mr. GREGG. Mr. President, I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

**SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.**

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later that 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

Mr. GREGG. Mr. President, this amendment has received a fair amount of attention and I believe is fairly well understood by most of the membership, but it is important that we have a substantive discussion of it and an open debate of it over the next couple of hours. As I understand, Senator MCCAIN has allotted that type of a time window. I very much appreciate that.

I want to thank Senator MCCAIN for his courtesy in allowing us to put this amendment in order at this time, and certainly I appreciate the manner in which he has managed this bill in such a fair way.

The immunity issue is really at the essence of this bill and the public policy which this bill addresses. What we have here is an industry which produced a product which it knew killed people. It is an industry that produced a product which it knew addicted people. In fact, it created additives to that product so it would addict people at a higher rate than were the product sold in its natural state. Then, knowing that it had a product that killed people, and knowing that it had a product that addicted people, it then targeted the sales of that product on our kids.

That is an industry which deserves very little in the way of courtesy or support or protection—and that is what this amendment is about, ''or protection''—from the U.S. Congress. Yet, within this bill there is proposed language which would give a historic, unprecedented protection to the tobacco industry from liability on their lawsuits.

Now, we have addressed this issue before in this body. In fact, not too long ago there was a sense of the Senate which said there shall be no immunity for the tobacco industry. That sense of the Senate passed the Senate by a 79 to 19 vote. This amendment is the real thing. It is calling to account that sense of the Senate.

Now, the question here goes to the manner in which we, as a country, sell products. We are inherently the most capitalist, market-oriented economy in the world. As a result, we have been the most prosperous society in the world economically. What this amendment is about is maintaining a capitalist marketplace approach to the issue of the sale of a product in our society.

What this bill does in its present form is institute an antimarket, anticapitalist approach into the process of producing and selling a product in this society. It gives an artificial, inappropriate, legislative protection to an industry from what has been the traditional way in which consumers have a right of redress against that industry.

Remember, in our society when a consumer, when John and Mary Jones from Epping, NH, are sold a product that doesn't work, they have a variety of different avenues to address the failure of that product. Should that product harm them, one of their most appropriate avenues is to go to court to bring an action against the producer of that product and to get a recovery. That has been basically one of the essential elements for disciplining the marketplace in our capitalist society. We have not, as has been pursued in other nations, especially those that use a Socialist form of management of their marketplace, we have not had the Federal Government or any government come in and tell a consumer what they can and cannot buy, except in very limited instances. And we have certainly not limited that consumer's ability to recover should they be sold a product that doesn't work or that harms them.

The right of redress in the court system, the right of redress for a consumer, is at the essence of having a competitive marketplace and a disciplined marketplace. When you eliminate that right of redress, which this bill does, when you take away the ability of the consumer, of the person who has been damaged, of John and Mary Jones of Epping, NH, to get a recovery for an injury they have received, you have artificially preserved the marketplace. But more importantly, you have

given a unique, historic, and totally inappropriate protection to an industry.

Now, let's think about this for a minute. Why would the Federal Government at any point in its history want to step in and bar the ability of the consumer to use the judicial method of protecting themselves in the marketplace? There might be instances where that would happen—national defenses might be an example. Under our law, once we did that in the area of people working at nuclear weapons factories. There was a national defense issue.

Or it might occur if a product was deemed so beneficial that it was important to protect it. In those instances, of course, we have a situation where the Government raises the visibility of the need to protect the society as a whole over the individual. That has never happened. We have never found a product that was so beneficial. Or if we have, it has only occurred in the rarest of instances, so beneficial that we give that sort of protection. So that is a very unusual protection, to say the least.

But what we have here is the granting of a significant, unusual protection of immunity to an industry that produces tobacco, which, as I mentioned in my opening statement, is a product that kills people, that addicts kids, and addicts people and is targeted at kids. It is very strange that we should pick that industry for which to give this sort of protection.

Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2434 TO AMENDMENT NO. 2433

(Purpose: To modify provisions relating to civil liability for tobacco manufacturers)

Mr. GREGG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG] proposes an amendment numbered 2434 to amendment No. 2433.

Mr. GREGG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

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

In title XIV, strike section 1406 and all that follows through section 1412 and insert the following:

**SEC. 1406. RESOLUTION OF AND LIMITATIONS ON CIVIL ACTIONS.**

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING CLAIMS.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall resolve any civil action seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions that have been commenced by the State against a tobacco product manufacturer, distributor, or retailer that is pending on the date of enactment of this Act.

(2) FUTURE ACTIONS BASED ON PRIOR CONDUCT.—With respect to a State, to be eligible to receive payments from the State Litigation Settlement Account, the attorney general for such State shall agree that the State will not commence any new tobacco claim after the date of enactment of this Act (other than to enforce the terms of a previous judgment) that is based on the conduct of a participating tobacco product manufacturer, distributor, or retailer that occurred prior to the date of enactment of this Act, seeking recovery for expenditures attributable to the treatment of tobacco induced illnesses and conditions against such a participating tobacco product manufacturer, distributor, or retailer.

(3) APPLICATION TO LOCAL GOVERNMENTAL ENTITIES.—The requirements described in paragraphs (1) and (2) shall apply to civil actions commenced by or on behalf of local governmental entities for the recovery of costs attributable to tobacco-related illnesses if such localities are within a State whose attorney general has elected to resolve claims under paragraph (1) and enter into the agreement described in paragraph (2). Such provisions shall not apply to those local governmental entities that are within a State whose attorney general has not resolved such claims or entered into such agreements.

(b) STATE AND LOCAL OPTION FOR ONE-TIME OPT OUT.—

(1) IN GENERAL.—The Secretary shall establish procedures under which the attorney general of a State may, not later than 1 year after the date of enactment of this Act, elect not to resolve an action described in subsection (a)(1) or not to enter into an agreement under subsection (a)(2). A State whose attorney general makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a State to make such an election on a one-time basis.

(2) EXTENSION.—In the case of a State that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in an action described in subsection (a)(1) prior to or during the period described in paragraph (1), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(3) APPLICATION TO CERTAIN STATES.—A State that has resolved a tobacco claim described in subsection (a)(1) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in paragraph (1) if, as part of the resolution of such claim, the State agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(4) LOCAL GOVERNMENTAL ENTITY OPTION FOR ONE-TIME OPT OUT.—

(A) IN GENERAL.—The Secretary shall establish procedures under which the attorney for a local governmental entity which commenced a civil action prior to June 20, 1997, against a participating tobacco product manufacturer, distributor, or retailer seeking recovery for expenditures attributable to the treatment of tobacco related illnesses and conditions, not later that 1 year after the date of enactment of this Act, may elect not to resolve any action described in subsection (a)(3). A local governmental entity whose attorney makes such an election shall not be eligible to receive payments from the State Litigation Settlement Account. Procedures under this paragraph shall permit such a local governmental entity to make such an election on a one-time basis.

(B) EXTENSION.—In the case of a local governmental entity that has secured a judgment against a participating tobacco product manufacturer, distributor, or retailer in a claim described in subsection (a)(3) prior to or during the period described in subparagraph (A), and such judgment has been appealed by such manufacturer, distributor, or retailer, such period shall be extended during the pendency of the appeal and for an additional period as determined appropriate by the Secretary, not to exceed one year.

(C) APPLICATION TO CERTAIN LOCAL GOVERNMENTAL ENTITIES.—A local governmental entity that has resolved a claim described in subsection (a)(3) with a participating tobacco product manufacturer, distributor, or retailer prior to the date of enactment of this Act may not make an election described in subparagraph (A) if, as part of the resolution of such claim, the local governmental entity agreed that the enactment of any national tobacco settlement legislation would supersede the provisions of the resolution.

(c) ADDICTION AND DEPENDENCY CLAIMS; CASTANO CIVIL ACTIONS.—

(1) ADDICTION AND DEPENDENCE CLAIMS BARRED.—In any civil action to which this title applies, no addiction claim or dependence claim may be filed or maintained against a participating tobacco product manufacturer.

(2) CASTANO CIVIL ACTIONS.—

(A) IN GENERAL.—The rights and benefits afforded in section 221 of this Act, and the various research activities envisioned by this Act, are provided in settlement of, and shall constitute a remedy for the purpose of determining civil liability as to those addiction or dependence claims asserted in the Castano Civil Actions. The Castano Civil Actions shall be dismissed to the extent that they seek relief in the nature of public programs to assist addicted smokers to overcome their addiction or other publicly available health programs with full reservation of the rights of individual class members to pursue claims not based on addiction or dependency in civil actions in accordance with this Act.

(B) ARBITRATION.—For purposes of awarding attorneys fees and expenses for those actions subject to this subsection, the matter at issue shall be submitted to arbitration before one panel of arbitrators. In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the attorneys of the Castano Plaintiffs' Litigation Committee who were signatories to the Memorandum of Understanding dated June 20, 1997, by and between tobacco product manufacturers, the Attorneys General, and private attorneys, one of whom shall be chosen by the participating tobacco product manufacturers, and one of whom shall be chosen jointly by those 2 arbitrators.

(C) PAYMENT OF AWARDS.—The participating tobacco product manufacturers shall pay the arbitration award.

(d) RULES OF CONSTRUCTION.—

(1) POST ENACTMENT CLAIMS.—Nothing in this title shall be construed to limit the ability of a government or person to commence an action against a participating tobacco product manufacturer, distributor, or retailer with respect to a claim that is based on the conduct of such manufacturer, distributor, or retailer that occurred after the date of enactment of this Act.

(2) NO LIMITATION ON PERSON.—Nothing in this title shall be construed to limit the right of a government (other than a State or local government as provided for under subsection (a) and (b)) or person to commence

any civil claim for past, present, or future conduct by participating tobacco product manufacturers, distributors, or retailers.

(3) CRIMINAL LIABILITY.—Nothing in this title shall be construed to limit the criminal liability of a participating tobacco product manufacturer, distributor or retailer or its officers, directors, employees, successors, or assigns.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' means an individual, partnership, corporation, parent corporation or any other business or legal entity or successor in interest of any such person.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

Mr. GREGG. Mr. President, the amendment is a second-degree amendment, which simply perfects the amendment I offered, the underlying amendment. I will give a copy of the changes to the other side. I don't think they will find that they change the basic thrust of the original amendment.

As I was discussing, the amendment goes to the question of immunity and why we would choose, for the first time in the history of this country, to grant immunity to an industry from lawsuits, which basically changes the whole concept of the marketplace system in our country—why we would choose the tobacco industry to which to give that immunity. It is just beyond comprehension that an industry that produces a product that kills people, which they designed to addict kids, would be chosen as the industry to which we are going to give immunity protection. It makes absolutely no sense. It skews the marketplace. I simply point out to those who might be of a conservative philosophy and may be following this argument that to have done this is an absolute affront to the concept of capitalism and a free market society.

Now, there is an attempt in the bill to address the liability that tobacco companies generate as a result of their action—an $8 billion cap. Some will tell us that is a lot of money and that should satisfy everyone as a manner in which to redress the concerns of the consumer, of the individuals, of the kids, of the parents, the mom and pops, who have been damaged by the tobacco companies. And $8 billion is a huge amount of money on an annual cap for recovery on the loss. But it obviously isn't what the market sees as the potential liability here. Otherwise, there would not be a cap in the first place. So by its very definition it is an affront to the concept of a market-type approach to the selling of products in this country.

Equally important is the way this cap works. It gives a disproportionate amount of power to the tobacco companies to decide who the winners and losers are, because it is essentially a race to the courthouse. The tobacco companies, under the proposal in this bill, would control who gets to the courthouse first. If they decided the XYZ lawsuit was more amenable to them to settle than the ABC lawsuit, or Mary Smith's lawsuit was less desirable to them, for some reason, than Hank Jones', they can settle the ABC lawsuit, the XYZ lawsuit, and the Mary Smith lawsuit, but they cannot settle the Hank Jones lawsuit, they can make him litigate. And, by the time he is finished, they have settled these other ones and, poof, the $8 billion is gone. So not only does it have the total irony of perverting the marketplace, it has the irony of giving the tobacco industry the capacity to choose who the winners and losers are in the process of determining people who are suing them for being caused physical damage.

Can you think of anything more ironic? You have been damaged, your health has been destroyed, or maybe someone in your family has died as a result of the tobacco industry's actions, or some child was addicted and that child dies and the tobacco company gets to choose whether or not that person is going to be a winner under the lawsuit process. How unbelievably ironic and absurd that is. But that is the way this cap works. This is just one of the many, many technical problems with the concept of a cap, because what I think it reflects is the idea that when you put an artificial cap into a huge, dynamic economy like the United States', you are basically creating all sorts of unintended consequences that don't flow naturally in a capitalist system. Much more appropriate is that you allow the capitalist system to proceed in its usual and orderly course.

Now, others will say, well, if you don't have immunity, then you inevitably drive these companies into bankruptcy. To begin with, we don't have any idea that that is true. What we know is that these industries are extraordinarily profitable. We know that, right now, they are pursuing major buy-backs. Philip Morris, an $8 million buy-back; RJR, a buy-back of its stock. When you start buying back your stock as a corporate leader, you are saying your stock is undervalued. If your stock is undervalued, it is the ultimate test that in the future you have a better chance of progressive sales and a strong market force for your industry.

So the concept that if they don't have immunity, they are going to end up going bankrupt, I think the marketplace has discounted and rejected that and said that is not going to happen. In fact, there is a tremendous earning capacity out there, and we already know there is a tremendous capacity to pass on to the consumer, because that is the theme of this bill—to pass on to the consumer a significant part of the cost. As long as they can pass through that cost, it doesn't impact them at all, doesn't impact their capacity at all.

So from a substantive standpoint, bankruptcy doesn't make any sense as a defensive argument to this. But just from a purely logical standpoint, it even makes less sense. Think about it this way. We are saying that to save the industry from bankruptcy we have to put on this cap. But at the same time, we have to tax it. The reason we are taxing it is to discourage people from consuming the product. And the logical extension of that is that if you are successful in taxing people and managing to discourage them from using the product, you are going to reduce utilization, which one presumes would inevitably lead to the collapse of the industry and potentially bankruptcy.

So the bill, by its very nature, is inherently saying that the options of bankruptcy are there, but they are going to do it on a different system—through the tax system. Yet, they won't allow the marketplace to make that decision. They won't allow the marketplace to decide whether or not this industry survives, which is the way, traditionally, we have done it in this country. We don't traditionally say to an industry, well, you are about to go bankrupt, which is something that this industry can't say, certainly in light of what it is doing with stock values—so we, the Federal Government, are going to step in and give you unique protection; we are going to give you liability protection. And we certainly don't say it to an industry that has produced a product that kills people and has addicted them.

For those people who don't believe this industry knew their product was addictive, I will cite a few quotes. We have here quotes from the Brown & Williamson documents, disclosed as a result of the Minnesota case, and from documents of RJR. Brown & Williamson in 1978—that is a long time ago; this wasn't just yesterday:

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

These folks knew a long time ago that they were selling an addictive product that killed people. This is a quote from RJR:

> Tobacco companies are basically in the nicotine business. . .Effective control of nicotine in our products should equate to a significant product performance and cost advantages.

That is a pretty cynical statement. It reflects the fact that the tobacco industry knew they were selling an addictive product.

> Nicotine is the addicting agent in cigarettes.

The evidence is beyond question. They knew that it was a poison, that it killed people, and they knew it was addictive.

Second, there are some who may say, ''Well, they don't really target kids.'' That is very hard to defend also because the facts speak for themselves from their own documentation. They look on kids as their source of future revenues.

This is from the RJR documents of 1974:

> Let's look at the growing importance of the young adult in the cigarette market. In 1960, this young adult market, the 14–24

group, represented 21 percent of the population . . . they will represent 27 percent of the population in 1975. They are tomorrow's cigarette business.

How cynical could you be? Let's first produce a product that kills you, let's make it addictive, and then let's target it at kids.

Mr. KERRY. Will the Senator be willing to yield for a question?

Mr. GREGG. I would like to complete my statement, and then I will yield.

In 1974, ''Marlboro dominates in the 17 and younger age category, capturing over 50 percent of the market.''

Obviously, Philip Morris knew that Marlboro was making money in that area.

I will not read the next statement, but it has the same context. Kids were the target.

So we have here, as I mentioned earlier, the concept that we are going to be giving immunity, for the first time in our history, to an industry. What industry do we pick? Do we pick the people who are making heart valves so you can live longer? Do we pick an industry that makes hip joints to make you live longer? Do we pick the industry that is making a drug that will maybe make your life easier? Do we pick an industry that makes cars so you can get places faster? No. We pick an industry which targets kids with a poisonous product that they made addictive. And they knew it all along.

The last argument that we hear is,

We can't do this bill unless we have the tobacco companies cooperate, and we can't have cooperation unless we have some sort of immunity for the tobacco companies, unless we give them this historic new authority and protection.

First off, that is not true. The vast majority of the advertising controls that we think are needed can be done without the tobacco companies' participation. Yes, there are some issues of the first amendment that we can't step over. But for the most part, we can do a great deal to limit their access, especially to kids.

Second, we can compete with them. We can produce our own advertising programs, which compete much more aggressively than they can in the marketplace. Of course, that is the traditional American way: Make the point, make it effectively, that tobacco kills.

But, most importantly, I think it ought to be pointed out here that we are making a deal with the Devil and the Devil walked away from the table. There is no tobacco company participation in this process any longer. Here we are offering them the most significant legal protection probably in the history of the country in exchange for them being willing to give us some limited ability to limit their advertising activities, and they are not even at the table to accept the offer. In fact, they have walked away from the table. They said they don't want to have anything more to do with this process.

The quote from the head of RJR is:

The extraordinary settlement, reached on June 20th last year, that could have set the Nation on a dramatically new and constructive direction regarding tobacco, is dead. And there is no process which is even more remotely likely to lead to an acceptable comprehensive solution this year.

