

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### AMERICAN JOBS CREATION ACT OF 2004—CONFERENCE REPORT—Resumed

Mr. REID. Mr. President, is the FSC bill now before the Senate?

The PRESIDING OFFICER. Yes.

#### INTELLIGENCE REORGANIZATION

Mr. REID. Mr. President, the chairman of the committee is here and wishes to speak on that measure. We have a number of people on this side who have been waiting today to speak. They will not be able to speak until he finishes his statement, unless he decides not to give it immediately.

I am going to give a very brief statement on the measure we just completed, that Senator MCCONNELL and I worked on, a very short statement. Then with the permission of the manager of the bill, the chairman of the committee, I will go into a rollcall, so to speak, following your statement, who will speak on this side and who will speak on your side.

Mr. President, as I said earlier this week on more than one occasion, change is very difficult. Sometimes change is what we have to do. The events of 9/11 were very bad, and as a result of that, reluctantly, energetically, and enthusiastically, the 9/11 Commission was formed and they met for a year. They did wonderful work. But for the 9/11 Commission, we could not have done the reorganization of this body that we completed. As they found, our intelligence oversight was weak. Our homeland security oversight was fractionalized. We can and must do better for this institution and the country. The legislation just passed does that.

We have recommended four additional ways to strengthen the Select Committee on Intelligence, which is no longer a select committee; it is an "A" committee. We have also recommended the creation of an Appropriations subcommittee on intelligence. I thought we should have that as the last issue—the appropriations aspect of it. My friend, the Senator from Texas, offered an amendment that says there will be an intelligence subcommittee of Appropriations. But it is up to the Appropriations Committee as to whether they merge Military Construction and Defense or come up with something else. But there will be a freestanding intelligence subcommittee on appropriations which, as Governor Kean says, is in keeping with the spirit of the Commission's recommendations.

We have also consolidated homeland security oversight in the Governmental Affairs Committee. We have taken 10

committees' jurisdiction. From some, we took away five or six items. Significant things were taken from these committees. For example, from Environment and Public Works, my committee, we took FEMA, which is a very important part of what goes on in our country. That is the way it was through the 10 committees from which we took jurisdiction. We have consolidated homeland security oversight in the Governmental Affairs Committee.

We know there are some who think we did too much. We have had committee chairmen and ranking members really complain about what we did. They said: Why are you doing this? You are taking these things we have worked on for 105 years. What right do you have to do that and create this monstrous committee? But we felt it was the right thing to do—to bring together, the best we could, these homeland security functions. We did that.

There were others who thought we didn't go far enough. I say to them, they should have listened to the complaints and the admonitions we received from chairmen and ranking members and members of these committees. There can be no doubt that the new homeland security and governmental affairs committee will be one of the most powerful committees in the history of the Senate.

The committee will exercise its vast jurisdiction effectively under the leadership of Senators COLLINS and LIEBERMAN. They are disappointed; they wanted everything. But they got most everything. I am sure they will do a good job there. Remember, the Governmental Affairs Committee, before we started, was a pretty powerful committee. Now it is a committee that is a very powerful committee.

We would not have gotten here without the support of Senators FRIST and DASCHLE. I said at a press conference that Senator MCCONNELL and I just had, the next time Senator DASCHLE calls me and says, I have a little job for you, I am going to get a few more details about what that little job is before accepting it. I think Senator MCCONNELL feels the same way. This has been very hard. I have a few Members on my side, chairmen, who are upset at me. But we did the right thing. We did the right thing.

Anyway, I appreciate the support of the two leaders who formed a working group for this resolution. I express my appreciation to the members of my working group, my task force. They were so supportive and did such a good job in helping us get to where we are. I appreciate the feedback we got from members of our working group, and all Senators were committed to reforming the Senate.

Mr. President, I want to personally thank Senator MITCH MCCONNELL. It has been difficult for him and for me. But I said last night on the floor and I will say it again this afternoon—it is true that I certainly cannot understand totally the Presiding Officer's

feelings because he has been in actual mortal combat, and the relationships formed there, I guess, are as close as any relationships could be. I didn't fight in the jungles in Vietnam as did the Presiding Officer. Senator MCCONNELL and I fought in the "jungles" of the Senate and, as a result of working as we did in the last almost month on this, we formed a very close friendship—something we didn't have before. I will always remember this time we spent, and I express publicly my admiration for the Senator from Kentucky for sticking with the program. It wasn't easy to do.

I have the greatest respect for his staff, Robert Karem, Kyle Simmons, Mike Solon, Brian Lewis, and John Abegg. They worked very hard. Two people on my staff worked very hard. Rich Verma worked so hard. He is a lawyer and we used his negotiation skills on many occasions. And then Gregg Jaczko, who has a Ph.D. in physics. We needed his scientific background. He understands the legislative process, and he has done an outstanding job. I hope everybody in the Senate feels good about the work he has done because he has been selected by Senator DASCHLE to be a member of the Federal Nuclear Regulatory Commission, the NRC. His nomination is pending in the Senate now. He did an outstanding job working with Robert, Kyle, Mike, Brian, and John.

I have thanked the members of the 9/11 Commission. I thank the families who were impacted by the attacks on our country. We would not be in the position we are today without their efforts. We have made our country safer as a result of what happened in the legislation that was marshaled and passed by Senators LIEBERMAN and COLLINS, and the work done by Senator MCCONNELL and myself is going to make our country safer. Serious times call for serious action. That is what we have done here. I appreciate very much my colleagues' support.

Following the statement of the Senator from Iowa, on our side of the aisle, I ask unanimous consent that Senator HARKIN be recognized for 5 minutes, Senator DORGAN for 20 minutes, Senator DAYTON for 10 minutes, Senator JACK REED for 30 minutes, and Senator LANDRIEU to follow for a time of 90 minutes.