With that statement, he walked out. He said, I am not going to participate in this and tobacco is not participating in this anymore.

So you have this almost pathetic situation where the U.S. Congress is passing immunity and giving this outrageous new authority to the tobacco companies to protect them from lawsuits. The tobacco companies have walked away, and the U.S. Congress is sort of chasing after them on bended knee, saying, ''Please, tobacco companies, please, tobacco companies, please take our offer.''

My goodness. First, we make a deal with the Devil, and then we chase after him asking for him to take our deal. I mean it is just ridiculous, it is inappropriate, it is not becoming of the Congress, and it is wrong.

The language which Senator LEAHY and I have proposed here is essentially the same language which was in the original HEALTHY Kids bill, which was endorsed by the White House. I regret that we have not received White House support for reinserting this language. I regret that the leadership within this Congress has not supported the insertion, although on the House side I note, I believe that the Speaker supports no immunity language, although I don't want to speak for him. I have read reports to that effect.

But the point is that this is not dramatic language, it is not outrageous language, it is the language that was in the original HEALTHY Kids bill, and it essentially says no immunity. It says what this Senate said back when we passed the sense of the Senate 79 to 19: No immunity for the tobacco industry, because they don't deserve it, it is wrong, and it is inconsistent with the capitalist system.

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

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

Mr. GREGG. I yield to the Senator for a question. The Senator from Massachusetts had a question. And then I will yield to the Senator from Vermont.

Mr. KERRY. I thank the Senator. I know the Senator from Vermont has to go somewhere.

I want to ask the Senator if he is aware that there is a real distinction between the notion that he has been using called ''immunity'' and a limit on the exposure of liability. In fact, in this bill there is no immunity. They are liable for up to $8 billion on an annual basis. So that is not immunity.

Will the Senator not agree that the use of the word ''immunity'' is, in fact, an exaggeration?

Mr. GREGG. No, I would not. I happen to think the use of the word ''immunity'' is correct. The fact is that we are setting up a new structure here where, for the first time, we are giving product liability protection to an industry which clearly doesn't deserve it. The term ''immunity'' has become a term of art relative to that discussion. From my standpoint, the term of ''immunity'' properly defines that. If the Senator from Massachusetts wishes to define it in a more narrow sense and say, ''We are giving them product liability protection but we are not giving them immunity,'' that is the Senator from Massachusetts's definitional approach, and that is fine. But the point is the same. We are creating a unique, unusual, significant action which changes the jurisprudence that has dominated the marketplace in this country for 200 years.

Mr. KERRY. Will the Senator yield for a further question?

Mr. GREGG. Certainly.

Mr. KERRY. The Senator is aware, obviously, that Minnesota settled a lawsuit. Minnesota settled a lawsuit, and other States have settled lawsuits, and in those settlements there is, in fact, the same kind of structure contemplated in this bill. That is part of the system of jurisprudence, is it not? It is a normal part of how you arrive at a settlement of a dispute?

Mr. GREGG. First off, there is no lawsuit against the Federal Government. So that I don't think is applicable. I don't serve in the legislature of Minnesota. If I did, I certainly would not have agreed, and I would change the law of Minnesota to not allow that settlement to have gone forward should that decision be found to be constitutional, which I don't know whether it will be or not.

At this time, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. ABRAHAM). The Senator from Arizona.

Mr. MCCAIN. I will be brief. I want to say to the Senator that I will be very brief.

Mr. President, I yield the floor.

Mr. SESSIONS. Mr. President, is there an order of procedure, informal or otherwise?

Mr. LEAHY. Mr. President, I note that my good friend from Arizona, who is managing the bill, sought recognition, and I will be perfectly willing to yield to him for that.

Mr. MCCAIN. I thank my friend.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I rise in strong support of this amendment of my friend and my neighbor from New Hampshire. I was thinking about this. I thought to myself, why should we give big tobacco any special legal protections? My friend from New Hampshire said that we are not doing this for a medical company because they build some new kind of heart valve, and to get it out, we will give them special protection; or somebody else comes up with a new cancer drug and we want to give them special protection. We are

being asked to give this special protection to tobacco. I have to tell you, Mr. President, I don't have a whole lot of people in Vermont rushing up to me and saying, ''Oh, please, please, please, give immunity to the tobacco companies. This is our No. 1 priority.''

In fact, this is whom they are asking to give immunity to. Mr. President, look at this stellar group standing, raising their hand, swearing to tell the truth, the whole truth, nothing but the truth, and then they sat down and lied. I remember my days as a prosecutor. We used to see lineups like that, but they were usually a different type of lineup and you had numbers across the front.

These are not the people I want to give immunity to. These are not the people I want to go back home to Vermont and say, ''I voted to give them immunity.'' In fact, yesterday the former Surgeon General, Everett Koop, and the former FDA Commissioner, Dr. Kessler, endorsed the Gregg-Leahy amendment because they know Congress can protect the public health without having to protect big tobacco.

This really comes down to the issue of, Do you have to protect big tobacco in order to protect public health? I say no. What we should be doing is protecting public health, that is it, not protecting big tobacco.

Now, the Senator from Arizona, Mr. MCCAIN, the Senator from South Carolina, Mr. HOLLINGS, and the White House have done a great job in narrowing the list of special legal protections in the managers' amendment, and I compliment Senator MCCAIN, Senator HOLLINGS, and the White House for what they have done. But now that the Senate begins floor debate on this revised bill, we have to go beyond that. We have to take the great work that my neighbor from Massachusetts, Senator KERRY, and the others I have named have done. Then we have to say, once and for all, we are rejecting the tobacco industry's siren song for unprecedented legal protections.

I applaud Senator KERRY and Senator MCCAIN and Senator HOLLINGS and the White House for going as far as they did, but I want to now go further, lock the door, close the door once and for all, and allow us all to go back home to our States and say we stood up to big tobacco, we voted against immunity. It is time for Congress, and especially the Senate, to scrap the last remnants of the original sweetheart deal of immunity for the tobacco industry. That was the sweetheart deal that was in the proposed national settlement.

In theory, the tobacco industry will restrict its future advertising in exchange for legal protections from past punitive damages and other past and future damages. I reject this mirage of a deal because it will evaporate in a court of law. Any affected industry that is or is not part of the deal, such as a retailer or distributor or even a tobacco company, might sue to block these restrictions as being in violation of the first amendment.

Many advertising experts, including the head of the Federal Trade Commission, predict such a suit will succeed in throwing out the advertising restrictions as unconstitutional. In the end, Congress will have been duped again by the tobacco industry. They will have given unprecedented legal protections in exchange for empty promises. They will have said, ''You guys fooled us before when you testified under oath, but we know you have now found religion and you are going to be fined this time and you haven't fooled us again.'' It reminds me of Charlie Brown and the football: ''Don't worry, Charlie Brown, I won't pull the ball out this time.'' And we see that, of course, every year. Out goes the football, and flat on his back goes Charlie Brown.

Well, let's not do that to the people of this country. We have learned a lot more about the industry's schemes. We have seen what Attorney General Skip Humphrey in Minnesota has pried loose from the hundreds of thousands of internal tobacco documents. Let's take a look at some of this.

Let's look at some of these things that came out of Minnesota, the released tobacco documents. Now, this is just marketing that is aimed at children. Look at this one:

> To ensure increased and longer-term growth of Camel Filter, the brand must increase its share penetration among the 14–24 age group which represents tomorrow's cigarette business.

Mr. President, this is not a typographical error. They are talking about how they will increase—not just to start people at 14 years old but how they will increase the market among 14-year-olds.

Philip Morris starts off being a little bit more responsible by saying:

> Marlboro dominates in the 17—

But then we see—

> and younger age category.

RJR ''Product Research Report'':

> Salem King shows encouraging growth by posting a four point gain in the 14–17 market.

You wonder if whoever wrote this about encouraging growth, do they have children of their own? Do they have children of their own that they would brag about that?

Or look at Brown & Williamson:

> At the present rate a smoker in the 16–25 year age group will soon be three times as important to Kool as a prospect in any other broad age category.

Again, Mr. President, as a parent, I find this reprehensible. To them this was just marketing, and is that the kind of conduct that we should reward with unprecedented legal protection, that we should reward people who target 14-year-olds? To use the language of the same 14-year-olds, get real. We can't do it. If we grant immunity to this special rogue industry, we have lost all our common sense.

But if we go with the bill as now written, we will establish an $8 billion annual cap on damages for tobacco claims. That is about $20,000 per family for the 400,000 Americans who die from tobacco-related diseases each year. These are special provisions. They are unnecessary. Why should the industry stop marketing to children? Why should they stop manipulating nicotine? Why should they stop cutting health research when they know this liability cannot exceed a certain amount? If they know the liability is capped, then it just becomes a marketing ploy.

Some might say, ''Well, they would not do that because they promised us.'' This is like saying the check is in the mail, I gave at the office, or a few other versions of that. Why should anybody trust them? I do not. A liability cap eliminates the incentive for the tobacco industry to change its corporate culture. It is kind of like having two warehouses side by side and one has got locks on the doors and one doesn't. And you have somebody who is inclined toward burglarizing a place, and they say, ''Oh, I promised not to burgle those places.'' Well, they are not telling us the truth. We know which one they are going to go into. They are going to go into the warehouse without the lock. Let's put some locks on it.

I think, if you don't have the incentive of real liability facing them, the promises they make to get the Congress off their backs today are the promises that will be forgotten tomorrow. If big tobacco could turn its liability exposure to fixed costs which they could pass on to consumers and taxpayers, then they can keep on doing business as usual without the risk of litigation.

How will the liability cap work? Will it reward today's plaintiffs at the expense of future injured parties? Because most lawsuits settle, I believe the tobacco industry will have a unique negotiating edge if they have a liability cap. The industry will have every incentive to do sweetheart deals with favorite plaintiffs—do that first, then use the prospect of delayed payments in the future to force smaller settlements. A payment delayed will result in justice denied for thousands of tobacco victims.

I said earlier, each week, when I go back home, I don't have a lot of my fellow Vermonters coming up to me and saying, ''Hey, PAT, give immunity to the tobacco industry.'' We Vermonters are known for our common sense. My fellow Vermonters are telling me that immunity for big tobacco makes no sense. In fact, the Vermont legislature overwhelmingly, Republicans and Democrats alike, passed a resolution condemning any immunity for the tobacco industry in Federal legislation. I think that is because the American people outside the beltway understand that big tobacco does not deserve any special legal protections.

I take seriously the admonition of Mississippi Attorney General Michael Moore, whom I respect greatly, who told the Senate Judiciary Committee last year that the proposed settlement

offers Congress a historic opportunity to seize the moment and protect the health of future generations. But I believe that we can seize this historic opportunity to curb teenage smoking without giving big tobacco any special legal protection. Under our amendment, a State may resolve its attorney general's suit or take on the tobacco industry in court, as Minnesota did. It is up to the people of that State, instead of Washington. That is the same approach used in the Conrad bill that has, I think, 32 cosponsors.

I am confident in my State of Vermont, Attorney General William Sorrell knows the facts in his lawsuit against big tobacco. He is going to weigh the interest of Vermonters in deciding to opt out of the bill's settlement provisions. As one Vermonter, I am perfectly willing to put that decision in the hands of our elected officials in our State.

Our approach puts the interests of the children ahead of the interests of the tobacco lobby. The public health community agrees that immunity for the tobacco industry makes no sense. The Advisory Committee on Tobacco Policy and Public Health, headed by Drs. Koop and Kessler, wrote to Congress:

> We oppose granting the tobacco industry immunity against liability for past, present or future misdeeds. Congress should focus its efforts on public health, not on the concessions the tobacco industry seeks.

I agree. I agree. Dr. Koop called a liability cap a huge corporate giveaway. He is right. I agree. After all, the only reason we are here—and it is really a credit to it—is our civil justice system. In fact, without the use of class actions, without the likelihood of punitive damage recoveries, we all know tobacco companies never would have come to the negotiating table. So let's not change our successful State-based tort system as it involves tobacco legislation. It has served us well. After all, the same people who were in the picture I showed earlier, raising their hands, swearing they will tell the truth, the whole truth, nothing but the truth so help me—and I think they were swearing on a tobacco leaf because now the Department of Justice is currently investigating them for criminal conspiracy and perjury. I would say, if I can move that metaphor a little bit further, strip away the tobacco leaf and see what is hidden behind it. I am not going to give legal immunity to the same people who appeared here and lied to Congress while under oath.

Why in the world do we want to give big tobacco such legal protections? Rely on common sense. Rely on the things I hear from my fellow Vermonters as I am in the grocery stores back home. Rely on what I hear, as I am walking down the street, from Vermonters of all political persuasions. Rely on the common sense I hear from my neighbors and friends of a lifetime back home. Then we will reject the unprecedented legal protections for the tobacco industry, and we will vote for the Gregg-Leahy amendment.

I believe it makes sense. I certainly find myself in total agreement with what the distinguished Senator from New Hampshire, Mr. GREGG, said. That is the way I feel about it.

I understand from earlier discussions with the distinguished leader we may not vote on this today; we may vote on it tomorrow. But whenever we do, think what is in the best interests of the country. Think what is in the best interests of the people. And think, every Senator, how you would answer this question when you go home if you are asked: Are you willing to give immunity, even limited immunity, to the tobacco companies or not? If you are not, then you vote for this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I have listened very carefully to both of the proponents of this measure, for both of whom I have respect. But I must say this amendment is really not connected to the reality of what is in this bill or the reality of what we are trying to achieve with this bill. And I say that respectfully.

You might dub this amendment the ''kick the tobacco companies hard no matter what the consequences'' amendment. This is the amendment if all you want to do is hate the tobacco companies, all you want to do is come here and show photographs of children or show us how terrible the companies have been. Nobody is going to argue. We all know that. We know the companies have lied. We know they have been egregious in their behavior. We know they targeted young people in this country. We know they have come to the Congress, raised their hands, and not told the truth. We understand all of that.

The question is, What are we going to be able to achieve here in the U.S. Senate in terms of conditioning their behavior, within the limits of our Constitution, within the limits of our ability to do so. We have heard the words said that the tobacco companies ''do not deserve immunity.'' That is correct. They do not deserve immunity. And they are not receiving immunity under this bill. There is no immunity. They are liable. There are simply two choices as to how they are liable.

They can be liable by paying the annual payments that will now come from the $1.10 that appears to be at least settled for the time being. They will pay from that. And they will, in addition to that, have very, very rigorous so-called look-back assessments. They will have to live up to those look-back assessments. Where, if they do not achieve a specific level of reducing smoking among teenagers, then they get hit harder. They pay more. They pay more as an industry, up to $4 billion on any year, and they pay more per child that is deemed not to be meeting that level of reduction—$1,000.

That is a pretty steep penalty, $4 billion plus the assessment per child if they don't meet the reduction levels; that is, if the companies do not decide to be part of the solution. If all they do is get assessed the $1.10 assessment, and all they do is meet the standards of the look-back, they are subject to suit forever—forever. There is no immunity. They are liable. They are liable—not even under the cap. There is no cap under those circumstances. I ask my colleagues to focus on that in this bill. This is a two-part bill. One part offers the companies the opportunity to be part of the solution. Only if they become part of the solution does there then apply a so-called cap on annual payments.

Even if there is a cap on annual payments, there is no immunity; there is no avoidance of liability. We heard my colleagues stand here and say—let me quote it: ''The liability cap permits them to avoid changing the corporate structure.''

Not true, Mr. President. The liability cap does not permit them to change to avoid it. In fact, they only get a liability cap if they agree to change the corporate structure. That is the way it works now. The incentive of the cap is the commitment to change the corporate structure. If they change the corporate structure by agreeing to live by the FDA rules, by agreeing to live by the advertising restrictions, by agreeing to a whole set of requirements, that is the only way they qualify for the so-called cap.

The cap is annual. That is not immunity. That means they can be charged up to $8 billion in the industry for every year on into the future, and it is indexed, incidentally, for inflation. That is immunity? That is why so many people are on the floor saying, ''Hey, wait a minute, what are you folks doing in the U.S. Senate?'' because there are some people here who think that is too tough.

The fact is, and I emphasize this again and again, there are two choices for the companies: They can either take the assessment, be assessed the $1.10 and have the look-back provisions hanging over their heads and be sued and sued and sued by a State or an individual on into the future, or they can decide they are going to sign up.

What are they going to sign up to? Each company will sign up to a whole set of restrictions—FDA advertising restrictions, they would make a substantial up-front payment, they would abide by the far broader advertising restrictions that were in the June 1997 settlement, they would create a document depository, and they would agree not to challenge provisions in the bill and to abide by these provisions, notwithstanding any future decision from the court on constitutionality.

That is really critical, Mr. President. We are asking these companies to do a whole bunch of things that we can't get them to do unless they agree. We can't mandate that they give up their constitutional rights. No matter what we

pass here, these companies have constitutional rights under the first amendment. They have to come in and sign a consent decree and sign an agreement, and they have to agree, among other things, that there will be no billboards within 1,000 feet of a school; that all advertising will be black and white text unless in adult-only stores; that all advertising in the text must be in black and white, unless in magazines with 15 percent or less youth readership; it prohibits the sale or give-away of any products with tobacco logos; it prohibits brand name sponsorship of sporting and entertainment events.

We can't do those things, unless the tobacco companies agree. What they agree to is that they will do that. Even if the court decided later that it is unconstitutional, they will abide by it. How are we going to get them to do that? How are we possibly going to get these tobacco companies to become part of the solution of keeping our kids from doing things unless they agree to do it, and the fastest way to keep them from agreeing to do it is to say to them, ''We're just going to kick you around forever and forever, be subject to lawsuits forever and forever'' and not offer some incentive to come on board.