Mr. President, Senator DEWINE is the Republican who is the only one who has come forward, other than Senator GRASSLEY. Because of the gentleman he is, he said he would be willing to wait until Senator REED finishes his statement. I appreciate that very much. Senator DEWINE wants to be recognized for up to 1 hour. Again, I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, reserving the right to object, is it the Senator's anticipation that we go back and forth?

Mr. REID. Yes. If there are people who come with relatively short statements who are on the majority side, we would fit those in between the statements. We want to make sure Senator DEWINE, who is being such a nice person, doesn't get jammed in the process. He, in fact, has agreed to let these others go before him. If a Republican comes over, we can do that.

Mr. KENNEDY. Mr. President, may I have an hour after Senator DEWINE?

Mr. REID. I ask unanimous consent that Senator KENNEDY be given up to 1 hour following Senator DEWINE.

The PRESIDING OFFICER (Ms. MURKOWSKI). Is there objection? Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am glad that we are finally getting up the FSC/ETI bill, the JOBS bill as it is sometimes referred to, because this bill will create jobs in manufacturing.

As everyone knows, the World Trade Organization has ruled that our Foreign Sales Corporation extraterritorial income legislation that has been on the books for quite a few years is an illegal export subsidy and has authorized up to \$4 billion a year in sanctions against U.S. exports. These sanctions actually began way back in the month of March this year. They now are at 12 percent and they are going to increase 1 percent each month that we do not repeal the existing law. By November, they will be at 13 percent, and Senator FRIST rightly has called these "Euro taxes" on our exporters.

It has been a long road to what I hope will be final passage of this legislation. Both bodies passed bills to deal with the Euro taxes. Both bodies struggled to get this to conference. Nothing has been easy, but we are at last in the final stages.

Now that we are at the doorway of final passage, we cannot fritter away the opportunity to eliminate this tax put on our exports to Europe by the European Union.

American workers, especially those in the manufacturing sector, put in the work necessary to make the U.S. the most productive economy in the world. We Senators have to employ the same work ethic. We have to match our constituents' work productivity. We cannot delay on this matter any longer. We cannot leave the job site without finishing our work.

I will inform my colleagues of what happened during the conference this week. It was one of the most open and unusual conferences between the Senate Finance Committee and the Ways and Means Committee of the House that we have ever had. There were 18 House conferees and 23 Senate conferees. The conference chairman, Chairman THOMAS of the Ways and Means Committee, started the ball rolling with a discussion draft. The discussion draft reflected the core elements of both bills.

The main piece complied with our WTO obligation by repealing the For-

eign Sales Corporation extraterritorial income regime. In its place, we provide a deduction for all manufacturers, big and small. That was a significant movement toward the Senate position.

In one move, Chairman THOMAS addressed the top Senate priority; that is, that all manufacturers receive the benefit of the deduction.

The next piece of the discussion draft included a package of international tax reforms that will make America's manufacturers yet more competitive. This package reflects the priorities of both the Senate and the House bill.

Finally, the discussion draft included identical and near identical provisions from both bills. Revenue neutrality was another important principle of the Senate bill, and I appreciate Chairman THOMAS's cooperation on this Senate priority. Indeed, it was the bipartisan Finance Committee staff that refined the offsets that made this bill viable in the first place.

After presentation of the discussion draft, each Member had an opportunity to put forth their priorities by filing amendments for the public conference. Finance Committee conferees recognized the similarity to the customs of the Senate Finance Committee markup, the way we have done it traditionally in the Senate Finance Committee. This process was very unusual for a conference. Normally, conferees go through a series of meetings and exchange of offers or some other elongated process.

I have been a member of the Finance Committee for nearly 20 years, and I can tell my colleagues that in nearly all cases, conferees debate the issues in private. Nearly all of the toughest decisions come down to private negotiations between the two chairmen. Those decisions are reached after conferee input.

In this conference, however, all discussions were aired publicly. Sometimes conferences take months. Sometimes they end without accomplishing anything before the adjournment of a Congress. We had neither option before us. We were in an unusual and sensitive situation because we are coming up now to adjournment of this Congress. Unusual situations require then unusual procedures. We had only a few days remaining to enact this measure. That is not much time, but we are here now before the Senate, and this bill has passed the House of Representatives already.

The bottom line is that we have to move this measure to the President of the United States. I am fully committed to getting this bill done before we leave for the elections.

I appreciate the House's willingness to open up this process and let transparency occur through the amendment process. I would also like to thank my Finance Committee conferees, particularly my friend and ranking member, Senator BAUCUS. We would not be here—in fact, we would not have even gotten this bill through the Senate

without the bipartisan spirit of the Finance Committee members and Senator BAUCUS's efforts in that. That spirit remained in place as we took the final steps in the conference committee between the House and Senate.

Both the House and Senate agreed on the basic structure of the bill and on the policy. In addition to the major movement to the Senate on the structure of the manufacturing deduction and revenue neutrality, many Senate priorities have been addressed. An expanded renewable electricity reduction credit is included. This was a high priority for Senate conferees BINGAMAN, SMITH, DASCHLE, HATCH, BAUCUS, SNOWE, BREAU, LINCOLN, CONRAD, BUNNING, and GREGG.

Chairman THOMAS recognized this as an important bipartisan mark and included section 450 in his mark even though it cost over \$2 billion to accommodate the Senate on this issue, with in the spirit of revenue neutrality.