I reiterate, that is not immunity, it is a deal. It is a deal just like the attorney general of Minnesota made, the attorney general of Mississippi and the attorney general of Florida. That is what happens in the courtrooms of our country every single day. If you bring a lawsuit, as 44 attorneys general have done, then you go to court. But many of these cases come to some kind of settlement before they ultimately go to a jury verdict.

I remind my colleagues, the Senator from New Hampshire and the Senator from Vermont, in all of the years of bashing tobacco, in all of the years of hating tobacco, in all of the years of summoning up these speeches that whack them apart and say what they have done, not one lawsuit has been won in a courtroom. Not one.

What my colleagues are suggesting is that somehow the country is going to be better off by allowing that status quo to continue; that all we are going to do is have a bunch of lawsuits rather than trying to bring the companies into the process of helping to resolve this issue.

Again I say, if you want to have a document depository which, incidentally, helps people continue to sue and they are able to continue to sue up to the level of the $8 billion per year, that is not immunity. The best of my judgment is that is a limitation on the exposure of immunity. It is a limitation on the degree to which you are going to have to pay out in a given year, and that is precisely the kind of certainty that the tobacco companies and the attorneys general were trying to achieve in the agreement they came to last year.

Here we have in front of the U.S. Senate the opportunity to raise the price and the opportunity to have very stiff look-back provisions that will hang over the heads of the company. Let me just cite what those are, Mr. President, if you don't think those aren't tough. There are two look-back assessments. There is an industry-wide assessment and there is an individual assessment.

Under the industry-wide assessment, the industry is going to have to reduce youth smoking 15 percent in years 3 and 4, 30 percent in years 5 and 6, 50 percent in years 7 and 9, and 60 percent in years 10 and beyond.

If the industry fails to meet these targets, then there will be a graduated industry-wide assessment of the following amounts: $80 million per point for missing the goals by 1 to 5 percentage points, $160 million per point for missing the goals by 6 to 9 percentage points, and $240 million per point for missing the goals by 10 or more percentage points.

The total industry assessment will be capped at $4 billion per year, which is about 22 percentage points, and this will not be tax deductible. If the industry fails to meet the youth smoking targets, they will have to pay about 27 percent per pack. In addition to that, there will be a company-specific amount of an assessment annually—$1,000 for each child who uses tobacco beyond the youth smoking reduction targets.

Mr. President, there is no way to suggest that that is immunity. You can't be required to engage in that if you, in fact, have immunity. If you have immunity, you walk away free. Immunity means you are not going to be prosecuted. Immunity means you don't pay. Immunity means there is no price. There is clear liability here and the liability, I think, is serious.

A final comment I will make is that participating manufacturers—and this is very important—must agree to comply with all of the provisions in the act, including the provisions in look-back and in the annual assessments. They must also agree not to bring any court challenges to any provision in the act.

I ask the Senator from New Hampshire rhetorically, we can't get them to agree not to go to court. They are already challenging the FDA rule. They are clearly going to challenge the constitutionality of the look-back provision. The only way we can get them to participate is by offering something, and the something is that you are going to settle the lawsuits and you are going to have the ability to give them certainty as to how much their liability is on an annual basis.

Also, they will agree to abide by the provisions in the act, including the annual payment in the look-back provision, even if a third party challenges that provision and it is declared void by a court.

I emphasize that. Even if a third party challenges it, the tobacco companies that sign the protocol and agree to get the $8 billion limitation on their annual liability will still have to agree to live by it. If any of them break any component of this act, they have no cap at all. They are subject to exactly what the Senator wants.

Here is the choice for the U.S. Senate: It is a choice of whether we are going to have a piece of legislation that makes sense, that is built on common sense, that tries to bring the companies into the fold, that tries to create a solution for this problem, or you just come out here and feel happier bashing the companies.

And I think the choice is very, very clear for the Senate. I think the Senator from Arizona, and Senator HOLLINGS, and the others who have worked on this particular effort to create this structure have struck a balance of that common sense and of a way of achieving the goals of the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I will be brief, because I do not want to take the time from the Senator from Alabama who is going to speak next.

So I just mention administratively that, after discussion with the Senator from Massachusetts and with the majority leader, it would be our intention to have either a tabling motion or an up-or-down vote on this amendment and the second-degree amendment around 10 o'clock tomorrow. It is my understanding that we will be in at about 9:30, and that would give a half-hour tomorrow morning. So whether we have the unanimous consent agreement or not, that would be the intention of the Senator from Massachusetts and myself.

Second, the majority leader has asked me to announce that there will be no further rollcall votes tonight.

I would like to say, and point out to my colleagues, that I have heard all day today that some of my colleagues have felt that they have not been able to speak on the bill. There are others who want to speak on the amendment. I encourage you to come over. As I mentioned earlier, the Senator from Massachusetts and I will remain here until such time as everyone is heard both on the bill and on the amendment.

So finally, Mr. President, I just received a letter from the President addressed to Senator LOTT expressing President Clinton's opposition to the Gregg-Leahy amendment. I ask unanimous consent that that letter be printed in the RECORD.

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

THE WHITE HOUSE,
*Washington, May 20, 1998.*

Hon. TRENT LOTT,
*Majority Leader, U.S. Senate,*
*Washington, DC.*

DEAR MR. LEADER: I applaud the Senate for taking up comprehensive, bipartisan legislation to dramatically reduce teen smoking.

Every day, 3000 teenagers start smoking regularly, and 1000 will die prematurely of smoking-related diseases as a result. I urge the Senate to move swiftly to pass comprehensive legislation that could save those children's lives.

Last September, and in my budget plan, I set forth five principles for comprehensive tobacco legislation: Raising the price of cigarettes by $1.10 a pack over 5 years with additional surcharges on companies that continue to sell to kids; affirming the FDA's full authority to regulate tobacco products; getting companies out of the business of marketing and selling tobacco to minors; promoting public health research and public health goals; and protecting our tobacco farmers and their communities.

I have made protecting tobacco farmers and farming communities a top priority for this legislation, and I believe Senator Ford's LEAF Act fully meets this standard. I am deeply troubled by the Senate Leadership's recent attempt to undermine protection for tobacco farmers and their communities. I urge the Senate to work through this impasse and ensure that small, family farmers are protected.

If that issue can be resolved to my satisfaction, the bill before the Senate, as amended by Senator McCain's Manager's Amendment, is a good, strong bill that will make a real dent in teen smoking. Congress should pass it without delay.

I applaud Senator McCain and others in both parties who have worked hard to strengthen this legislation. I am particularly pleased that the bill contains significant improvements which will help reduce youth smoking and protect the public health:

Tough industry-wide and company-specific lookback surcharges that will finally make reducing youth smoking the tobacco companies' bottom line;

Protection for all Americans from the health hazards of secondhand smoke;

No antitrust exemption for the tobacco industry;

Strong licensing and anti-smuggling provisions to prevent the emergence of contraband markets and to prosecute violators;

A dedicated fund to provide for a substantial increase in health research funding, a demonstration to test promising new cancer treatments, a nationwide counteradvertising campaign to reduce youth smoking, effective state and local programs in tobacco education, prevention, and cessation, law enforcement efforts to prevent smuggling and crackdown on retailers who sell tobacco products to children, assistance for tobacco farmers and their communities, and funds for the states to make additional efforts to promote public health and protect children; and

The elimination of immunity for parent companies of tobacco manufacturers, an increase in the cap on legal damages to $8 billion per year, and changes to ensure that the cap will be available only to tobacco companies that change the way they do business, by agreeing to accept sweeping restrictions on advertising, continue making annual payments and lookback surcharges even if those provisions are struck down, make substantial progress toward meeting the youth smoking reduction targets, prevent their top management from taking part in any scheme to promote smuggling, and abide by the terms of the legislation rather than challenging it in court. Because the First Amendment limits what we can do to stop the tobacco companies' harmful advertising practices—which lure so many young people to start smoking—we can do far more to achieve our goal of reducing youth smoking if the companies cooperate instead of tying us up in court for decades. If a cap that doesn't prevent anybody from suing the companies and getting whatever damages a jury awards will get tobacco companies to stop marketing cigarettes to kids, it is well worth it for the American people. I, therefore, oppose the Gregg Amendment to strike the liability cap.

I strongly support these improvements, and I urge the Senate to pass this legislation without delay.

Sincerely,

BILL CLINTON.

Mr. MCCAIN. Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I know the Senator from Alabama has been waiting. I just misspoke on one thing, and I want to, if I may, correct it, take 2 minutes, and then I will yield the floor.

When I talked about the things that the advertising is going to require, that was the components of the FDA rule itself. I want to just share with my colleagues how, by bringing the companies in, it goes way beyond the FDA rule, because they would then be agreeing to have a ban on human images, animal images, and cartoon characters. They would agree to a ban on outdoor advertising, including stadia and mass transit, they would agree to a ban on Internet ads accessible to minors, and they would agree to severe restrictions on point-of-sale advertising of tobacco products. All of those things are what you get for having the companies agree to be part of the process.

The final comments I would make is, I began the process very much feeling that there should not be sort of a restraint liability, in a sense. When we sent this bill out of committee, there was a great deal more restraint with respect to liability. And since the Commerce Committee effort in putting the managers' amendment together, we have taken out an extraordinary number of those restraints. I will not go into detail now, but all of them were taken away, so that there was considerable increased exposure of the companies, which is one of the reasons why the companies are spending so much money now advertising and trying to refocus America on what this bill is not. And I think that is a critical thing for us to keep in mind.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. KERRY. I thank my colleague for his courtesy.

Mr. SESSIONS. I thank the Senator from Massachusetts for summarizing many of the very significant restrictions that will be placed on the tobacco companies if they participate in the settlement.

But I really do believe, and can say with great confidence, that we are not dealing with a question of immunity when an industry agrees to pay $750—$70 billion in payments to subject itself to many other controls and limitations. That is not immunity. And in fact, they have agreed, in addition, to pay $8 billion into a fund that would be available for individual liability lawsuits—each year, $8 billion. It goes up according to the cost of living index.

So I just say, this is a remarkable settlement. And it reminds me of the case in which the client sues and gets everything he wants but he still wants to keep suing because he wants to get a drop of blood.

Now, let me say this. I am not a defender of tobacco. I do not take any money from the tobacco industry. I believe it is a very damaging product to people's health. I know that as certainty as I am able to know anything. I oppose its use. I believe anything we can do particularly to keep youngsters from getting involved in tobacco is good, because it is more difficult for them to quit once they start, and they become addicted quicker at a younger age. It is a very insidious product, and we ought not to do anything that would undermine our effort, that I think has bipartisan support, to deal with smoking in America.

Let me talk about this subject on a broader basis. And I think our Members ought to consider this on both sides of the aisle. It is above partisan politics. In my view, the law is too much with us late and soon. We have too much litigation. Courts are clogged all over America with more and more lawsuits every day. People cannot get speedy justice. Cases are backed up. Costs have increased. And it is not a pretty sight.

As policy-setting Members of this Government of the United States, it ought to be our goal to reduce that litigation, to do what we can to obtain justice in ways that do not require citizens of this country to expend extraordinary sums of money over long periods of time for only modest gain at the end of it. That is a principle in which I believe deeply.

I have been a practicing lawyer all my career. I served as a U.S. attorney for almost 12 years, and I practiced law in private practice.

Let me just mention the asbestos litigation situation. Asbestos caused a number of different diseases that have resulted in large payments by the asbestos companies. This was handled, in the normal litigation of America, in the torts lawsuits that have been filed. Over 200,000 of those lawsuits have been filed and concluded, 200,000 more are pending, and it is estimated there may be another 200,000 filed.

Now think about that. That is 600,000 lawsuits, perhaps more, having to wind their way through the court system, with lawyers, and fees, and costs, and expenses. According to testimony we had before the Judiciary Committee by one expert who studied this matter, less than 40 percent of the money paid by these asbestos companies actually got to the victims, the people who were suffering disease because of their exposure to asbestos. Just think about that. Less than 40 percent of the money they

paid actually got to the victims of asbestos disease.

I think that is unacceptable. That is an unjustifiable event. It does not reflect credit on the legal system, and it does not, even more so, reflect credit on the Congress and the Senate of the United States, because we should have legislation that can deal with that in a more efficient way.

So I just say, I am troubled by the prospect that we will allow litigation to spring up all over America, that we can have a fund there to pay it, that we will have not 200,000 smoking suits, as they had in asbestos, but perhaps 500,000, 800,000, a million, several million lawsuits filed—tens of hundreds, maybe thousands in every community in America, large and small, where lawsuits will be filed, clogging the dockets of the courts, taking up weeks to try, and incurring great expense. It seems to me we can do better than that. I am certain that we can do better than that.

What happens when a lawsuit of this nature is filed? And I have to agree with Senator GREGG from New Hampshire: This bill is not effective in what it intends to do. It needs to be amended. And Senator JEFFORDS from Vermont and I will be introducing legislation on this bill, an amendment, that will distribute moneys that are paid in a fair and equitable manner, with the minimum of cost and the quickest possible turnaround time, so the people who are ill can receive compensation which they deserve, receive it quickly, without even having a lawyer.

Under the court system approach, just turning over tobacco lawsuits to litigation throughout America, we are talking about individuals having to hire attorneys. The Wall Street Journal has already noted that attorneys—I believe, in Detroit or Chicago—are advertising for tobacco clients now. They are already advertising for clients so they can file lawsuits. Traditionally, they will charge at least one-third, probably more of them will charge 40 percent of the recovery on a contingent fee basis. That means 40 percent of the money paid out by the tobacco company won't go to the victim, but will go to the attorneys. In addition to that, there will have to be trials, court costs, jury costs, deposition costs, medical costs, expert witness costs, and great delays.

Before you can get any money out of this bill, you have to have a final judgment. Normally that would mean a judgment by the supreme court of the State, which may be 2 years or more in the offing. The result of that, I suggest, for people who are suffering from lung cancer is that many of them, unfortunately, would not live to see any recovery.

The Senator from New Hampshire is also correct that it appears under this bill the tobacco companies decide who gets paid. I don't know how that came about, but it indicates they pay whoever they want to pay and that counts toward their payment into this fund. That is not a rational way to see that injured people get paid. They should not be required to do that. It will also cause a race to the courthouse because you don't get any money until you have a final affirmance of your judgment, and only then can you come to the tobacco company and get your payment.

We should not be put in a situation in which two equally deserving claimants have filed a lawsuit and one wins and he has a fast court system and he gets into the fund and gets his money first and another one takes a long time before he ever gets his final judgment, before he gets money. We are creating a system that will be aberrational.

It will be aberrational in a number of other ways. Some States will be favorable to these kind of lawsuits. Some States will not. Maryland has already changed its law to make lawsuits against tobacco companies easier to file. Other States may do that. Traditional defenses such as assumption of the risk and contributory negligence may be vitiated by legislation or court rulings, and lawsuits will move faster and more successfully in one State, whereas another State that adheres to traditional rules of law may not allow cases to move forward at all. It may be unsuccessful wholly in one State. Indeed, we could have one or more States virtually bankrupting the tobacco industry themselves if they were to have unfettered litigation cases of this kind.

As a person who has practiced law for a long time, who has been in court on a consistent basis, I can tell you that the prospect of hundreds of thousands, maybe a million tobacco lawsuits being filed, burdening the judges and courts to a degree they have never known before is not a good thing. The taxpayers pay for that. Some will say it is a free-market deal. Just let people file their lawsuits and the government is not involved in it. The courts are the government. Courts are the government. The taxpayers are paying for the judges, the jurors, the clerks, the court reporters and everybody that manages a courtroom, and the courtrooms in which these cases are tried. The taxpayers are intimately involved in that.

We can do a lot better than this. I just say we cannot allow a repeat of the asbestos litigation situation. We cannot, as Members of this body, allow a situation to occur in which less than 40 percent of the money paid out actually gets to the people who are victims of the crime. They will say, well, in this bill they have arbitration over attorney's fees. I have heard that. So I have gone back and read the legislation. This is the arbitration: If you are unhappy with the agreement you have with your attorney, you can go to an arbitrator. The attorney gets to name one member of the panel, you get to name one, and those two select a third. But if you have a standard agreement with them on a one-third or 40 percent contingent fee basis, 40 percent of what you recover goes to the lawyer if you have that kind of an agreement. That is what the arbitrators are going to affirm. They are not going to undercut written contracts between attorneys and clients the way this thing is written.

So there is no protection here to substantial fees being paid to attorneys in all of these cases. We know it will take years for them to be concluded. There will be a race to the courthouse to get judgment. Some States will allow suits to proceed. Others will not. Some people will draw a favorable jury, win a big verdict, $100 million; somebody else will have a jury that is more conservative and renders no verdict, zero verdict. This is not the way we ought to do it.

On this legislation, we begin the process of establishing a sane and rational method of distributing the funds that ought to go to those who have been injured by tobacco. However, the problem with it is it does not go nearly far enough. This is a classic mass tort situation. The greatest mass tort situation, perhaps, in the history of mankind in which millions of Americans have smoked for a long time and they have hurt and damaged their health because of it, and as a result of that they now want to seek compensation.

First, let me say something. I have to be very frank. No individual person has succeeded in a lawsuit against a tobacco company, primarily because of the traditional rules of law that say if you undertake a dangerous activity and you are injured in that, you cannot sue somebody and ask for compensation because of it. The way this bill is written, I believe the likelihood is we will have more States like Maryland amending their law, more pressure on judges and juries to get around the traditional defenses to these kind of activities, which is somewhat dangerous, because what about the liquor companies and cirrhosis of the liver or other kinds of diseases that come from other kinds of products. Is there no barrier to that anymore?

I will say we have a major mass tort situation. We ought to deal with it in a comprehensive manner. We should not allow an unfettered lawsuit flood to dominate the American court system, resulting in some people winning large verdicts, others getting nothing, delay, people dying before they have any recovery.