We have a very good small business package as well included in the conference report. The bill before us extends small business expensing for another 2 years. The bill contains significant S corporation reforms. Even though the subchapter S corporation provisions were House provisions, they have historically been Senate priorities. We have probably the most comprehensive agricultural and rural community tax incentive package ever.

I thank Chairman THOMAS for including these Senate priorities in his mark. For everyone, there is a substantial overhaul of the fuel excise tax system, with a VEETC proposal, fuel fraud, and also biodiesel provisions.

These provisions will mean more highway money for more States. According to Federal statistics for the current fiscal year, 37 of 50 States will receive more highway money because of the VEETC proposals in this bill. There will still be more highway money for all States from provisions in this bill by shutting down fraud when people do not pay the fuel tax that is required under existing law. VEETC and fuel fraud provisions are estimated to put over \$24 billion into the highway trust fund.

Now, I point out that this bill does not contain many special interest members' provisions. If my colleagues will recall, the JOBS bill passed the Senate 92 to 5. In part, the bill received such widespread support because many Member items were accommodated when this bill first went through the Senate. Literally dozens of narrow tax benefits were adopted in committee and also added on the floor. Those provisions also unnecessarily caused the bill to be defined as a special interest bill. Senator BAUCUS and I put out a staff analysis that showed only a small portion of the bill's revenue was absorbed by these individual Members' items. But that did not stop the criticism of those items, either by Members of the Congress or by the press writing about this bill, emphasizing things

that were only a small part of the legislation.

The House bill also, however, contained Member items. They were fewer in number, but very significantly defined. Most of those items enjoyed some Senate support.

In addition to the press criticism, the President also made clear to me he would not support a bill that is heavily laden with so many of these narrow items.

Neither side got everything they wanted. For example, the House made a huge concession by giving up its rate cut for only C corporations. They had invested \$15 billion for this in small C corporations, and another \$64 billion for large C manufacturing corporations. They relented on this point in order to accommodate the Senate concerns about extending the manufacturing rate cut to all manufacturers, regardless of whether they were C corporations, S corporations, partnerships, or individuals.

We have heard harsh complaints about the conference bill from Senator LANDRIEU because the bill does not contain her reservist amendments. I would like to set the record straight on that point. The Senate voted in support of her amendment in conference. We approved it and presented it to the House for inclusion in the conference bill. The House rejected that amendment. The conference was open to the public. Everyone witnessed the vote. There were no back-room deals on the reservist amendment.

Finally, as a premise, let me note we knew the House would not accept as much in revenue offsets.

Mr. GRASSLEY. Indeed, the bill before us is smaller in size by more than \$30 billion than the Senate-passed JOBS bill.

There has been some grumbling about how much the bill grew beyond the simple repeal of foreign sales corporations' extraterritorial income provisions. One of the reasons it grew is because the Finance Committee found sufficient offsets, most of which are loophole closers—loophole closers Senator KERRY spoke about in the debate, that he wanted to close. We did this to allow Members to have enough revenue to offset particular Senators' interests in this bill.

This is also true of Senator LANDRIEU's reservist amendment. Not only did we support it but we found a way to pay for it. We modified the foreign housing exclusion for high-income U.S. employees working overseas. Unfortunately, the House rejected that offset, and in turn the specific amendment.

I think the Senate is being distracted by too much emphasis upon particular specific Member priorities. I believe the core benefits of the bill should not be sacrificed to narrow items. The core benefits go to manufacturers. It is all about creating jobs in particular, particularly about creating jobs in manufacturing in America, where there has

been some concern expressed in the Senate about outsourcing. So that is what this bill is all about. That is not to say we did not attempt to include a number of Members' issues from both sides of the aisle, and from both bodies of Congress. There was a balance that needed to be struck in order to get a compromise out of the conference committee. I committed to Chairman THOMAS that I would defend the mark as a whole. Chairman THOMAS made a similar commitment. That commitment enabled us to accommodate Member items that had broad support.

Let's finish the job this week before we leave. There is no excuse for allowing partisanship to hold up this bill. I will remind everyone, one more time, this bill passed the Senate Finance Committee on a bipartisan vote, 19 to 2. Only two Senators, both on my side of the aisle, not on the Democrats' side, voted against this bill. Both of those Senators, however, put their own special concerns aside for the greater good, and are supporting this conference report. This is a bipartisan bill that reflects everyone's concerns, both Republican and Democrat.

I will describe once again the history of this bill. The JOBS bill was a bipartisan bill from the ground up. The framework was laid by Senator BAUCUS when he was chairman of the Senate Finance Committee in the year 2002. In July 2002 we had a hearing to address the FSC/ETI controversy within the World Trade Organization. We have heard from a cross-section of industries that would be damaged by the repeal of the extraterritorial income laws we had on the books for the last few years. We also heard from U.S. companies that were clamoring for international tax reform, because our tax rules were hurting their competitiveness in foreign markets. Their foreign competitors were running circles around them because of our international tax rules.

During this hearing, Senator BOB GRAHAM of Florida and Senator HATCH expressed concerns about how our international tax laws were impairing the competitiveness of U.S. companies. After some discussion back there in the fall of 2002, we formed a blue ribbon commission to study this problem. We all decided that decisive action was more important than a commission. During that hearing, Chairman BAUCUS formed an international tax working group that was joined by Senator GRAHAM, Senator HATCH, and this Senator, and was open to any other Finance Committee Senator interested in participating.

The bipartisan Finance Committee working group developed a framework that formed the basis of the bill that is before us this very day. We directed our staff to engage in an exhaustive analysis of the many international reform proposals that have been offered. We sought to glean the very best ideas from as many sources as possible. Senator BAUCUS and I also formed a bipartisan bicameral working group, with

the chairman and ranking member of the Ways and Means Committee, in an effort to find some common ground on dealing with the repeal of FSC/ETI. That effort did not go so well. But it did inspire Senator BAUCUS and this Senator to continue our Senate bipartisan development of a FSC/ETI repeal and international tax reform package.

We continued our efforts in cooperation with Senator HATCH and Senator GRAHAM and a few other members of the Finance Committee who wanted to do what was fair and right in complying with the World Trade Organization ruling. We continued our bipartisan efforts when I became chairman—again, in the year 2003. In July 2003 we held two hearings on the FSC/ETI and the international reform issues. One hearing focused on the effect of our tax policies on business competition within the United States and the other on international business competition. These two hearings led to the bipartisan Senate bill that passed earlier, 92 to 5.

Let me review what is in the bill before us, because most of it comes from our bipartisan Senate bill. The core part of the bill repeals the current FSC/ETI provisions that are in our current tax law and were ruled out of order by the World Trade Organization because they are contrary even to the laws of our own Congress.

FSC/ETI reduces the income tax on goods manufactured in the U.S. and exported overseas by as much as 3 to 8 rate points. That is, if a corporation's tax rate is 35 percent, the tax rate on export income is somewhere between 27 and 32 percent instead of that maximum of 35 percent.

It lowered the U.S. corporate rate on goods made in the United States and sold overseas to make us competitive because of the fact that the European Union and those countries do not export their value-added tax. The World Trade Organization has determined that the FSC/ETI is an impermissible export subsidy and has authorized the European Union to impose up to \$4 billion a year of sanctions against U.S. exports until we get rid of FSC/ETI, which this bill does.

Those sanctions begin March 1. They are up as high as 12 percent right now. They can go up as high as 17 percent. They can even go higher than that if the European Union institutes longer phase-ins.

Our companies carry this burden because Congress has failed to act for 2 or 3 years. That is why we must pass this bill before we leave Washington for our campaigning.

This should be a very serious concern of all Members because the sanctions are hitting commodity products such as agricultural goods, timber and paper, as well as other manufactured products. Presently, about 89 percent of the FSC-ETI export benefits go to the manufacturing sector.

Repeal of FSC-ETI raises around \$55 billion over 10 years. If that money is

not sent back into the manufacturing sector, which this bill does, there will be a \$50 billion tax increase on manufacturing. It is mathematically impossible for it doing anything else.

That is why the bill before us takes all \$55 billion of the FSC-ETI repeal money and sends it back to the manufacturing sector in the form of a 3-point tax rate cut on manufacturing income; in other words, that corporate tax of 35 percent being reduced down to 32 percent.

This tax rate is for manufacturing in the United States. No company that manufacturers offshore will benefit from it. We start phasing in those cuts next year. The cuts apply to sole proprietors, partnerships, farmers, individuals, family businesses, multinational corporations, and foreign companies that set up manufacturing plants in the United States.

In total, this bill provides over \$76 billion of tax relief to our U.S.-based manufacturing sector to promote factory hiring in the United States—\$76 billion not lost to the Federal Treasury because it is offset.

This bill also contains another \$7 billion for small businesses, local communities, inland shipping, and other local business concerns.

There has been chatter in the press about the short-line railroad provision benefiting big railroad companies. That is not true. Short lines are the small spurs that run off of the main railway systems and generally connect to local community businesses such as our grain elevators and our small factories. They connect them to the main rail arteries. They are often owned by small rail companies or local community businesses. This short-rail provision is vital to farming and rural communities across America, as well as secondary cities that do not have the benefit of massive public rail systems.

This bill also contains an agricultural and small business package which devotes \$5 billion to our home communities.

As I said before, this is probably the most comprehensive agricultural and rural community tax incentive package ever passed by the Congress.

We also include international tax reforms, mostly in foreign tax credit areas, and most of which benefit the manufacturing sector.

The international tax reforms largely fix problems our domestic companies face with the complexities of the foreign tax credit. These reforms are necessary if we are to level the playing field for U.S. companies that compete with our trading partners, particularly those companies that are in countries that have value-added tax and they don't export that tax like we export our income tax as part of our cost of production.

You will hear arguments that the international reforms provide an incentive to move jobs offshore. Read the bill and you will find that is not true. We have carefully selected inter-

national reforms that do not provide offshore incentives.

Our bill also includes a House version of the Homeland Reinvestment Act which will temporarily reduce tax on foreign earnings that are brought into the United States for investment here at home instead of overseas. The Senate version of this provision is the work of Senators ENSIGN, BOXER, and SMITH, a bipartisan measure.

We included a provision that allows naval shipbuilders to use a method of accounting which results in more favorable income tax treatment.

There are enhanced depreciation provisions to help the ailing airline industry.

The bill also expands the new markets tax credit to high outmigration counties. These credits help economic development in rural counties that have lost over 10 percent of their population.

We have also included the Civil Rights Tax Fairness Act. We have a special dividend allocation rule which benefits farm cooperatives.

We have other farm provisions that give cattlemen tax-free treatment if they replace livestock because of drought, flood, or other weather-related conditions—things all beyond the control of the farmer.

We included a provision that allows payments under the National Health Service Corps loan repayment program to be exempt from tax. This is an important measure to enhance the delivery of medical services to rural areas that do not have the proper number of health practitioners.

The bill before us contains several energy provisions that were voted out of the Finance Committee that had been previously approved by the full Senate in the JOBS bill.

I have already spoken about VEETC, which is short for volumetric ethanol excise tax credit. This provision would add up to \$14.2 billion of revenue to the highway trust fund over the 6-year life of the upcoming transportation bill now pending before Congress. This provision alone could create as many as 674,000 new jobs in America.