Senator JEFFORDS and I will be introducing a bill that will say if you have a serious disease and have been disabled because of your smoking, you can file a claim and within 90 days you can be paid. You will not even have to have an attorney. We will limit the cost to 10 percent and we will dispense the moneys based on the seriousness of your disease, the seriousness of your disability and whether or not it is connected to smoking. That is the kind of thing we can do. We can use this money that the tobacco companies in this litigation demand that they pay—

$8 billion a year—and we can use that to compensate in a prompt and fair way those who have been injured. To do otherwise is just not a good way to do business. It will enrich lawyers, it will burden the courts, and it will guarantee an irrational distribution of funds to those who have been injured and minimize the amount of money actually getting to those who deserve to be compensated.

I will say that I do believe that this amendment should not be passed, that the payment of $755 billion, the agreement to give up certain constitutional rights such as free speech and advertising is the kind of settlement that is justifiable and proper under the circumstances. We would make a historic step forward for America if we can develop a way to ensure that those who are injured in a mass injury-type situation such as this are compensated in a realistic and prompt way. I believe we can do that. For these reasons, I must ask my fellow Senators to vote no on the Gregg amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I come to the floor to make a general statement about the legislation.

Let me say this to begin with: I am very concerned by the speed with which this bill has come to the floor. It has really foreclosed any real financial analysis—no joint tax figures that are adequate, no CRS analysis, no CBO study.

For me, who represents California, there is a certain irony in passing a bill under these conditions. That irony is what we do that we believe is right for people may turn out to be very harmful for those very people. And I want to say what I mean by this. I want us to pass a good bill. What is a good bill? It is one that deters smoking; it doesn't create a huge black market; it is constitutional; it would give the FDA full authority to regulate the contents of nicotine; it would prohibit all advertising, which to me is very important, not the kind of crimped regulations, but a prohibition on all advertising; and it would have some strong antismuggling provisions, both domestic and international.

We have heard Senators state the facts. Forty million Americans smoke today. Most of them are addicted. I don't think we have heard the California facts. Earlier, I was listening to the distinguished Senator from Nebraska say he was speaking on behalf of 1.6 million Nebraskans. My goodness, in California alone, three times the population of the State of Nebraska smokes. We have 4.6 million smokers in California who are adults; that is, 19 percent of the population of the State of California smokes. You can figure how many of those people you believe are truly addicted, who would like to quit but can't.

Ten percent of our youngsters smoke; that is, 890,000 young people in California smoke. Let me give you a really chilling figure. One out of every four high school senior is addicted to nicotine. One out of every four high school senior in the largest State in the Union is addicted to nicotine. That is why I say an express prohibition on all advertising is important to the success of any antismoking effort.

Mr. President, 1.8 billion packs of cigarettes are sold in California each year. On a per capita basis, 54 packs of cigarettes are consumed in California each year by every man, woman, and child in the State. And there are more than 32 million of us in that State. We already have a 37-cent State tax. We have a 24-cent Federal tax. And on the ballot in November is an initiative placed there by Rob Reiner, which would put on 50 cents additional. So we will be over a dollar in tobacco taxes in the State of California before this body and the other body do anything at all.

In California, 300 young people under the age of 18 begin smoking daily. We all know the health consequences. Just yesterday, my closest and oldest friend called. She had just been diagnosed with lung cancer. She quit smoking 30 years ago. Just the day before, I learned of the husband of a very close friend of mine who just had a tumor, stage 4, the size of a softball diagnosed in his lungs. So we all see this happening to us every day. A good friend of mine just died from lung cancer —a lifetime smoker.

The hard part is not that we don't want to do something, but whether what we do is right. What really will turn around the teenage trap of smoking and addiction? What is the right balance of penalties, pressures, regulations, and health research for the next 25 years? If the goal of this legislation is to reduce and limit youth smoking, and not just creating a spending bill, we must address the link between price of cigarette packs, the ratcheting down of nicotine, if the FDA has full regulatory authority, a black market, and the availability of cigarettes to children. We need to make certain that we don't increase the price of cigarettes so high that it becomes lucrative for smugglers and for organized crime to become involved in cigarette smuggling so that, like cocaine, cheap black-market cigarettes will be available on street corners in cities all over our country.

Mr. President, there is already a black market in California. It is a substantial black market, and it is based on just the taxes I have mentioned so far—a 37-cent State tax and a 24-cent Federal tax. The State estimates they lose between $20 million and $50 million a year in revenues.

We have all heard in the Judiciary Committee commentary that when the per-pack price increases beyond $3.60 to $4 a pack—this takes into consideration what the public health people said could be added to a pack—about $2—and what the industry analysts said, anything over $3 to $3.50—at that point we would create a black market in this country, unmatched by what happened in Canada in the 1980s.

I believe that, as I understand the McCAIN bill, within 5 years in the State of California, with the item on the ballot, you will have a black market in cigarettes unmatched by anything in history. According to an independent industry analyst, the price per pack in 1997 dollar terms, under the Commerce bill, would be $4.61. In California, with what is on the ballot in June, that will make it $5 a pack. If you include inflation, the McCAIN legislation would be $4.61, and that becomes $5.11 if you add the 50 cents that is on the ballot in my State in November. That is above anything that anyone has said would be the trigger point to create a black market in the State. This is a 25-year prospect, so the numbers only go up from there.

At the Judiciary Committee hearing 2 weeks ago, John Hugh, the senior assistant attorney general of the State of Washington stated:

> As tax rates have risen generally across the United States, a new trend is emerging. Increasingly, tobacco products manufactured outside the United States are being smuggled into the United States and are sold on the contraband market. In 1988, California increased its tobacco tax from 18 percent to 35 percent per pack. Today, the contraband market is estimated to be between 17 and 23 percent of the cigarettes sold.

The impact of cigarette smuggling is enormous for this country and most particularly for my State. First, there is, obviously, the loss of State excise tax revenues, which I said were $20 million to $50 million annually now.

Second, we have no control over the safety of cigarettes that are smuggled in from overseas. For example, tobacco from China is much harsher, and the cigarettes are much more carcinogenic. And that is a very likely contraband potential black market today. Even though all 50 States have laws prohibiting the sale of tobacco to people under 18, Federal sting operations show that four in ten teen smokers nationwide today succeed in evading such laws.

Individuals, including teens, find ways to buy available cheaper cigarettes. In Canada, when they increased tobacco prices by 150 percent in the 1980s, it is estimated that 40 percent of the cigarettes in Canada may have been contraband U.S. cigarettes, where a carton of Canadian cigarettes was $37 compared to $14 for U.S. cigarettes.

We also heard testimony about how a smugglers' ally developed in an area between Cornwall, ON, and Messina, NY, the epicenter of the Canadian contraband cigarette crisis.

It goes on and on and on with testimony.

There is a very real probability that within 5 years in California there will be a major black market, if the McCain's per pack tax plus what happens on the ballot in California in June all go into law.

With almost 890,000 youngsters smoking, with one out of every four high

school seniors addicted to nicotine, what prospects do we have, then, of really reducing teenage smoking unless we can get full regulatory FDA authority, and unless we can prohibit all advertising, which I don't believe we will be able to constitutionally do unless the tobacco companies will agree to ban all advertising. To me, a ban of all advertising is really going to be important if we want to help youngsters to not smoke.

Let me tell you two things about the McCain bill that I cannot live with.

I will shortly be introducing an amendment, along with Senators BOXER and DURBIN, to cure an injustice in the McCain bill's treatment of local government. As presently drafted, the bill would wipe out the suits that several local governments have filed against the tobacco industry without providing a dime of compensation. That is simply unfair. The McCain bill currently would prevent local governments from sharing in any of the settlement funds now being provided for in the United States. San Francisco was the first local government to sue. It sued in June of 1996. The suit was joined in by 17 other California cities and counties representing over half of the population of the State of California. Local governments in three other States have also sued the tobacco industry. New York City; Erie County, NY; Cook County, IL; the City of Birmingham, AL; and Los Angeles County brought their own suits. These local governments have been litigating against the tobacco industry for 2 years. As a matter of fact, it was the California cities and counties which resolved the Joe Camel case in California. And as a result of that case R.J. Reynolds agreed to pull the infamous Joe Camel campaign. R.J. Reynolds was required to disclose its confidential marketing documents. The release of those documents was front-page news across the country.

The California county lawsuit is set for trial early next year. In the absence of Federal legislation, the California counties and other local governments would expect to recover appropriate compensation as a result of the trial or the settlement of these cases. The legislation coming out of the Commerce Committee jettisoned all of these suits.

That is my first major point of a grievance with the McCain legislation, in addition to it moving so fast and the cost such that I believe it creates a major black market.

The second objection is that the formula for distribution in the State disadvantages 26 States because it is based on an agreement among the Attorney Generals and not on general population census figures. For example, in California, if you use the population percentage as a formula mix, what happens is California's share of revenues is increased 4 percent. And that is 9 percent to 12 percent, and that is a third net additional cost for 26 other States to which we have sent a Dear Colleague letter out today letting them know about this.

It is no secret that I have been working with the distinguished chairman of the Senate Judiciary Committee, the distinguished Senator from Utah, on a bill that might well avoid some of these problems—avoid the black market for California, cover local suits and county suits, provide a formula which is really based on what we are trying to do, which is to stop youth smoking, and it makes sense in many other ways.

Particularly, let me stress again that unless whatever we do here has some encouragement for the tobacco industry to agree not to advertise, the only prohibition we can probably impose, or perhaps—I say perhaps—some of those in the FDA rules, and even that will be litigated and even that will hold up the legislation probably for 5 to 10 years.

I notice the distinguished Senator from Utah is on the floor. I wonder if I might ask him this question. I have had the privilege of serving with him on the Judiciary Committee for 5½ years now. I regard him as a strong and positive constitutional expert.

Based on what the Senator from Utah knows of the Commerce Committee bill, does the Senator believe it will be contested in court, and does he believe that it will withstand a constitutional test?

Mr. HATCH. I thank the distinguished Senator for her kind remarks. I have listened very carefully to her.

There is no question in my mind—not only from my own personal evaluation and study of these issues, but also from conferring with the top constitutional experts in the country, that both the original Commerce bill and the managers' amendment we are now discussing, are unconstitutional in scope and intent. This is especially true with regard to the FDA provisions where it would appear that the advertising restrictions are too broadly conceived to be enforced. Both Larry Tribe, a constitutional expert on the left, and Robert Bork a renowned scholar on the right, have concluded these provisions are problematic and raise constitutional concerns.

With regard to any other advertising ban, as embodied in the new title XIV of this managers' amendment, the only way they can go into effect will be if the tobacco companies actually voluntarily consent to these restrictions on advertising. As the distinguished Senator knows, they have not voluntarily consented. Far from it.

The companies have said they will fight this bill. This means that if the McCain bill passes in its current form, and thus there is no voluntary consent to the advertising provisions, we will have up to at least 10 years of litigation. During that time, we face the possibility of having no money for our stated purpose of helping reduce youth smoking, no money for smoking cessation, nor for any of the other stated purposes such as biomedical research, settling the state suits, and farmer transition payments.

And at the end of 10 years, it will be entirely likely that the tobacco companies will have won their suits because of the constitutional infirmities within this bill.

I am just talking about advertising.

Then we go to the look-back provisions. There are at least two major constitutional problems with the look-back provisions as written in this bill.

One is that they are going to punish these companies even though they don't show fault on the part of the companies when the projected youth smoking reduction targets are not attained.

The constitutional experts have said that may constitute a bill of attainder which is expressly prohibited by the Constitution.

There are other constitutional infirmities with regard to the look-back provisions. So it doesn't take anybody on the side of tobacco companies 3 minutes to know that if they face the Commerce bill, in which they had no part in drafting, during which they were not even allowed to provide input, for which they gave no consent to waive their constitutional rights, then it is a lot cheaper for them to litigate the matter with a good prospect of winning than to pay over $800 billion in the next 25 years.

I might add just parenthetically that by some estimates there could be 1 million young children whose lives will be cut short prematurely because Congress has failed to write a constitutionally sound bill.

So the Senator raises very important issues; she raises very important considerations here and very important criticisms of this particular piece of legislation.

It really bothers me that many in this body are rushing to ''pile on'' this legislation without trying to bring the tobacco companies onboard, albeit screaming and kicking.

Let me state for the record. I have no respect whatsoever for the tobacco companies.

I think that their record shows clearly they have lied to the American people for decades. They knew their products were addictive. They knew they caused cancer. They deliberately marketed their products to young children, and then denied it.

I would like nothing more than for them to pay a trillion dollars a year.

But what I would like even more is for us to endorse a workable, constitutionally-sound new War on Tobacco, and we are not going to do it by writing a bill which fails the constitutional test. Such an approach is destined for failure.

I remember clearly when Mississippi Attorney General Mike Moore testified before our committee, not once, but twice. He related that the attorneys general knew all these evil things about the tobacco companies when they were negotiating the settlement

last year, they waded through all the relevant documents, and they concluded that the far greater goal was to help a generation of youth from becoming addicted to tobacco than to continue to focus on the companies misdeeds.

If the companies broke the law, if anyone in the companies broke any law, they should be punished to the fullest extent possible. Nothing here would preclude that. Nor should it.

But I get upset when some suggest that we can help children by thinking up literally every measure we can to punish the tobacco companies and then loading them into one constitutionally-infirm bill.

It seems to me it is possible to punish the companies, but at the same time compel them to underwrite financially a new public health program that can do future generations more good than anything we have ever envisioned. We simply can't develop that comprehensive public health approach without the industry's consent, again, however reluctant.

I can go on and on. Tomorrow, I plan to go into greater detail on the constitutional infirmities of both the original Commerce Committee bill, which everybody knew was just a vehicle for amendment, and the bill as now amended with the managers' amendment, which is just as bad as the original Commerce bill with regard to constitutional concerns.

So I thank the distinguished Senator from California for bringing this out. I also appreciate her working with me to try to resolve these difficulties. And, as my dear friend from California knows, the original settlement on June 20 of last year was for $368.5 billion.

All of us gasped for breath when we heard that. We thought, ''Why in the world would the tobacco companies agree to pay $368.5 billion?''

The reason is because they want some limits of liability, even though they will still have abundant liability; they want some finality to the litigation that they face, a predictability that will allow them to make the large payments we envision to underwrite the new public health program we are trying to develop.

And so, if we take away even the few aspects of limited liability that are there, there is no chance at all of ever getting the tobacco companies to come on even a modest bill.

I thank the distinguished Senator from California for being willing to help cosponsor the bill that we are working on that would require $428.5 billion in payments over 25 years, or $60 billion more than the June 20, 1997 settlement.

I believe that if we can limit it to somewhere between $400 billion and $430 billion, and if we can include reasonable limited liability provisions for the companies—limited liability provisions that restrict class actions but do not stop individuals from suing—than I am hopeful we can get the companies to come back on board.

I am not sure if this is possible, but I think we ought to try, or the whole program will be lost. And if we get them back on, then this whole matter can work and work to the best interests of children and society as a whole.

So I thank my colleague for being willing to work together on this and, of course, for bringing up the points she is raising here today. I hope that at least cursorily answers her questions, and I will be glad to go into much greater detail later.

Mrs. FEINSTEIN. I thank the Senator for that excellent answer and the discussion of the constitutional infirmities and what is apt to happen in the litigation which would really hold up a remedy for smokers, probably for 10 years.

I would like to ask another question. Is it not correct, I ask the Senator, that you also are a member of the Finance Committee in addition to being chairman of the Judiciary Committee?

Mr. HATCH. In response to my colleague from California, it is correct. I am a member of the Finance Committee and, of course, on that committee voted against the $1.50 increase at the manufacturers level, not because I would not like to punish the tobacco companies, but because that amount is excessive and in the process will not lead to a bill which can stop youth tobacco use.

Mrs. FEINSTEIN. I have been troubled by the absence of sound analytical data. I just sent my staff to the Joint Tax Committee, and as of May 18, there is a small report which shows the distributional effects of S. 1415 as reported by the Senate committee, but that is just the distribution of how the taxes would fall on the income groups.

To the Senator's knowledge, is there any sound analysis by a governmental entity such as CRS, CBO, or Joint Tax on the actual per-pack costs of this bill out 25 years?

Mr. HATCH. As the Senator knows, we held extensive hearings on this issue in the Judiciary Committee. The Treasury Department sent up Deputy Secretary Larry Summers, who gave us a five-line piece of paper as the basis for their analysis. When we asked him about whether they had a model, he wasn't able to respond very carefully.

There is apparently not much of a model backing up the Treasury Department's assertions in this area. But, on the other hand, we had three of the top analysts from Wall Street who spend all of their time working on tobacco-related issues trying to be able to be accurate in informing their customers, and they had extensive economic modeling done that showed the retail cost per pack of tobacco under the $1.10 bill that we have before us would be somewhere between, as I recall, $4.50 and $5.50 per pack. And if that is so, then the distinguished Senator's concerns about the black market are certainly legitimate and justified.

I might add that the Finance Committee last week did not view it as a precedent for the future. But I cannot believe that it is good for the Finance Committee, good for the full Senate, and good for the American people to consider what one Wall Street analyst has projected to be an $861 billion program without the Finance Committee having a meaningful opportunity to study the Treasury Department's estimates of the costs of the program.

As chairman of the Judiciary Committee, I tried to get a full explanation of the Treasury model before a hearing that we held on April 30.

But, the administration failed to provide us with their model together with a full explanation of their assumptions. And what I can only conclude from that is they did not have a model; perhaps they were just hypothesizing. I hope this is not so.

Late the night before the hearing, I succeeded in getting only a one-page summary table that some Treasury and White House staff insisted on calling a model.

Let me just say that I hope we could all agree we should not launch a huge new, multi-billion Federal program, with such far-ranging implications, on the strength of a one-page chart.

It is also important for me to note that many Wall Street analysts have been calling for a full explanation of the Treasury projections for a few months. Several Wall Street experts have participated in meetings with administration officials and Commerce Committee staff and explained their own models and their own assumptions so this should have been a very open process.

In fairness to the Treasury Department, I must say that finally, late on May 12, but only after our hearing that same day where two financial analysts testified—and this was 2 weeks after our hearing in which Deputy Secretary Summers testified—Treasury did provide our Committee with an additional 11 pages of information.

For the record, I must note that this still is not everything I have asked them for. For example, Treasury s one-page summary table that they insist on calling a model assumes a 23 percent reduction in cigarette sales from 1998 to 2003, based upon a semilogarithmic demand function with an initial elasticity of minus 0.45.

I might not know the difference between a semilogarithmic function and a hole in the ground, but there are experts who know how to assess this information. These experts deserve a chance to analyze this data on something this important. And the fact is, on the evening of April 28, Treasury and the White House staff said they would send over the formula for this function, that they would send it right over.

At this meeting, it was explained to my staff that this function gradually reduced the price elasticity as the price climbed. Frankly, this makes sense, because you would expect that as price goes up, there would be fewer

and fewer people left who are willing to pay the higher and higher prices.

But the administration officials also said that in year 5, for some statistical reason, the Treasury elasticity function would actually increase, under the Commerce bill assumptions.

So, while they are saying that as a general matter the elasticity would get slightly lower as price climbed, they were also saying that in year 5, at least, this elasticity would actually grow higher.

You can see why anyone would want to study the underlying assumptions for these conclusions very carefully, since elasticity of demand—that is, the responsiveness of individual consumption due to an increase in price—is so important to the writing of this law.

Our debate on the floor over the Kennedy amendment calling for a price increase of $1.50 per pack centered on this price elasticity issue. But the formula that was going to come right over from the Treasury never came on April 28, as they said it would.

At the April 30 hearing, I renewed this request by asking Deputy Secretary Summers to provide this information with the details of the so-called Treasury model. And, as I said earlier, the Treasury Department did finally send us additional information after our hearing on May 12, but we are still waiting for their semilogarithmic demand function.

I have no reason to believe there is anything magical about this information and cannot imagine why it has not been provided. Certainly, it is not like I am asking for some sensitive top-secret security information.

We are asking for information to help us understand how to write properly a bill that is being touted as having a $516 billion revenue impact, but in reality which is probably $861 billion, according to those who have developed full, detailed models with assumptions which they are willing to make public in at least two open hearings.

So, I have to say the testimony we heard from these financial analysts just completely blows away the Treasury Department testimony that was given, and certainly the 1-page so-called model that they presented to the Committee, and even the 11 additional pages that they gave us which really weren't very helpful.

And I have to say I take exception about remarks made hear earlier today suggesting that these financial analysts had a vested interest in killing the McCain legislation because it would help their investors. We did, in fact, discuss this issue with the analysts at our recent hearing. They advised the Committee, and I believe they had no reason to mislead us, that their only vested interest was in providing accurate information to their clients. They have both recommended buying and selling tobacco stocks, depending on the company and the time.

The companies they represent do not own tobacco stocks, as was alleged here earlier, at least not in the traditional sense. It is clear that they may hold tobacco stocks for their clients who have purchased them, just as they hold stocks in a myriad of publicly-traded companies, but it is hard to argue that this is ownership of those stocks.

That was a little lengthy, but I don't know how else to explain it.

Mrs. FEINSTEIN. I thank the Senator. I think that was an excellent explanation, if we all understood it. I don't know a lot about logarithms. I do know about per-pack cost. And I do know we have 5 million smokers, and almost a million juvenile smokers, in the State of California. And I do know that by all the testimony we had in the Judiciary Committee, Senator HATCH, that if the price in 5 years is over $5 a pack, we have a whopping black market on our hands.

Would you agree with that?

Mr. HATCH. There is no question in my mind about it. If we pass this legislation the way it is currently written, we are going to have a black market like you have never seen before.

When Canada raised its taxes so dramatically, they found this to be the case. Remember the mayor of Cornwall, Canada——

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Who came in and testified about how they threatened him, his life, his family's life, how the city become inundated in organized crime, until they finally had to reduce the size of the excise tax in order to prevent further black marketeering?

Remember how he told us his family had to be removed to a safe house? How ordinary citizens could not even go out at night because they were afraid of random gunfire?

The distinguished Senator from Massachusetts also showed a chart here today——

Mr. MCCAIN. Mr. President, regular order here.

Mr. HATCH. That only went up to 1991.

Mrs. FEINSTEIN. Mr. President, I believe I asked——

The PRESIDING OFFICER. Regular order is the Senator from California has the floor. She has yielded for a question to Senator HATCH.

Mr. HATCH. I am trying to answer that question.

Mrs. FEINSTEIN. Yes, I am asking the chairman——

MR. MCCAIN. Further parliamentary inquiry. Will the Parliamentarian describe the procedures here in the Senate called for as a result of a question, and that the Senate is not supposed to be abused by long, lengthy discussion of a question. This is clearly what is going on. It is not in keeping with the spirit of the Senate. There is another speaker waiting to speak, and that is why I am concerned about it. Otherwise, I would not care.

I ask a parliamentary inquiry, to describe the procedures of the Senate in this case.

The PRESIDING OFFICER. The Senator who has the floor may yield for a question. And the precedent prohibits statements in the guise of a question.

Mr. MCCAIN. Would the Chair repeat that, please?

The PRESIDING OFFICER. Under the precedents, statements in the guise of a question are not permitted.

Mr. MCCAIN. Statements in the guise of a question are not permitted. I thank the President. I made my point. If the Senators want to continue to abuse it, that is fine.

Mrs. FEINSTEIN. And I would make my point to the Senator in return. I have asked no question in the guise of a statement. I believe, if you read the RECORD, the RECORD will reflect that. I have asked a question.

Mr. MCCAIN. It is very clear what is going on.

Mr. HATCH. Mr. President, could I ask the distinguished Senator from California a question? Do I have the right to do that, under the parliamentary rules here today? If she will——

The PRESIDING OFFICER. The Senator from California has the floor—

Mr. HATCH. May I ask her a question?

The PRESIDING OFFICER. And the Senator from Utah may ask her a question if she permits it.

Mr. HATCH. I think that is what I will do, because it seems to me that some of the people around here are afraid to get the facts on this matter.

And I have to say that it is highly offensive to have someone come here and suggest that the distinguished Senator from California and I are not trying to get to the bottom of the facts, especially since the facts are so complex here.

So I will ask the distinguished Senator from California, isn't it true that you are trying to get to the facts of this matter? Is that right?

Mrs. FEINSTEIN. Yes. It is true.

Mr. HATCH. May I also ask the Senator from California, are you aware of the fact that we have had extensive testimony on this very issue before our Judiciary Committee? I hope this question is fair. I hope that I will be permitted to ask it, under the Senate rules. I surely hope that the manager of the bill will recognize we are going to abide by the rules, if he wants to be a stickler on them. Is it not true that we have had literally hours of testimony on this very issue?

Mrs. FEINSTEIN. Yes, it is true. And I believe I was present at most of the hearings on this subject in the Judiciary Committee.

Mr. HATCH. And I would like to ask, isn't it true that the distinguished Senator from California heard the testimony of witnesses saying that if the per-pack price under the Commerce bill goes to $4.50 to $5.50 per pack, there is going to be an extensive black market? Isn't that true?

Mrs. FEINSTEIN. That is true. The independent Wall Street analysts said they believed it would happen at $3 to

$3.50 a pack. Mr. Myers, representing Tobacco-Free-Kids, testified before our committee that he believed you could take an additional $2 on a pack before it would develop a black market. But the figures for California really, if the tax passes in June, indicate that the tax in this bill, plus that tax, would be substantially above $5 within 5 years.

Mr. HATCH. Is the Senator aware of this comment by CBO in April 1998—and I hope this is in the form of a question that is acceptable to the manager of the bill—about black-market cigarettes:

> Any legislation that would rapidly raise the price of a product by a third or more would almost certainly spawn a black market as people attempted to evade the high prices. Tobacco is no exception.

Is the Senator aware of that?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Is the Senator concerned about that?

Mrs. FEINSTEIN. I am very concerned about it, because, again, we have 40 million smokers in the United States, 5 million of them in California. There is a huge market. There is a huge number of people already addicted, and as the price per pack, plus reduction of smokers, comes into play, the opportunity for a black market increases, and particularly if you begin to ratchet down the addicting chemical which is nicotine.

It is a serious question. I am surprised, frankly, that people really don't want to know more about it. I, frankly, am surprised that there is a rush to judgment. It seems to me that because of what we are doing is for 25 years, we better be right. I don't want to see in my State a huge black market in 5 years and know that I voted to help make that market possible.

Mr. HATCH. Can I ask the Senator from California another question that I think is relevant to her concerns?

Mrs. FEINSTEIN. Absolutely.

Mr. HATCH. The Senator comes from California, the largest populated State in our Nation. How many people live in California?

Mrs. FEINSTEIN. Oh, probably around 33 million today.

Mr. HATCH. Almost 34 million people, I understand.

Mrs. FEINSTEIN. Nineteen percent of whom smoke.

Mr. HATCH. Nineteen percent of whom smoke. Is the Senator aware that one out of five packs of cigarettes sold in California happens to be contraband?

Mrs. FEINSTEIN. I believe that is correct. Law enforcement has said there is now a substantial black market in California. With the franchise tax, port authorities advise that the State loses about $20 million to $50 million a year in revenue now from that market.

Mr. HATCH. And that jumped up when the State raised its tax by a few pennies from, I think, was it 17 cents to 34 cents or something like that.

Mrs. FEINSTEIN. That is correct. There was a proposition on the ballot that did do that. That generated the market. They have made some major arrests with large numbers of confiscated goods to go on the black market.

Mr. HATCH. What do you think is going to happen in California and other States if that price is raised per pack from $2 to $4.50 or $5.50?

Mrs. FEINSTEIN. I think if it goes from $2 to $4.50 in California, with the number of people addicted and the fact that most are low income, that it creates a black market. One of the concerns I have is that it becomes a real pawn for organized criminal elements that also brings on other serious repercussions. But I don't want the Senator from Utah, or anybody else, to mistake me. I want to see us have a bill. I want to see us have a bill that is going to be able to do the job, rather than have adverse, unintended consequences.

Mr. HATCH. I have to agree with the Senator. And I have to say, is the Senator aware that on May 4, 1998, testimony before the Senate Democratic Task Force on Tobacco, Robert A. Robinson, Director of Food and Drug, Agriculture Issues, Resources, Community and Economic Division of the General Accounting Office—who should surely win an award for one of the longest titles in Government—said:

> Smuggling cigarettes from low- to high-tax States or interstate smuggling prominent in the 1970s may be a reemerging problem. Such activity is likely to occur when the differences in cigarette taxes across the States are significant enough to make it profitable. Recently, many States have opted to sharply increase their cigarette taxes, yet most low-tax States have not. As a result, recent studies suggest that the level of interstate smuggling activity may now be increasing. In fact, recent estimates suggest that smuggling is responsible for States collectively losing hundreds of millions of dollars in annual tax revenues.

Is the Senator aware of that?

Mrs. FEINSTEIN. Yes, I am aware of it. I am also glad that the Senator from Utah is mentioning this, because one of the most discouraging things here has been the rush to judgment, has been the feeling of many people, very well-meaning, very much wanting to see legislation in place, that if you pause to consider these impacts, somehow you are un-American, somehow you are pro-tobacco. And yet, as we know, the devil is in the details with all of these things. It really is the long-term effect of a bill that we need to consider carefully.

That is one of the reasons I have been, frankly, opposed to the speed with which this bill is being pushed, and I think it is being pushed so that we don't have this information in front of us, so that we don't understand the repercussions, so that a bill gets passed and everybody can pound their chests and say what a wonderful job we have done and then, boom, in 4 years, there can be a cataclysmic event like a big black-market operation.

Mr. HATCH. Let me just ask one other question of the distinguished Senator, because there has been some indication here that there is some sort of a game being played in this colloquy between the Senator and myself. It is anything but a game being played.

We have seriously looked at these matters in 10 Judiciary Committee hearings, at which the Senator from California was in attendance. And these are important issues.

I just ask the distinguished Senator, what are we going to do if we go through all of this piling on mentality, as is embodied in this managers' agreement and many of the proposed amendments thereto, and, after we get to the end of this, the bill is still constitutionally unsound? What happens if we have 10 years of litigation and the program falls apart? Isn't that some justification for finding out the facts now in order to either amend this bill or have a substitute amendment or other correctional measure? Shouldn't we really get to the heart of how to develop a constitutionally-sound bill that will help reduce teen smoking and solve some of these other problems in society? Does the Senator agree with me?

Mrs. FEINSTEIN. That is absolutely correct, I say to the Senator. Not only are we not playing a game, certainly no one in this body has asked me, representing the State, what would be the impact of a bill on the largest State in the Union with the most smokers by far in California, with the most young people.

I came to this body to use my brain, to try to work for my State and try to see that whatever it is that I vote for doesn't have unintended consequences.

I think all the purpose of this colloquy is to say that there may very well be serious, unintended consequences, heightened by the fact that we are moving so fast without any major governmental analysis of the long-term, per-pack costs and what those costs might do when you measure elasticity, diminished market demand and a diminution of nicotine in a regulatory order by the FDA.

These are very serious things. I think they deserve consideration, and I thank you very much.

Mr. HATCH. May I ask the distinguished Senator one more question? It is this: I have sought to facilitate a thorough examination of public discussion of the Treasury model so policymakers can better understand why there is so much disparity between Wall Street and 1600 Pennsylvania Avenue on critical items like the estimates of the retail price per pack of cigarettes under the Commerce Committee bill.

Is the Senator aware that we have heard the official estimate is that the Commerce Committee bill will increase the cost of a pack of cigarettes by $1.10 per pack over 5 years? Many in the press simply report that the price, not cost, will go up by just $1.10 a pack.

As I understand it, and I ask the Senator to help me to know if she understands it the same way I do, the Treasury Department and the proponents of the Commerce Committee bill believe that when you take into account all other factors, you arrive at a real price in year 5 of $3.19 per pack. Although it is not a number that many of the bill's proponents seem anxious to get into public discussion, and the press is not widely reporting it in nominal terms, this is how much money you actually have to pull out of your wallet. This $3.19 per pack figure translates at the cash register price of $3.57 in the year 2003 under the White House and Treasury Department's estimates.

Now, again, I ask the Senator, is the Senator aware of those facts?

Mrs. FEINSTEIN. Actually, Senator, those are not the facts—they may be the facts coming out of the White House.

Mr. HATCH. That is right.

Mrs. FEINSTEIN. But the facts in committee.

Mr. HATCH. That is the White House's spin here.

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Let me ask the Senator this. Does the Senator recall that in September the President called for, and the White House repeated again in February, bipartisan legislation that raises the price of cigarettes by up to —and that is up to —$1.50 per pack over 10 years? Does the Senator remember the President calling for that?

Mrs. FEINSTEIN. I do.

Mr. HATCH. Given that the price of cigarettes is about $1.95 per pack today, it looks like the Commerce Committee bill or this managers' amendment will achieve the $1.50 price hike 5 years ahead of schedule by the Treasury's own estimates. Is the Senator aware of that?

Mrs. FEINSTEIN. That is correct; yes.

Mr. HATCH. All right. Now, Wall Street analysts tell us the Treasury numbers are off—way off, they say. They say that the actual price increases under the Commerce Committee bill will be much higher than what Treasury is telling us. They say the price in real dollars will climb to between $4.50 and $5 per pack in 5 years; and at least one indicated higher than $5 per pack, up to over $5.50. Is the Senator aware of that?

Mrs. FEINSTEIN. I am.

Mr. HATCH. Martin Feldman of Salomon Smith Barney projects in the year 2003, the Commerce Committee bill, the old bill—but the revised one is the same on the facts—will result in a real price of $4.61 per pack. In nominal terms, this means that cigarettes will cost $5.11 per pack. That is over $50 per carton. Does the Senator remember that testimony?

Mrs. FEINSTEIN. I believe you are accurately reflecting the testimony.

Mr. HATCH. David Adelman of Morgan Stanley Dean Witter testified on April 30 that the 2003 average retail price will reach at least $4.53 per pack if the Commerce Committee bill is adopted. His analysis also indicates that the price under this bill that is on the floor right now could actually grow to $5.66 per pack or higher within 5 years. Is the Senator aware over that?

Mrs. FEINSTEIN. Yes.

Mr. HATCH. Now, similarly, Gary Black of Sanford C. Bernstein & Company, told the Judiciary Committee on May 12, 1998, that under the Commerce Committee bill the real price of cigarettes will exceed $5 per pack in 2003. Is the Senator aware of that?

Mrs. FEINSTEIN. Absolutely. And the point that you are making is really reflective of the point that I am trying to make in a less erudite way. That point is, let us take the time to have a CRS analysis, a CBO analysis, a joint tax force on some of the figures that we are putting forward, because these are figures that have been presented to us in a formal way.

Mr. HATCH. I would ask the Senator if she is aware—let me emphasize the $4.50 to $5-per-pack prices that these leading Wall Street analysts projected in testimony to the Judiciary Committee, those prices are much higher than what the Treasury estimated and far higher than the widely cited and widely reported $1.10-per-pack figure. Isn't that correct?

Mrs. FEINSTEIN. That is correct—one of the reasons I do not know who to believe.

Mr. HATCH. So it is far higher than the up to $1.50-per-pack increase that the President called for over a 10-year period; is that correct?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. If these Wall Street analysts are correct, and the Treasury estimates are off in year 5, under the Commerce Committee bill, we may reach a price increase that is twice as high as what the President has called for; that is, a $3-per-pack price increase rather than a $1.50 price increase. That is certainly a far cry from the $1.10 we hear so much about; isn't that so?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Let me just finish this.