The energy tax package also includes a new incentive for the production of renewable biodiesel—biodiesel made from soybeans—and hence, mixed at a 20-percent mixture with petroleum diesel, clean burning, no sulfur in that 20 percent, as an example of being environmentally friendly.

Anyway, the biodiesel provision means jobs in our heartland. Renewable fuels have directly generated over 150,000 new jobs. In fact, in 2004 alone, this industry will add 22,000 new jobs.

The bill also includes a provision to accelerate the production of natural gas from Alaska and the construction of a natural gas pipeline from Alaska to the lower 48 States. According to our own Department of Labor's Bureau of Economic Analysis, construction of the Alaska natural gas pipeline would create nearly 400,000 jobs in construc-

tion, trucking, manufacturing, and other service sectors.

The bill provides all of this tax relief, nearly \$140 billion worth, and yet is revenue neutral, meaning we reduce taxes over here, close corporate loopholes over here, raise a certain amount of money to make up for what is less taxation over here. It is revenue neutral—no additional money added, no additional dollars added to the national debt; not one dime to the Federal deficit.

The tax relief in this bill is paid for by extending Customs user fees, shutting down abusive corporate tax shelters, and attacking the abusive tax strategy used by Enron, which we unearthed during my Finance Committee Enron investigation.

Last October, the Finance Committee held hearings on the status of these abusive corporate tax shelter activities. During that hearing, we received anonymous testimony from a leasing industry executive describing how U.S. corporations are able to take tax deductions for the pair of sewer lines in the New York subway station.

Let me explain "anonymous." This meant the person was testifying before the committee. We knew who he was, but he was not identified to the public. But he knew what he was talking about. We have a situation where major corporations, through these abusive tax shelters, are claiming tax deductions on taxpayer-funded infrastructure, mostly by municipalities located both in the United States and overseas. Imagine our surprise on the Senate Finance Committee to learn that the U.S. taxpayer is subsidizing the cost of electric transmission lines in the Australian outback. No one believes that, but it showed up in our investigation.

I could go on with a lot of other examples, but the bill before the Senate ends this corporate tax shelter abuse.

It was shortly after the September 11, 2001, terrorist attacks that we saw the beginning of the exodus of U.S. companies moving their corporate headquarters to tax havens overseas, just setting up a shell corporation, basically just a mailbox, for the sole purpose of evading U.S. corporate taxes. It was the events of September 11, 2001, and the ensuing stock market plunge that provided companies with cost-efficient ways to get out of the United States. That is one thing, but to get out of the United States just to cheat on their taxes and leaving everything else in the United States—that is the problem.

Members may recall the video I played for some members in which a big four accounting firm partner said that U.S. companies were resistant to this scheme out of some post-September 11 sense of patriotism and national duty. This big four accounting firm partner said patriotism would have to take a back seat when they see their improved earnings per share. Isn't that a nice thing to be talking

about within 2 or 3 months after losing 3,000 Americans in the terrorist attacks on New York City and the Pentagon?

In this bill before the Senate, patriotism is not taking a back seat. This bill includes measures to shut down this type of corporate expatriations that are there for the sole purpose of dashing from the country and stashing the cash, as opposed to those patriotic corporations that are staying in America and paying and playing here.

I am not pleased with the effective date that came out of the conference, but this bill does shut down for the future more of these corporate tax shelter abuses that we call inversions. They are done. In fact, this bill represents the most comprehensive attack on tax shelters since 1986.

There is a great deal of good in this bill. We can rescue the manufacturing sector. We can give companies less reason to outsource because the cost of capital—as one of the arguments for outsourcing—will be less if this bill passes.

We also end European Union sanctions. By passing this bill we can respond to the recent rise in gas prices through our encouragement of more renewable fuels, and we can shut down every known corporate tax shelter abuse.

It is time to pass what is a very important bill to aid our manufacturing sector, remove tariffs off our farmers' backs, create jobs for our workers, and to place the Senate back on its footing, to do its job, and move legislation that benefits the American working men and women.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARKIN. I understand there was an order, and I am allowed to speak for 5 minutes.

#### DISASTER ASSISTANCE

I take this time first to thank all the Senators who voted for S. 454, expressing the sense of the Senate that disaster assistance ought to be emergency spending and not taken as an offset out of any other program, especially the farm bill.

The vote was overwhelming, 71 to 14. Once again, as we have in the past, the Senate has spoken very loudly and clearly that when a disaster strikes, wherever it is, this is an emergency. It ought to be taken out of the whole pot of Government money rather than invading a program and taking money out it as an offset.

Again, I have the deepest sympathy for all the people who got hit by the hurricane in Florida and other States. They ought to be compensated. That is

a true emergency. It is a disaster. But we have had disasters in other parts of the country. We have had floods, tornados, droughts, all kind of things. Just because it is not a big hurricane does not mean it is not just as devastating. It is. It makes no sense why we should have to then offset, take money out of existing farm programs, to pay for agricultural disaster assistance. But that is the position of President Bush and of the House leadership. We do not require offsets to respond to the hurricane disaster, and we should not do it for any other disaster.

Seventy-one Senators again spoke and said emergencies are emergencies. Disasters require emergency spending.

I have to point out that last night in the debate in St. Louis the President said he had fought for strong conservation provisions in the farm bill. I was there when the President signed the farm bill in May 2002, and he touted the conservation title and how much he supported it and that one of the main reasons he was signing it was because of the strong conservation title.

Yet today, his people, the President's own people from the White House and OMB, are up here telling the members of the House and Senators that in order to respond to the droughts, flooding, tornados and other disasters we have had around the country, that the disaster payments have to be taken out of the farm bill and that the place to take them is from conservation.