What is more, according to these experts, we will reach this twice as high level twice as fast as called for by the President. I guess we should ask whether the American public understands that what we may actually be talking about under the Commerce Committee bill is a $50-per-carton price for cigarettes.

Now, if you are like me, and do not, and will not, ever smoke, this may not seem so bad, literally; but I just hope that the public health lobby does not next focus its attention on the problem of obesity, or we may have chocolate ice cream at $20 a gallon, a $10 package of potato chips, or a $5 slice of apple pie, sold by prescription no doubt, if we continue to follow this type of bureaucratic reasoning. Is the Senator in disagreement with me on this? And I didn't even talk about cheeseburgers!

Mrs. FEINSTEIN. My point is, Senator, I do not really know whom to believe. And that is why I am where I am with respect to this bill. Different committees have had different testimony. I do not know whether the Finance and the Commerce Committees actually had this testimony. We had it in the Judiciary Committee.

Mr. HATCH. The Finance Committee did not hear any testimony on the tobacco issue; the Commerce Committee heard from Secretary Summers as well as Mr. Feldman.

Is the Senator aware that the $1.10 price that is so widely reported in the media as the add-on to the current $1.95 or the $2-per-pack price at the manufacturer's level does not include a whole wide variety of factors, like the wholesale markups, the retail costs, the additional excise taxes added on by the States, litigations costs, the lookback, all factors that could be add-ons to the retail price under this bill?

So it is pretty clear that it is a lot higher than what the media are reporting is $1.10. It is a lot higher, isn't it, than what the White House has indicated?

And I would just ask the Senator this other question: Isn't it plausible to believe these Wall Street analysts, whose very livelihoods depend on trying to arrive at correct economic projections in order to advise clients about whether or not to invest money, who have used extensive models to make those projections rather than just a 5-line sheet of paper?

Mrs. FEINSTEIN. I think that is right. I think what has happened is that we have seen a net figure applied as a gross figure when in fact it is just a beginning figure. It becomes an arbitrary cost added, and then there are all these other costs that come on top that are not factored in.

I think that is why we need a very thorough, objective report on what actual street prices of cigarettes will be, what you get them for in your 7–11, what you buy them for in your supermarket, what it will be with inflated dollars in 5 years.

If we know that with specificity, then I think we can make some informed judgments as to whether, in each of our respective States, this is apt to create a black market or not apt to create a black market. We then can relate this data to the distribution table that Joint Tax has done so you know what portion of this falls on the lowest-income people versus the highest-income people.

Mr. HATCH. Is it not true—this will be my last question—is it not true that under the substitute that the distinguished Senator from California and I are working on, that we do not base this on a price per pack of cigarettes, our $428.5 billion, we base it on payments that have to be made over 25 years?

Mrs. FEINSTEIN. That is correct.

Mr. HATCH. Whether the companies—whether they sell a lot of cigarettes or not, they are going to have to make those payments; isn't that correct?

Mrs. FEINSTEIN. That is correct. You see, the thing that bothers me is, in this rush to judgment, everything is evaluated based on the per-pack numbers that are thrown around, based on what is a net addition that will not be the real street addition. So there is no way, with the speed this bill is moving, to know exactly what we are going to be doing down the line. The beauty of our bill, if people should be interested, is that we have tried to avoid that problem.

Mr. HATCH. Mr. President, I thank the distinguished Senator from California for answering my questions.

Parliamentary inquiry. Have these questions been in order under the rules of the Senate?

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

Mr. HATCH. I am asking the Parliamentarian if these questions have been in order under the rules?

The PRESIDING OFFICER. I believe they are, Senator.

Mr. HATCH. Well, my goodness, I am so happy to find that out.

Thank you so much, Senator.

Mrs. FEINSTEIN. I thank the Senator. It has been a pleasure for me to work with him.

Let me once again sum up, because I know the distinguished Senator from Maine is waiting, and I do want to thank the Senator from Utah for his leadership not only of the Judiciary Committee but in what we have been working on. I hope if people might be interested they would let us know.

In the meantime, I am really not prepared, based on the analytical data—and we have tried to get every single piece we could—to cast a vote which has repercussions for a quarter of a century and which would have repercussions on a State where 5 million people smoke and almost a million youngsters and one out of every four high school seniors is addicted to nicotine. Until I have some of these answers and we know what the impact on the streets in Los Angeles, in San Francisco, in Fresno, in San Diego, is going to be 5 years, 10 years, 15 years, 20 years, and 25 years hence—then we can cast an informed vote, and then we can go home and say we really have done something good for the people we represent.

I thank the Chair. I apologize and I thank the Senator from Maine for her forbearance.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, this week the Senate is debating far-reaching landmark legislation which gives us a historic opportunity to combat teen smoking and in the process save millions of lives.

Tobacco use is the No. 1 preventable cause of death in the United States, accounting for almost half a million deaths a year and billions of dollars in health care costs. More people die each year in the United States from smoking than from AIDS, suicide, alcohol and drug abuse, car accidents, and fires combined. Tobacco use in this country carries a price tag of almost $100 billion a year in direct health costs and in lost productivity.

Clearly, the single most effective thing we can do to improve our Nation's health is to stop smoking. However, smoking rates are actually increasing, particularly, and most tragically, among our young people. Tragically, tobacco addiction is increasingly a teen onset disease. Ninety percent of all smokers start before age 21. What is especially disturbing is that children, especially girls, are smoking at younger and younger ages. Smoking is at a 19-year high among high school seniors and has increased by over 35 percent among 8th graders over the past 7 years.

The statistics for my own State of Maine are particularly alarming. Maine has the dubious distinction of having the highest smoking rate among young adults in the country. Thirty-two percent of our 18- to 30-year-olds are regular smokers. Almost 40 percent of Maine's high school seniors smoke. If current trends continue, one in nine children will die prematurely of tobacco-related illnesses.

Tobacco is the leading preventable cause of death in Maine, responsible for almost 2,500 deaths a year. Direct medical costs of treating tobacco-related illnesses in Maine are about $200 million. Indirect costs—the costs associated with lost work time, higher insurance premiums and so forth—are also estimated to be about $200 million.

These numbers speak for themselves. The status quo is simply unacceptable. If we are to put an end to this tragic and preventable epidemic, we must accelerate our efforts not only to help more smokers quit but also to discourage young people from ever lighting up in the first place.

I found one fact in a recent Maine survey of smoking habits to be particularly disturbing. The smoking rate among young girls in my State has increased by 30 percent since 1993. I think that this advertisement gives us a good clue why. It is a blatant and shameless attempt by the tobacco industry to entice young girls, to entice teenagers to smoke. With more than 1,000 of the tobacco industries' best customers dying every day and another 3,000 to 5,000 quitting because of health concerns, smokers are literally a dying breed. As a consequence, the tobacco industry must hook thousands of new customers each day just to break even, and is now spending over $5 billion a year on advertising and promotional campaigns.

The tobacco industry actually claims that it does not target image-conscious young people with its advertisements featuring rugged Marlboro men and fresh-faced, model thin, ''You can do it'' young women. But, Mr. President, the evidence clearly proves otherwise. Just look again at this magazine ad. It is very typical, very typical of cigarette advertising. This ad is not aimed at people my age. It certainly is not aimed at people my parent's age. There can be no doubt it is not aimed at adults at all. It is aimed at teenagers.

Moreover, internal industry documents indicate that tobacco companies have long known that tobacco use leads to addiction, serious illness, and death. Yet, they nevertheless continue to pursue children, to target teens through ads and promotional campaigns, and have even gone so far as to consider marketing Coca-Cola-flavored cigarettes.

A landmark 1991 study published in the Journal of American Medical Association showed that cigarette-smoking ''Smooth Joe'' Camel was as recognizable to 6-year-olds as Mickey Mouse. Let me repeat that. Joe Camel was as recognizable to 6-year-olds as Mickey Mouse. The tobacco industry claimed the ads were, in fact, directed at adults. A second study found that 98 percent of the 12- to 19-year-olds recognized Joe Camel, compared to just 72 percent of adults. As a result, Camel's market share among underage consumers rose from less than 1 percent when the Joe Camel campaign first began, to 33 percent when he was finally put out to pasture.

More recent studies published in JAMA and elsewhere add further weight to the mounting evidence that advertising and marketing are the linchpins of the tobacco industry's efforts to hook children on nicotine. A February 1998 JAMA study found that the effect of tobacco advertising and promotional activities is ''strong and specific,'' with at least 34 percent of all experimentation with cigarettes by teenagers attributable to those activities.

Moreover, a 1995 article in the Journal of the National Cancer Institute found that tobacco marketing has a greater influence over a teen's decision to smoke than whether or not their parents smoke or their peers smoke.

Other studies have shown that the cigarette brands most popular with teenagers are the ones most likely to advertise in magazines with the highest youth readership. Moreover, unlike adults, the vast majority of young smokers prefer the most heavily advertised brands of cigarettes.

It is also far too easy for children and teens in the United States to purchase cigarettes. During hearings in the Labor Committee, we heard testimony that children living in 99 percent of our cities and towns have very little trouble walking into a store and buying a pack of cigarettes, despite the fact that it is against the law in all 50 States to sell tobacco products to minors.

Mr. President, during this debate, we have focused a great deal of attention on the $1.10-a-pack fee that the McCain bill imposes on cigarettes. Some have argued today that is simply too low and that an increase to $1.50 or more a pack is necessary if we are going to curb underage smoking. Others—and I

include myself in this group—are concerned that the evidence linking teen usage and price is not conclusive. Moreover, I am very concerned that a price increase of this magnitude is highly regressive and will fall mainly on adult smokers earning less than $30,000 a year. If we were to increase the cost by the $1.50 that was proposed, it would have meant that the average couple who smoke would be paying $712 more a year in taxes. That is a very hefty tax increase on low-income Americans.

Mr. President, at some point, raising the tax on cigarettes ceases to contribute to the reduction of smoking and becomes little more than an act of financial cruelty. Tobacco is highly addictive and there are people, perhaps many people, who will not be able to quit smoking even with an additional tax of $1.50 or more.

There is a point at which the tendency of the U.S. Senate to play God in the lives of the American people becomes dangerous. The notion that we can cure addictions by creating enough deprivation for those who are addicted is a very arrogant one. If we are wrong, we do nothing more than inflict suffering on those who do not deserve it.

While I respect the motives of its supporters, I could not, and did not, back an amendment that carries such a risk and that is not truly needed to fund the antismoking programs included in this bill. Those of us who legislate must draw lines, and recognizing that I am far from infallible, I believe that a tax of $1.50 per pack crosses that line. If our purpose is to inflict pain, it should be on those who profit from the addiction and not on those who suffer from it. That is why I shall vote to support the amendment offered by my friend and colleague from New Hampshire to eliminate the immunity protections afforded to the tobacco industry by this bill.

My view on the $1.50-a-pack tax proposal has been strongly reinforced by conversations I have had in recent weeks with young people in my State in an attempt to find out what the true experts—our teenagers—believe would be most effective in stopping teens from smoking in the first place. I have asked this question to, among others, a seventh grader from Portland, a Boy Scout troop in Dover-Foxcroft, high school students in Aroostook, and a teen smoker in Bangor. Significantly, none of these teens felt that a price increase would be the most effective means of discouraging teens from smoking.

As the addicted Bangor teen told me, ''I can't quit, so what I'll do is cut back on going to the movies or going to McDonald's in order to pay for cigarettes.''

Another teen told me that many students get their cigarettes by stealing them from their parents, so unless their parents stopped smoking, their access to cigarettes will be unaffected.

Alex Pringle, a seventh grader from Portland, suggested that having smokers who are suffering from lung cancer or other smoking-related diseases come to schools would be the most effective means of discouraging kids from smoking. It would effectively make the link between smoking and illness, a link that is too often unrecognizable to teens who believe themselves to be invulnerable.

Teens throughout the State told me that they smoked simply because it was ''cool'' or because it helped them feel more accepted by their friends. From their comments, I have no doubt that the tobacco industry's ads, such as the one I have displayed today, have sent a clear message to teens that teens who smoke are cool. I also have no doubt that when teens see movie idols such as Leonardo DeCaprio smoke, that message is, unfortunately, reinforced.

That is why the educational, counteradvertising, and research programs funded by this legislation, as well as the advertising restrictions, are so critical to our efforts to sever the deadly connection between teens and tobacco.

Earlier this year, I joined Senators JIM JEFFORDS and MIKE ENZI in introducing the Preventing Addiction to Smoking Among Teens, or the PAST Act, which adopts a comprehensive approach to preventing teens from smoking. The bill gave clear and comprehensive authority to the FDA to regulate tobacco products and incorporated the FDA's recommendations on combating teen smoking, such as strong warning labels, a ban on vending machine sales, a ban on outdoor advertising and brand name sponsorship of sporting events, and prohibition on the use of images like Joe Camel and the Marlboro man. The legislation also held tobacco companies accountable by imposing stiff financial penalties if the smoking rate among children does not decline.

Moreover, the legislation incorporates strong measures to ensure that restrictions on youth access to tobacco products are tough and enforceable, and it promoted the development of State and local community action programs designed not only to educate the public on the hazards of tobacco and addiction, but also to promote the prevention and cessation of the use of tobacco products. We need to focus on cessation programs. They are an important part of this bill.

It also called for a comprehensive, tobacco-related research program to study the nature of addiction, the effects of nicotine on the body, and ways to change behavior, particularly that of children and teens. We don't know enough about addiction yet.

And finally, and very important, it called for a national public education campaign to deglamorize the use of tobacco products to discourage teens from smoking.

Mr. President, we have made tremendous progress in recent years in making our streets safer from alcohol-impaired drivers. This was accomplished not only through tough drunk-driving laws, but also through a very effective national advertising campaign waged by Mothers Against Drunk Driving and others that has resulted in a change in our Nation's attitudes toward drinking and driving. This is the approach that we need to take to curb teen smoking.

The legislation we are considering this week contains many of the public health provisions that were included in the PAST Act. While the legislation before us tonight is not perfect and will undoubtedly face many more amendments during Senate consideration, it does give us a critical opportunity to address the teen smoking epidemic in a strong and comprehensive way.

I yield the floor.

Mr. FAIRCLOTH. Mr. President, while we may all agree that teenagers should not be smoking, this bill goes well beyond reaching that goal.

We should all be deeply concerned about the ''tax and spend'' approach that the bill takes to resolving a social problem. The bill reaches right into the pockets of hard-working low- and middle-income adults who, even tobacco's most staunch critics acknowledge, have every right to smoke if they so choose.

And, it takes their hard-earned dollars to create yet more federal programs and to pay trial lawyers billions of dollars. We're literally grabbing money from the poorest Americans to buy trial lawyers more Learjets.

To what end? There appears to be uncertainty as to whether price increases really have the effect of getting kids to stop smoking or to never start in the first place.

And what is the real motivation here? If it were really to cut smoking, we wouldn't phase it in, we would drop it right at once. But we're not doing that because the tax-and-spenders want the revenues. I know they're not doing it for the tobacco companies.

We all know that this isn't about smoking—it's about money.

What unpopular product or industry is next—now that we, our nation's lawmakers, have decided that ''and justice for all'' really doesn't mean what it says.

First, let's discuss the taxes imposed by the bill. Lots of people are jubilant at the prospect of this legislation passing. The plaintiffs' lawyers would become fabulously wealthy; the public health community would get all of its favorite projects generously funded; and, of course, the bureaucrats will get write volumes of new rules.

The ones who won't be so happy are the working class families who have been targeted to pay for it all.

In short, the McCain bill, through its highly regressive tax provisions, inflicts enormous costs on lower- and middle-income families. Let me put this regressivity problem in concrete terms. The increased excise tax payments under the McCain bill are projected to exceed $690 billion over the next 25 years.

Based on analyses by the Joint Committee on Taxation, families with incomes less than $30,000 a year will wind up paying roughly 43 percent of these taxes. In other words, under the bill, families earning less than $30,000 a year will have to pay roughly $300 billion in new taxes over the next 25 years.

This amounts to more than the total income taxes that these families are expected to pay over the same period of time.

The numbers are even more striking if we look at families earning less than $75,000 a year. Other experts have estimated that families in this category will pay more than 83 percent of all the tobacco excise taxes, which means that families earning less than $75,000 a year will, as a group, pay more than $570 billion in new excise taxes as a result of the McCain bill.

Where are the cries about regressive taxes? We're all so used to the long speeches about taxes on the poor. Or is that argument just used for convenience? This is the largest tax increase on the poor in years—if not in all time!

It gets even worse. The numbers I just cited only take into account the excise taxes imposed by the bill. The reality is that the increases in the prices of tobacco products resulting from this bill will be substantially greater in magnitude. This is because of the look-back payments and the increased sales taxes as well as wholesaler and retailer margins that will be tacked on to any excise taxes.

It is estimated that, based on projections of the actual increases in the prices of tobacco products, the true cost over the next 25 years will be more in the range of $380 billion for families earning less than $30,000 a year. it will be more than $735 billion for families earning less than $75,000 a year.

These are truly staggering numbers. To put them in perspective, it is projected that once the new excise taxes under the McCain bill are fully phased in, the annual cost to the family of a smoker earning less than $30,000 a year will be $875.

For a smoker's family earning less than $75,000 a year, the cost on average will be more than $950 each year. Now, a figure of $875 or $950 a year may not sound like much to these plaintiffs' lawyers who are expecting to get hundreds of millions of dollars. But I can assure you that this money means a lot to families trying to get by on $30,000 a year, or even on $75,000 a year.

If this doesn't persuade you, let's hear from the experts on Wall Street. As noted by Morgan Stanley analyst, David Adelman: ''98.5 percent of cigarettes are legally purchased by adult smokers, and therefore higher excise taxes will unfairly (and regressively) penalize adult consumers who choose to smoke.''