Yes, you heard me correctly. The President of the United States, who so loudly last night said he fought for a strong conservation title in the farm bill, today, his people are up here and saying to take money out of conservation to pay for agricultural disaster assistance.

I am sorry, can someone please join the dots for me? What is happening? The President is saying one thing, but his people are up here doing exactly the opposite. Does the President not know what his people are doing up here or have they not informed him or what is going on?

The farmers and ranchers of this country, as well as Americans who support conservation, ought to know that there is a provision soon coming before the Senate that will take money out of conservation to pay for disasters. It is wrong. Seventy-one Senators just spoke and said it is wrong. Yet the White House is insisting that disaster money has to be taken out of conservation.

The White House and the House insist on provisions that basically take money away with hand and give it back with the other and say to farmers and ranchers: You are better off. It is a cruel hoax for agricultural producers. Farmers who receive disaster payments should not suffer the loss of other farm bill benefits. Nor should our Nation's farmers as a whole, the majority of whom will not receive any disaster payments, be forced to bear the cost of disaster assistance by having farm bill

benefits taken away to be transferred to a disaster program for only some farmers.

Why should the farmers in Pennsylvania have their conservation funding taken away from them to transfer to farmers in Nebraska or Wyoming or Colorado or Oklahoma or Texas or wherever the disaster may be. The White House did not say to do that for Florida's hurricane losses. They did not say to take money away from Alaska or Ohio or places like that to go to Florida. No, and they should not have. We should all pitch in as we have before, the whole country, to respond to the hurricane recovery. We pitch in because it is a disaster and emergency and so we fund it as an emergency, not by taking funding away from other vital programs. Yet for agricultural disaster assistance responding to droughts, or floods or other disasters, the White House and the House leadership are telling farmers and ranchers they will have to bear the cost of it by losing conservation funding from the farm bill.

I am sorry, it is not right and not fair. And 71 Senators said it is not.

Again, I ask the President: Please, Mr. President, you touted the conservation program.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. I ask unanimous consent for just 30 more seconds.

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

Mr. HARKIN. Mr. President, you touted the conservation program. Last night you said you fought for a strong conservation title in the farm bill. And now you are taking money out of conservation to pay for disasters. Please, Mr. President, I am telling you, get ahold of your people who are at OMB—your people. They work for you. Get them on the phone right now and tell them, this agricultural disaster money ought to come out of emergency assistance, just like you proposed for the hurricanes, and not out of farmers' own pockets.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, I understand there is a unanimous consent agreement. I ask unanimous consent it be modified so I may be recognized now according to the time allocated under the unanimous consent agreement.

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

#### HONORING OUR ARMED FORCES

Mr. REED. Madam President, as a preliminary point, let me say I had the privilege yesterday to go up to Walter Reed Army Hospital to visit soldiers who have been injured in action defending this country and also to visit the rehabilitation facilities there. And any time you go to Walter Reed, you are inspired by the courage, the selfless service, and the sacrifice of these outstanding young men and women. But I

want to relay something I think is particularly appropriate but is not often said.

As I was leaving the room of an injured soldier from the 509th Parachute Infantry Regiment, his parents—his mother and father—were there, and his father stopped me and said: Senator, I want to make sure you know something. The people in this hospital are extraordinary. They have treated my son with extraordinary care. He is my child, but all the people I have known here in this hospital treat my son as if he was their child.

That is an extraordinary compliment to the men and women of Walter Reed, the Army Medical Corps, the doctors, the nurses, the technicians, the occupational therapists, the janitors, the clerks. And it is not just Walter Reed, it is Bethesda, it is the Air Force Health System.

I do not think we spend enough time thanking those valiant soldiers, sailors, and air men and women for what they do. And certainly those soldiers who have suffered and are being treated, rehabilitated, we owe them more than we can ever repay. We have to match their courage with wise and thoughtful policy.

OPERATIONAL DEPLOYMENT OF THE GROUND-BASED MISSILE SYSTEM

Madam President, I am going to spend a few moments talking about a policy which I do not consider to be the wisest and the most thoughtful, and that is the President's likely declaration, within a few days, of the operational deployment of the ground-based missile system. We have constructed a test bed in Alaska. We are trying to assemble a system that will work to protect this country. I think operational testing is in order. In fact, I would hope that the administration would actually follow the law more rigorously and provide for a scheme of operational testing. But that is not the case.

To declare this immature, technologically challenged system as deployed and operational today is a political judgment, not a military judgment. I think we should refrain from blatant political judgments when the security of the United States is in the balance.

Simply stated, this system is so immature and technologically challenged that they canceled the last test. And it defies me to understand how, after cancelling the test, you can turn around and say: It will work. It is operational. It defies common sense. It defies logic. It is something I think, again, that simply is a political statement.

Now, intercept tests are the critical means by which a missile system, any military system that is technologically sophisticated, must be validated, must be tested. It is the only way we can truly assess whether a system will work, whether it meets a minimum criteria for deployment, to put it in the hands of American fighting forces.

The last intercept flight test of the system was conducted almost 2 years ago in December 2002. It was a failure.

Six days after the test failed, the President announced that the U.S. would deploy the missile defense system by the end of 2004. It is almost like watching a piece of military equipment crash and burn and then suddenly say it is operational. Again, it defies logic. It defies common sense.

Since the time of the last test failure in 2002, there have been seven other planned tests. They have all been canceled. Again, we are not able to test this system. How in good faith can we say it is operationally workable? The tests have been postponed, deferred. None of these tests have taken place.

None of the major components of the system, neither the new operational interceptor, nor the operational radar, nor the operational battle management system have ever been tested at all against a real test target. Yet the President will say, I assume in a few days, this system is capable of protecting the United States.