So, we're talking about hundreds of billions of dollars in new taxes to try to stop 1.5 percent of tobacco users from illegally buying tobacco. Why not just impose penalties on children who try to purchase tobacco? Well, I suppose, because it wouldn't be a jackpot for trial lawyers and Washington bureaucrats. The fact that it might help the children is irrelevant.

Mr. President, I, for one, was not elected to sock the American taxpayer with more taxes. If teens are really our target, we owe it to the taxpayer to first explore other non-price measures to combat youth smoking.

At a minimum, we need to explore whether there are ways to rebate these increased taxes back to the adult smokers who paid them—rather than using these regressive taxes to fund huge new government programs.

Turning to the bill's disturbing reliance on new government programs, I find it highly ironic that we are here debating a bill that will increase the size of the federal bureaucracy when this is the Congress that is supposedly committed to reducing federal government bloat.

The bill takes over half a trillion dollars in tobacco funds to fund new social programs or enlarge existing programs.

We also need to think long and hard about the bill's Orwellian approach—giving the federal government more power to look over our shoulders regarding the personal choices we make.

I'd like to take this opportunity to read into the RECORD a few excerpts from recent articles, articulating these concerns:

> Most Americans may not like smoking, but that doesn't necessarily mean they favor a big-spending nanny state. Yet if President Clinton and his supporters are allowed to succeed with this tobacco pact, the same extortionist tactics will undoubtedly be applied to other ''sins.'' Just imagine how much government could ''do'' by slapping a health tax on Big Macs and Budweiser.

That's from the Detroit News, on April 24, 1998.

I urge my colleagues to learn from experience. Too many times in the past, Washington has raised taxes in the name of one feel-good social program or another. The American people have consistently indicated that they are tired of that practice.

We on the Republican side of the aisle were supposedly sent here to see to it that the tax and spend era of big government ceases to exist. I'm not so sure we're holding up our end of the bargain when we propose to pass legislation along the lines of the bill we're debating today.

As I raised earlier in my remarks, we appear to be forging blindly into a tax and spend approach to combating youth smoking, even though it is highly speculative that higher prices will even have this desired effect.

This legislation is going to result in a massive price increase for the entire smoking population, including the 98 percent of legal adult smokers. I think it is important that my colleagues are aware of all the facts before they vote on it.

A Cornell University study found that there is no significant correlation between price levels and the youth smoking rate.

This study, conducted by researchers at the Department of Policy Analysis and Management of Cornell University over a period of four years, reexamined the relationship between price increases on tobacco products and the likelihood that children will smoke.

It analyzed the smoking habits of over 14,000 children in grades 8 through 12. To quote the study's conclusion: ''the level and changes in cigarette taxes [is] not strongly related to smoking onset'' for children between 8th and 12th grades.

In addition, this study casts doubts on the results of previous studies which have directly linked smoking rates among children to price, noting that ''* * * youth who face different tax rates also face different anti-smoking sentiment * * *.''

The study suggests that previous research on youth smoking failed to take into account differing public perceptions that smokers face across the country. The Cornell study attempted to eliminate such extraneous information from their results.

Removing the effect of other factors, such as different State smoking-related legislation, allowed researchers ''to directly examine the impact of changes in tax rates on youth smoking behavior, and our results indicate this impact is small or nonexistent.''

This view is also supported by statistical evidence from other countries. As Martin Feldman of Salomon Smith Barney has noted:

> But we all know that kids don't stop smoking because of the price of cigarettes. Let me give you an example. In England, between 1988 and 1994, cigarette prices rose in real terms, by 20 percent. In '88, 8 percent of them 11 to 16-year-olds smoked. By '94, 13 percent of them smoked, after the price increase. The White House will not take this into account. And I don't understand why.

And, it's not just academia that questions whether increased prices will deter kids from smoking. It is the kids themselves. Just ask the four bright, young citizens who recently testified before the House Commerce Subcommittee on Health and Environment on March 19, 1998.

Of the four who testified about the effects of price increases on youth smoking, three clearly stated that price increases would have no effect on the number of youth smokers, and the fourth didn't know what the result would be.

As one teenager testified, ''[I]f money were a huge issue, then kids wouldn't be buying marijuana as much.

Another teenager testified:

> [I]f you look, it's kind of weird how, people would be willing to pay $150, $200, for shoes. And it's completely outrageous; but people will complain about it. They'll moan and groan; but they'll still pay. And, when it comes to cigarettes—how much is it? Two dollars a pack?

We've heard it from the horse's mouth.

I closing, I know that the tobacco companies have become so unpopular that nothing seems out of bounds. But,

whatever our views are about how much pain to inflict upon the industry, let us not forget that Congress also has an institutional responsibility.

We should be concerned that the McCain bill will set a terrible precedent that will haunt us for years to come. If we begin to use the tax code as a coercive means of social engineering, then I submit that there is no end in sight.

Today, smokers will be asked to pay a huge share of their income to the federal government and tomorrow, who will be next?

> I fear the precedent of the anti-smoking remedies now before Congress. What will they be used for next? Perhaps fat. Excuse me, Big Fat. As I understand it, fat, when used as intended, causes heart disease, which actually kills more people each year than smoking. And have you seen any of those chocolate ads, the ones targeting children, or the adult versions, where a beautiful woman caresses a nougat bar with her moist alluring lips? Consider that there are no warnings on boxes of high-fat cake about the hazards to our health, no restrictions on purchases of bacon by people under 26 and, to my knowledge, no lawsuits. How about a fax tax?

That's from Fred Barbash in the Washington Post, April 19, 1998.

Mr. President, I believe that passage of the McCain legislation is going to have a dramatic impact on the lives of millions of adult smokers across the country who are going to have to bear a significant price increase to purchase legal tobacco products.

It also perpetuates a tax and spend mentality that our constituents have rejected, as well as sets us sliding down the slippery slope. And, not only do we have no hard data that this is going to achieve the goal of preventing kids from smoking, we have evidence suggesting that it won't.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I rise tonight to take this opportunity to discuss why I believe it is so important that the U.S. Senate pass strong legislation to protect our children from the tobacco companies that are preying on them.

I got my real start in public service in Eugene, OR, right after I got out of law school in my twenties in Lane County in Oregon. I started a senior citizens legal clinic. I was able to get almost all of the attorneys in town to volunteer their time, coming to the senior citizens center to help the older people with the varied legal problems that seniors have.

At the legal clinic when I was in my twenties I saw firsthand the extraordinary health consequences that smoking has for our citizens. I saw older people come to that legal clinic in Lane County in Oregon racked with emphysema. They were struggling for every breath.

I found myself, having organized this legal clinic to help older people, having to console the widows and widowers of cancer victims, families that lost loved ones years and years before their time. I saw then when I set up that senior citizens legal clinic exactly what cigarettes can do to the health and well-being of our citizens and the toll that they take on American families.

So when I decided to seek elected office I said that I would put a special focus on my service in the U.S. Senate in trying to improve the health care of our citizens. I said that I wanted to focus on health care issues in a meaningful way, because I came to feel that if a person doesn't have their health care, doesn't have well-being, then they can't really focus on much of anything else. If they and their loved ones can't get access to decent medical care and they are suffering, there really aren't many other issues that a person and a family can focus on.

When I came to the U.S. Congress, I said I am going to remember all those seniors that I met at the legal clinic when I got out of law school, and I said if we really are going to take strong steps to improve the health of our citizens, we had to take on these tobacco companies, and that we will take them on even if it was a tough fight in order to make the lives of our citizens better when they got older. And it was just that simple.

The older people that I saw in that legal program didn't get started smoking when they were 48 or 55. They got started in their teens. They got started as kids when they were the age of Adam Wyden and his sister Lilly.

So I felt then that all other issues revolved around whether our citizens had their health. I remember those older people who came to the legal clinic in Oregon. I said we are going to take steps to make their lives better, and I am going to make that a special focus of my service in the Congress.

So when I was elected to the House of Representatives in 1980, I was able to win a position on the House Health Care Subcommittee, a committee that, in my view, turned out some of the most important public health legislation in our country's history under the extraordinary leadership of HENRY WAXMAN. I got to serve with one of the most courageous public officials who has ever served in the U.S. Congress, the late Mike Synar.

Against all odds, against all odds when he faced tremendous resistance in his home district, the late Mike Synar was willing to stand up for kids, and, in fact, wrote one of the first and the most important public health statutes to protect kids against the tobacco companies that prey on them, the statute known as the Synar amendment. Of course, the tobacco companies worked very hard to try to get around that because the Synar amendment stood for the proposition that we were going to enforce tough laws to protect our minors at the State level. That was too much for the tobacco companies, just as they sought hard to get around the early advertising restrictions on the electronic news, just as they sought to get around the early warning labels, they sought to evade the mission and the specific requirements of the Synar legislation.

So Mike Synar, HENRY WAXMAN, I, and others worked through the 1980s to try to rein in these tobacco companies and improve the lives of our children.

A little over 4 years ago we were at the now well-recognized hearing with the tobacco CEOs who under oath addressed for the first time before the U.S. Congress these major public health questions that the Senate has been occupied with over the last couple of days.

Mr. President, it was an extraordinary hearing. It went on for more than 7 hours. The executives said, for example, that cigarettes were sort of like Hostess Twinkies. They said that, of course, they never ever would target young people. And for more than 7 hours they said under oath that cigarettes essentially were not something that the U.S. Congress should be focusing on. They said it is just like any other health concern a person might have with sugar or with fat. Why is the U.S. Congress singling out tobacco, was essentially their message over a hearing that lasted more than 7 hours.

Chairman WAXMAN, Mike Synar, and others did, in my view, a superlative job trying to put the key issues on the record. When it came to my initial turn I felt that it was especially important to get the executives' position on whether nicotine was addictive. We had them all in front of the U.S. House of Representatives, the Subcommittee on Health. They were under oath. So I simply said I am going to go down the row. I am going to go down the row and ask each one of these executives one after another whether nicotine is addictive. So I began.

The first executive said nicotine was not an addictive substance. The second executive said that nicotine was not addictive. The third one raised questions again about why anyone would possibly have reservations about this issue, specifically why we would be asking whether nicotine was addictive. And all of the executives then under oath said for the first time that nicotine was not an addictive substance.

They contradicted the Surgeon General, who has come before health committees in the Congress for more than 20 years, and perhaps even more importantly, they contradicted what their own executives were saying for more than 30 years. That, of course, came out after the hearing took place. But what has been especially telling is that, after that historic hearing in 1994 when the executives said nicotine wasn't addictive and didn't target kids, a voluminous record has been made by various committees in the Congress which documents and makes very clear that these executives, in fact, knew all along that nicotine was addictive. There was not any question in their minds about whether it was addictive.

Their own documents had proved that. But yet they told the U.S. House of Representatives, the Subcommittee on Health, and myself specifically under oath that nicotine was not addictive.

I think that moment contributed in a significant way to our achieving a chance now to pass important legislation to protect our children. But there were a number of other important issues that were brought up that day before the Health Subcommittee that have implications even this evening as the Senate considers this historic legislation. And I would like to just touch on one of those.

At that hearing, it came to light that one tobacco company, Brown & Williamson, was in fact genetically altering nicotine in order to give it an extra punch, in order to make it more addictive to children and others who used the product. The Food and Drug Administration under the leadership of David Kessler had essentially brought this to light. The committee confronted the Brown & Williamson Company, and they were under oath and said that they would cease utilizing this high-nicotine tobacco called 1Y. So this was more than 4 years ago. It came to light as a result of the investigative work done by the Food and Drug Administration.

After the Brown & Williamson Company was caught using 1Y, this genetically altered, high-nicotine tobacco, they said they would not do it anymore.

A number of things happened over the last 4 years. One of them was that I had the honor of being chosen by the people of Oregon to serve in the Senate, and I was chosen to serve in the Senate January 30 of 1996. Having had the additional privilege of being named to serve on the Senate Commerce Committee under the outstanding leadership of JOHN MCCAIN, and our ranking Democrat, FRITZ HOLLINGS, I had a chance to participate in the next round of important tobacco hearings under JOHN MCCAIN's leadership. We held a number of them prior to the committee's consideration of the legislation that is now before us. And when Senator MCCAIN asked the executives—and a number of them, of course, are new—to come before the Senate Commerce Committee, I asked Brown & Williamson what was the current status of the use of 1Y genetically altered, high-nicotine tobacco.

The reason I asked the question is that I had read news reports that this special, genetically altered, high-nicotine tobacco was in fact still being used by the Brown & Williamson Company even though the company had said under oath that it would no longer use this genetically altered, high-nicotine tobacco. And in fact at that important hearing chaired by our leader on the committee, JOHN MCCAIN, Brown & Williamson said in fact that they are now working off a small stockpile of genetically altered nicotine. There is already a criminal investigation underway.

The reason that I bring this to the attention of the Senate tonight is for just one reason. If this company is so brazen as to engage in this conduct, having promised the American people that they would no longer do it again, and now being watched under the scrutiny of the Congress, what will it be like, Mr. President and colleagues, when in fact the hot spotlight is turned away from tobacco? This company has engaged in activity that they pledged to the American people they no longer would engage in, and they told the McCain committee that they are now working off a small stockpile of genetically altered, high-nicotine tobacco and that this product is being used in our country and overseas.

The other reason that I bring this to the attention of the Senate, Mr. President and colleagues, is this goes right to the heart of the industry's argument that it is a new day and that they are pursuing a new standard with respect to corporate citizenship. Before the McCain committee, the executives came and said: We realize that what happened in yesteryear was no longer acceptable. We are going to clean up our act. We are going to make sure that young people are not targeted.

I think it is the impulse of all of us to say, new executives, new day; let's look at this anew. But when it came to light that Brown & Williamson was again using genetically altered, high-nicotine tobacco after promising the American people and the Congress that they would no longer engage in the practice, that is a pretty blatant contradiction of the claim that things really are different, that it is a new day, and that tobacco companies want to clean up their act.

As we consider this legislation on the floor of the Senate, Mr. President and colleagues, the Justice Department continues its inquiry into the use of this genetically altered nicotine, and there have already been criminal pleas that have been entered into.

Now, having said that, and noting some of the great challenges, let me also talk about what I think is a significant success, and I am particularly pleased to have an opportunity to do it while Chairman MCCAIN is here and on the floor of the Senate.

Mr. President and Chairman MCCAIN, I will tell you that when I left the Waxman hearings in 1994, walking out of that hearing room with the late Mike Synar, I told him that I was not convinced that we would make real headway in this fight to protect our children in our lifetime. I said to Mike Synar, ''We are going to be up against all of the odds. We are going to be up against a lobbyist tidal wave. I am not sure we are ever going to do it in our lifetime.''

We lost the late Mike Synar years before his time, but a lot of us said that we are going to continue that work. And we have the opportunity to do it because Chairman MCCAIN was courageous enough to take on this issue, come to Members of the Senate like myself, come to the public health groups, and say that we are going to focus on this issue until we get it done.

He did not minimize how tough a job it was. All he has to do is look down the row of his committee members. He has our good friend, WENDELL FORD, sitting a few places away from me. It is going to be a challenge to get WENDELL FORD and RON WYDEN to support a bill. We both did in the Senate Commerce Committee.

I commend Chairman MCCAIN at this time because we would not be on this floor, we would not have made as much progress, had he not been willing to take this issue on. I say to you, Mr. President, and to the country, we have come a long way. If you had told me 4 years ago, when I walked out of the Waxman hearings, that we would now be debating whether to impose fines of billions of dollars on companies that do not meet tough targets in reducing youth smoking, if you had told me 4 years ago that we would be having a debate on how to do that and impose those penalties, I would have asked you, ''What are you smoking?'' Because I thought there would never ever be an opportunity like that in my lifetime.

We have that opportunity because JOHN MCCAIN has focused on this issue and brought together a group in the Senate that certainly does not agree on every single issue—that has been very clear—but does agree on how important it is to focus on this and get the job done.

Now, I do want to touch for just a few additional moments on several of the specific issues that have been important to me, and talk for a bit about why that is the case.

First, I am certain that many Members of the Senate have not heard about the accountability requirements that are in the legislation that we take up this week. And the word ''accountability,'' for me and most public health specialists, is probably the single most important word in the discussion of this whole subject, because in the past it has not been possible to hold the tobacco companies accountable. For all of the past legislative efforts designed to rein them in—the Synar amendment, the early warning labels, the restrictions on electronic advertising—the industry would use their marketing and entrepreneurial talent and would find a way around them. So when we focused on enforcement issues in the committee, I began to discuss with Chairman MCCAIN and the bipartisan leadership of the Senate Commerce Committee how we could assure our children and future generations that there would be an ongoing watchdog who would scrutinize the practices of the tobacco companies when they inevitably try to get around the new law that I hope this Congress passes and that I know President Clinton will sign.

The tobacco companies, once again, when we get a new law, will put their

entrepreneurial and marketing talent to the task of getting around it. They will have scores of slick strategies to employ to try to get around these protections. With the accountability requirements in this legislation, we will have an ongoing watchdog who will be in a position to let us know when the tobacco companies start trying to evade an important new public health law, as they have done every single time for decades.

With the accountability requirements, public health officials, the Surgeon General, the Director of the Centers for Disease Control, and the Office of Minority Health, will be involved in looking at company-specific behavior to determine whether a company is trying to evade the requirements of this law. They will be able to recommend at any time that a company that seeks to evade the strictures of this statute ought to have any liability protection they have pulled. Tobacco companies clearly have not been straight with the Congress. All their documents that came out after the 1994 hearings that contradicted what the executive said under oath in 1994 have made it very clear to me the single most important word in this debate—the single most intellectually honest word in this debate—is ''accountability.'' I, again, thank Chairman MCCAIN and his staff. They were under a lot of pressure from powerful interests to essentially strip out these accountability requirements. Once again, Chairman MCCAIN hung in there for the public health, and I want to tell him how much I appreciate that.

There are two other issues I would like to touch on briefly, with the first being the issue of the health care of our minority citizens and those in communities inhabited by many minority Americans. For years, again as has come out in documents since the 1994 hearings, the tobacco companies have shamelessly targeted these minority youngsters and minority communities to sell their products. I think it is critically important now that in this legislation there be resources specifically targeted to these minority communities and to minority youngsters who are preyed upon by the tobacco industry. This legislation provides a first step toward addressing the health concerns of minorities by assuring that all of the State efforts for smoking cessation and prevention include minority populations, and that services can be made available through community-based organizations.

In the Congressional Black Caucus, for example, Congressman BENNIE THOMPSON has done a yeoman's job in terms of trying to focus both the other body and the U.S. Senate on this issue. I know they have talked about this with Chairman MCCAIN. This issue is not one that we are going to allow to be swept under the rug. It is not right to see so many minority youngsters get involved with tobacco at an early age, and it is unconscionable the way these tobacco companies have targeted our minority communities. In addition to the support for the State plans for smoking cessation and prevention, the Office of Minority Health will be represented on the accountability panel. In my view, this is a significant win for the cause of minority health.

We are going to have much to do as we consider these questions through the rest of the debate in the U.S. Senate and in the House. I am particularly troubled about the prospect that some of the focus on improving the health of our minority citizens, and specifically seeing a reduction in smoking among minority youngsters, will get lost if the final judgment by the Congress on this issue is to create a State block grant approach. I don't want to see this issue, which has been neglected for so long, lost in some sort of amorphous block grant where, once again, the health needs of minority youngsters and minority communities get lost. So there are going to be a number of Members of the U.S. Senate who care about this issue, particularly Senators JEFFORDS and HARKIN, and I am looking forward to working with them to strengthen the minority provisions, minority health provisions of this legislation. I know that Congressman BENNIE THOMPSON is going to bring his talents and energy to doing that as the House considers the bill as well.

Finally, there is one last issue I would like to raise. I have been talking tonight about the needs of youngsters in the United States. I represent the people of Oregon. I have the privilege of representing them, serving with my colleague, Senator GORDON SMITH who, in my view, has been a very strong voice for protecting youngsters in this debate. I appreciate that very much. We are both very proud to represent Oregon, and to work to improve the health of youngsters all across this country.

But I come tonight, as well, to talk about an issue that I think ought to strike at our moral conscience, and that is, as I have said, to say that it is critically important that we protect kids in Bend, OR, across the country, in Bangor, ME, and communities in between. But it is also critically important to protect kids in Bangladesh and Bangkok, because a child is a child is a child. And I hope—it is my fervent hope—that when this bill heads to the President of the United States, that we will have put in place extremely strong health protections for youngsters across the world.

Let us not say on our watch that to pay for a settlement, a tobacco settlement in the United States, the children around the world lost their health. Let us not sacrifice the lungs of youngsters around the world to pay for a settlement here. Let's protect kids in the United States. That is what we have a sworn obligation to do. But let us not forget youngsters around the world who don't have lobbyists, who don't have lawyers and the great array of talent that so many powerful interest groups have.

I will say that if we don't speak for those children all over the world on our watch—the Presiding Officer of the Senate and I are about the same age, I am a little older, I resent that, but a little older—but on our watch, millions of youngsters around the world will get sick during our lifetime and die needlessly. I know that the Presiding Officer and all our colleagues don't want to see that. That is why I think it is so important that we pass the provisions in this legislation that will protect youngsters around the world when the tobacco companies target them.

Make no mistake about it, that is the game plan. The game plan for the tobacco companies is consumption is going down here—it is well documented—and it is going up at a staggeringly high level around the world. The evidence shows, for example, that for every smoker who quits in the United States, two start in China. There are countries around the world that actually are in support of companies that sponsor contests to see how many cigarettes a youngster can smoke at one time. If we don't take the steps to protect these youngsters around the world who are envisaged in the McCain legislation before us, we will have the bizarre situation where a tobacco company in the United States won't be able to slap a decal on some car or something that is utilized at a sporting event, but that same company will be able to participate in these contests around the world to see how many cigarettes a youngster can smoke.

I don't think we ought to have that kind of double standard where we say we are going to protect kids here but we are really not much interested around the world. I know that this is an issue that a lot of Members are not familiar with, but we are going to take the time over the next few days and, in the days ahead, to make sure that they are, because I think those kids count, too.

The legislation before us today is not all that I would want, and it is not all that Senator DURBIN and Senator WELLSTONE and Senator HARKIN and many others who have been interested in this issue would want either. We really had our ideal plan and consideration in the Senate Commerce Committee. Chairman MCCAIN was straight and realistic with us. We knew that we couldn't win that kind of package on the floor of the U.S. Senate, so we vowed that we were going to lay a foundation to protect the health of youngsters around the world, as well as youngsters here, and that is what we have done in this legislation.

It wouldn't be my first choice, but to tell you the truth, Senator HOLLINGS, who very graciously worked with us essentially nonstop over the weekend, wouldn't think it is his first choice either. But that is what the legislative

process is all about. What this legislation does with respect to kids around the world is very, very important.

Make no mistake about it, it is a strong beginning at laying out a global policy to protect kids around the world. It essentially does three things.

First, for all time—for all time—it gets the Federal Government out of the business, through the U.S. Trade Representative and other agencies, of promoting the sale of tobacco overseas. For the first time, the U.S. Trade Representative will be directed to consult with the Department of Health and Human Services concerning any trade actions related to tobacco. The U.S. Trade Representative will not be acting in a vacuum. They are required to let the Congress of the United States know when tobacco companies approach them on these matters. I think it is fair to say that with respect to the role of the U.S. Trade Representative and the Federal agencies that are charged with leading the international trade effort, that never again, as a matter of Federal law, will we have them promoting the sale of tobacco overseas.

Second, for the first time, we will require that U.S. health warnings on cigarette packs for exports are carried in a specific way. In effect, we are making it clear that the kind of warning labels, health-specific, that we have in the United States have to apply overseas. If the other governments around the world choose to put another warning on, it has to be substantially similar—substantially similar—in terms of the warning provided to our citizens.

It would not be right, as our colleague DICK DURBIN has said, to let them off by putting on a warning, ''Well, cigarettes may cause bad breath,'' or, as some have seen in other parts of the world, ''Cigarette smoking may be inconvenient to your neighbor.'' That won't do.

Around the world, as a result of the legislation incorporated into the McCain bill that we are considering now on the floor of the U.S. Senate, the warning that is health specific used in our country will have to be used around the world by regulation unless it is substantially similar. Those labels will make it clear that smoking is harmful, and they will be scientifically based.

The administration is charged with finding the most effective compliance mechanism and assuring that the labels are in the language of the country of destination. That is extremely important and something long sought by the public health groups.

Finally—I guess our colleague from Missouri, Senator ASHCROFT, took particular issue with this—this for the first time puts resources into the effort to work in an educational fashion around the globe. Several hundred million dollars is devoted to our participation in these global kinds of health efforts which are critically important, because if, for example, we learn about an important educational innovation that really does reach kids—for example, some of the counteradvertising that is already showing real promise in deterring youth smoking—we want to make sure that this kind of information is easily shared with the global network of public health specialists.

This isn't going to be sort of sock the Government. This is to make sure that kids around the world don't get sick. If we can prevent those illnesses, those countries will be able to avoid some of the much larger medical bills which often, as our colleagues know—particularly the Presiding Officer of the Senate because of his role in foreign affairs—and avoid coming to our Government to ask for support to deal with it.

So again, if we can prevent these illnesses among young people, particularly as it relates to tobacco, my sense is that the Presiding Officer of the Senate will see fewer demands for help with much greater medical bills which will come about as youngsters get hooked and addicted to tobacco.

Finally, the bill sets up a system to combat smuggling, and in much the same way the Federal Government today enforces the law against the smuggling of alcohol. And in regard to the smuggling provisions, I particularly want to commend the Senator from New Jersey, Senator LAUTENBERG, who has long been involved in this issue.

The tobacco companies, as a number of our colleagues already noted to me, do not want these provisions in this legislation. They do not want these provisions to ruin their business plans to target kids overseas. That is what the game plan is all about, Mr. President, and colleagues. It is about recognizing that consumption is going down in our country and skyrocketing around the world. With the export provisions, through removing the U.S. Trade Representative and Federal officials from the business of promoting tobacco permanently, through the warning labels, through the funds to participate in educational efforts, we make a very strong start to protect kids around the world. And I again thank Chairman MCCAIN for his help.

Mr. President, I want to wrap up with one last point.

I think I am the only Member of the U.S. Congress on either side who had the privilege in the last few years to participate in historic hearings in both of the Commerce Committees. I had the honor of serving on HENRY WAXMAN's subcommittee as a Member of the other body and I am now honored to have the chance to serve with JOHN MCCAIN, who has done so much to bring this bill to the floor tonight.

I will say that I think we have a once-in-a-lifetime opportunity to protect kids. That is what this is all about. At the end of the day, it is not about all these arcane and technical questions that we are debating on the floor of the Senate. That is not to say those questions are unimportant. They are. They are very important.

I will tell you, all of our colleagues who I have heard have been asking important questions. But as we ask those important questions, let us not lose sight of the end game here, which is to protect kids.

We have a President who is willing to take on the tobacco lobbies. That is a major reason we have come thus far. We have a chairman of the Senate Commerce Committee who has reached across both sides of the aisle to try to fashion a strong bill. We have public health groups all over this country who have made the case with their volunteers, with their physicians, with their nurses, with all of the individuals who participate in these superb organizations that now is the time, now is the time to act. And that means passing a bill in this Senate.

It is not going to be the perfect bill. It is not going to be what any of us would like in an ideal world. That is why I said there are a number of aspects of the export provisions that I was very bothered to see disappear. Senator HOLLINGS has concerns about what is in there—that is the process of fashioning legislation—but we were able to make a strong start at protecting our kids. And if the Senate passes this bill, and does it in a timely way, we can make a difference for kids here and around the world.

But I say, Mr. President, and colleagues—and I will conclude with this—the clock is ticking. It is not exactly an atomic secret that there are not many days left in the session. And delay is the best friend that the advocates of the status quo could possibly have. Delay is the very best friend of the tobacco lobbies that want to engage in business as usual. Delay is a perfect opportunity for all of those who say, ''Tobacco company profits ought to come before the health of kids, that, well, we just have to study this longer. We don't know all the facts.''

I say, Mr. President, and colleagues, that we will have a chance all the way through this process, through the amendments on the floor, and the House considers its legislation and passes it, as we go to conference, we will have a chance to learn more, to refine this legislation and to improve it. That is what we did through the many hearings that were held in the Senate Commerce Committee. That is what has happened through the work done by the Labor Committee, the Judiciary Committee, with so many of our colleagues on both sides of the aisle. But let us not miss this opportunity to pass this legislation. We have to do it soon. The clock is ticking.

Mr. President, this bill will be good for our children. More importantly, it will be good for our children's children. It is my fervent hope that this Senate passes this legislation, and does so in an expeditious way.

Mr. President, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from the great State of Arizona.

Mr. MCCAIN. Before my colleague from Oregon leaves the floor, I express to him, first of all, my appreciation for his kind remarks, which I do not deserve. Second of all, I thank him for all the work that he has done on this legislation. Without him and his incredibly active participation in this effort, we would not have been able to reach the goal of getting a bill through the Commerce Committee and now to the floor of the Senate.

But most importantly, I thank the Senator from Oregon because he was involved in this issue very long before I or most of the Members of this body were involved. He and former Congressman Synar embarked on this effort long ago. And sometimes we have a reputation, which is well deserved as politicians, of butterflying from one issue to the other and forgetting the one of yesterday for the one of today and tomorrow.

Senator WYDEN does not take that approach on any issue, but on this issue he has been steadfast. He has been courageous. And, very frankly, he has been criticized from time to time, when the mood of the country was not as it is today. There was a time when we did not know all of the details about the tobacco companies having deceived the American people. There was a time when the tobacco lobby, we all know, had a much greater influence on both sides of the Capitol than today. It was during those times that Senator WYDEN carried the torch for the children of America.

I will always be grateful to him. And history will record that Senator WYDEN was a key and vital player in that effort. So I extend my gratitude to Senator WYDEN and remind him that we have a great deal yet to do. I know I can count on him to do it.

EXPLANATION OF VOTE

Mrs. BOXER. Mr. President, I wish to inform the Senate of the reason I voted ''present'' on the Faircloth amendment related to attorneys' fees in tobacco litigation.

I abstained on this vote because my husband's law firm is co-counsel in several lawsuits against tobacco companies filed in California state court by health and welfare trust funds.

The Ethics Committee has advised me that voting on an amendment such as this ''would not pose an actual conflict of interest'' under the Senate Code of Conduct.

However, I decided that this vote could create the appearance of a conflict of interest and therefore I abstained by voting ''present.''

## MORNING BUSINESS

Mr. MCCAIN. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

## RETIREMENT OF STUART BALDERSON

Mr. LOTT. Mr. President, this evening, a number of us will be gathering together to honor Stuart Balderson who recently retired from the United States Senate after nearly four decades of exemplary service. I would like to take just a few moments to thank Stuart and to wish him well as he begins the next chapter of his life.

On May 23, 1960, Stuart Balderson, a twenty-two year old fresh out of the Navy, came to work in the United States Senate. At that time, Lyndon Johnson was the Majority Leader and Dwight D. Eisenhower was in the White House. Stuart was brought on board by Secretary of the Senate ''Skeeter'' Johnston and assigned a position in the Senate Finance Office. Over the course of the next 38 years, Stuart worked in every department of that office, including payroll, accounting, retirement and benefits, and legislative budgeting. In 1980, he assumed its top position, Financial Clerk of the United States Senate, and served in that capacity for the next 18 years.

Over the past 38 years, Stuart has seen a lot of history on Capitol Hill. To give you an idea of how much things have changed, when Stuart began working in the Senate, the Capitol Building was still using direct current from its own generators. You needed to use an AC adaptor if you wanted to plug in any electrical equipment, but there wasn't much electrical equipment to plug in. In those days, ''computers'' referred to the people who calculated the numbers rather than to any machines they used. Stuart's predecessor, Bill Ridgely, used to call those the ''Bob Cratchitt'' days of the Disbursing Office, when the Senate's bookkeepers, like Bob Cratchitt in Dickens' A Christmas Carol, wore green visors and armbands and sat on high stools.

A lot has changed since then. The number of Senate employees relying on the Senate Finance Office to handle their paychecks has more than doubled. Total Senate expenditures have risen from $25.9 million in 1960 to $583.3 million in 1997. In many ways, Stuart grew with the Senate, but the two things that always remained constant were his dedication to this institution and the financial integrity he brought to the job.

I know I speak for many other members and staff, past and present, when I say that we will miss Stuart. We commend him for his long and outstanding service and we wish him well as he retires.

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Tuesday, May 19, 1998, the federal debt stood at $5,501,436,319,981.88 (Five trillion, five hundred one billion, four hundred thirty-six million, three hundred nineteen thousand, nine hundred eighty-one dollars and eighty-eight cents).

One year ago, May 19, 1997, the federal debt stood at $5,344,451,000,000 (Five trillion, three hundred forty-four billion, four hundred fifty-one million).

Five years ago, May 19, 1993, the federal debt stood at $4,285,943,000,000 (Four trillion, two hundred eighty-five billion, nine hundred forty-three million).

Ten years ago, May 19, 1988, the federal debt stood at $2,523,047,000,000 (Two trillion, five hundred twenty-three billion, forty-seven million).

Fifteen years ago, May 19, 1983, the federal debt stood at $1,265,692,000,000 (One trillion, two hundred sixty-five billion, six hundred ninety-two million) which reflects a debt increase of more than $4 trillion—$4,235,744,319,981.88 (Four trillion, two hundred thirty-five billion, seven hundred forty-four million, three hundred nineteen thousand, nine hundred eighty-one dollars and eighty-eight cents) during the past 15 years.

## JIMMY STEWART—AND WHY HE'S REMEMBERED BY SO MANY

Mr. HELMS. Mr. President, when Jimmy Stewart died last July, less than a year shy of his 90th birthday, which would have been today, millions of Americans of all ages felt they had lost a dear friend. They had grown up with great films such as ''It's a Wonderful Life,'' ''Harvey,'' ''The Philadelphia Story,'' and the one that's probably many Americans' personal favorite, ''Mr. Smith Goes to Washington.''

I was fortunate to get to work with Mr. Stewart during the 1970s when we were on the campaign trail across North Carolina. Dot and I will never forget travelling with him introducing him to the citizens who felt that they already knew him.

Perhaps what I like most about ''Mr. Smith Goes to Washington'' is the manner in which Jimmy Stewart and director Frank Capra captured the timeless principles outlined in the Declaration of Independence. In describing the them of the picture, Capra said: ''The more uncertain are the people of the world, the more their hard-won freedoms are scattered and lost in the winds of change, the more they need a ringing statement of America's democratic ideals.''

Jimmy Stewart, Mr. President, in a sense was playing a character modeled after Abe Lincoln. According to Capra, Jefferson Smith was ''tailored to the rail-splitter's simplicity, compassion, ideals, humor and unswerving moral courage under pressure.''

A year ago, on the occasion of Jimmy Stewart's eighty-ninth birthday, John Meroney of Advance, N.C., wrote a Wall Street Journal essay, ''A Hero Larger Than Those He Portrayed,'' celebrating Jimmy Stewart's life and career. I learned about John Meroney when he was a student at Wake Forest University. I am persuaded the reason Jimmy Stewart appeals to John and other young people isn't simply because Mr.