In addition to all these test delays and cancellations, the administration has essentially eliminated any effective oversight over the missile defense test program, avoiding standards and laws that have been on the books for at least 20 years.

Years of hard experience have shown that it is much more expensive to fix a problem with a military system after you have built and deployed it than it is to fix it before it is deployed. Because of this, more than 20 years ago, Congress passed laws which required all major defense systems to undergo a full set of realistic operational tests prior to spending large amounts of money on full production and deployment of the system. These tests were to be judged by an independent test authority called the Director of Operational Test and Evaluation. This law is still in effect today.

Thanks to this law, we have been able to avoid some of the mistakes we made in the 1970s and the 1980s, where we declared systems deployed and operational without adequate testing. These are high-profile systems, like the B-1 bomber, the Sergeant York gun, and the Bradley Fighting Vehicle. We were able to make certain corrections to the B-1 and the Bradley. They were eventually fixed at a cost of billions of dollars. The Sergeant York gun was unable to be fixed. That was canceled. But we wasted billions of dollars by deploying these systems prematurely.

If the missile system is truly as important as the administration thinks, then we should take the time to test this system to make sure it works instead of trying to convince people, by press release, that it does work.

The missile system has been exempted by the administration from the oversight of the independent Director of Operational Testing, and they have plunged ahead with full-rate produc-

tion of the program with no independent testing at all. Incredibly, the administration has no plans to ever conduct realistic independent operational tests on this missile defense system. This avoids 20 years of law, practice, and indeed common sense. The politics of deploying a missile defense at any cost prior to the election has trumped any desire to make sure the system actually works and, if history is any guide, will likely result in the waste of a large amount of money to fix the system after it has been deployed.

If we can—and I think we should, indeed, with deliberate speed—deploy a system that is operationally effective, we should do that. But to take a system where the major components haven't even been tested and say it works is being intellectually dishonest and deceptive to the American people.

On August 18, Secretary Rumsfeld described the missile defense deployment as the "triumph of hope and vision over pessimism and skepticism." Actually it is a triumph of best wishes over reality. And hope is not a plan. We found that out in Iraq. Only a system that is rigorously tested, where improvements are made test by test by test, will get us to where we want to go and must be, a system that we are confident will work if it is called upon to defend the country.

Now this lack of testing is not a result of any lack of funds. The administration has lavished funding on this system. The budget request for fiscal year 2005 is \$10.2 billion. It is the largest single-year budget request for any weapons program in the history of the United States. For perspective, the fiscal year 2005 budget request for missile defense is more than the Army's total research and development budget for this year. And we know we have an Army engaged in combat, in trying circumstances, that needs to develop new approaches, new sensors for the troops, new observation devices, new ways to deal with insurgencies in built-up areas, new ways to deter and defend against improvised explosive devices. Their budget is a fraction of the budget that is being lavished upon this system. It is twice the budget for the Bureau of Customs and Border Protection in the Department of Homeland Security, and it is nearly twice the Department's allocation for the Coast Guard—two times Coast Guard, two times Customs and Border Protection.

The ultimate costs of this system are unknown because the administration steadfastly refuses to provide to Congress any information on how much missile defense they want to buy and how much it will cost. Recent estimates by the Congressional Budget Office indicate the Bush administration's Missile Defense Program could exceed \$100 billion. Nowhere is that \$100 billion being factored into ongoing defense budgets as we move forward over the next 5 to 10 years, and it will have to come from somewhere. Again, we

need a system, but we have to be honest about how much it will work and how we are going to pay for it. That honesty is not present today.

The other factor—and this is interesting—in contrast to the numbers that are being allocated for the Coast Guard and the Customs Service is that an intercontinental launch against the United States is probably less likely than other means of detonating a weapon of mass destruction in the United States. First of all, there are only two countries that currently have the capability: Russia and China. The Bush administration points—and I think rightfully so—with concern to North Korea. But that country has never successfully launched any missile capable of reaching the United States. Furthermore, North Korea has observed a self-imposed moratorium on long-range missile testing for 6 years since their last test failed in 1998.

But even if North Korea develops such a capacity, why would they launch a missile against the United States? Our early warning satellites will pick up the launch. It will tell us definitely and decisively where it is coming from, and we will retaliate swiftly and with devastating force that will likely destroy that regime. Why would they want to do that, particularly if they could attack us by other means, perhaps concealing a weapon of mass destruction in a container that comes to the United States since only a small percentage are opened?

Again, the budget for the Customs Service and the Border Protection Service is a fraction of what we are spending on this particular threat.

Now, that is not just my conceptual view. In December 2001, the U.S. intelligence community completed an assessment of the foreign ballistic missile threat to this country. The assessment was entitled “Foreign Missile Development and the Ballistic Missile Threat Through 2015.” Their conclusions:

[T]he intelligence community judges that U.S. territory is more likely to be attacked with [weapons of mass destruction] using nonmissile means, primarily because such means: Are less expensive than developing and producing ICBMs; can be covertly developed and employed; the source of the weapon could be masked in an attempt to evade retaliation; it probably would be more reliable than ICBMs that have not completed rigorous testing and validation programs; and probably would be much more accurate than emerging ICBMs over the next 15 years.

This is what the intelligence community said in 2001 looking forward to 2015. Yet since that time, the Bush administration has spent billions of dollars more on the development of this untested, unproven missile defense than it has on protection of our ports and borders where the real threats are likely to come from.

We should be very careful about making sure we take scarce dollars and apply them to the most likely threats. Some have said: Well, don't make those comparisons. We to have defend

against every threat. Frankly, the simple contrast between the money we are spending on missile defense versus the Coast Guard and border patrol seems to be directly in contradiction to the intelligence community estimate of what the most likely threat would be. That is not wise policy.

There is also a huge opportunity cost for us. While we are lavishing money on this system, there are other programs—for example, the Department of Energy program called the Global Threat Reduction Initiative—which are not being adequately funded. This Department of Energy program is designed to help secure loose nuclear materials that are around the globe so that terrorists don't get their hands on them. And what is the most vital threat to the United States today? A terrorist group could obtain nuclear materials or a nuclear device, smuggle those materials into the United States, and attack us here. That is what the intelligence community assumes is the most likely threat. Yet we are not going to the source and securing and eliminating the nuclear material that is too abundant in the world.

There is another program that the administration is proposing, which is the airborne laser program, another part of this elaborate construct of missile defenses. The airborne lasers are designed to shoot down ballistic missiles in their first stage as they blast off and start going into space. This program has been plagued by problems throughout, problems which have delayed the program by a year, reduced the laser power by more than half, and have many wondering whether this program is doomed to fail.

By the way, using the same criteria of missile defense—i.e., test failures followed by numerous cancellations—I wonder why the administration doesn't declare the airborne laser operational. It works perhaps as well as our national missile defense.

During the same time the administration has been spending far less on security for our Nation's ports, it has been spending a great deal of money on the airborne laser. The Bush administration's fiscal year 2005 budget proposes a \$50 million cut to the 2004 level of U.S. port security funding, the grant funding that we use to help our ports all across this country. Yet there they are still investing extraordinary amounts, almost a half a billion dollars, in the airborne laser. So while it is a risky, possibly doomed program, the money keeps flowing while we do not have adequate resources to protect our ports.

The other aspect of this dilemma is that the administration has never been able to open up this process to a transparent approach, where scientists can look at this data. Of course, we are going to protect the security and the proprietary information here, but they have been overly secretive. And the reason is obvious: it doesn't seem to work, and they don't want that infor-

mation out as they are getting ready to declare it operational.

They also never really had the opportunity or the will to have realistic tests. All of these tests have been carefully scripted. All of these tests have relied upon nonrealistic scenarios. The incoming missile has a homing beacon on it to help guide the interceptor to it. They don't use realistic decoys, which any country attacking the United States, you would have to assume, would have decoys as well as a real warhead. And there is no element of surprise. A real enemy missile attack would not be scripted, would not have a convenient homing beacon on the target, would likely have realistic decoys and would be a surprise attack.

Frankly, if we had warning of the pending attack, we would take preemptive action immediately, take out the missile on the launch pad.

During the entire time of the Bush administration, there has been essentially no progress made toward the goal of realistic missile defense tests against realistic targets.

An effective missile defense is something we should all work for. But a missile defense that is based upon a press release and not tested is not an effective missile defense. Saying it is operational doesn't make it operational. What makes it operational is rigorous testing under realistic circumstances. This administration has never done that.

I believe we should proceed forward with all deliberate speed to develop and deploy a missile system. I don't think we should allow ourselves to make a political judgment and declare it operational by press release and not validation through testing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise this afternoon to discuss the FSC bill. Some may view this as a tax bill, and it is; some have called it the American Jobs Creation Act of 2004, and I think that is fair; I am sure it will do that.

But let me say to the Members of the Senate, my colleagues, what this bill could have been, what this bill should have been, and what it was when it left here, when we sent it to the conference committee. What it should have been, what it could have been, what it was was the most important public health bill to be considered by this Congress.

Before the FDA provision to regulate tobacco was stripped out by the conference committee, it was the most important public health bill to be considered by this Congress. It was the most important children's health bill to come before this Congress. Tragically, the conference committee stripped out the FDA provision that would have, for the first time, put the marketing of the sale of tobacco under the same terms and conditions as the sale of every other product in this country. In this bill, which has so many things in it, there just wasn't room, according to

the conference committee, for this FDA provision.

This is a sad day for the Congress. This Senate voted on an amendment, 78 to 15, to include the tobacco buyout that helped tobacco farmers, which I supported and continue to support, coupled with, for the first time, having the tobacco controlled like every other product in this country and regulated by the Government. This bill we have in front of us represents a missed opportunity. It is a missed opportunity to help our children, our grandchildren, and the public health. Two thousand children a day in this country start smoking; 400,000 people a year die of tobacco-related diseases. Yet we failed in this bill; we turned our back on this historic opportunity.

I truly believe that in public life, as well as in life as individuals, we are judged not only by what we do, but also by what we fail to do. I think we ultimately are held accountable for what we don't do. So I intend to vote no on this bill. I intend to vote no on cloture because of the failure of the conferees to include this historic provision. We had the opportunity and missed the opportunity to close this loophole in the law, to deal with this anomaly in the law. Every product that comes on the market is regulated. When you walk in the supermarket today and you buy a product, every single product is regulated. The ingredients are on the package. If there is a claim that is made, that has to be substantiated. Every single product, except one, and that product is tobacco—cigarettes and smokeless tobacco; they are exempt. King tobacco is exempt in the law today. That is wrong.

This bill, as we sent it out of the Senate, in the wisdom of the Senate, would have changed that. Yet the conferees stripped out that provision. So we should vote no on cloture and on the conference report.

This was a historic opportunity that will not come again. The coupling of the tobacco buyout and the coupling of the FDA-controlled tobacco—we will not have the opportunity to do that again. This bill, in fact, contained the tobacco buyout. I support that. If this bill passes, the tobacco buyout will be done and we will no longer have the opportunity to couple these together. We will have lost that—let's be candid—political opportunity to put these two together. So we have lost that chance and that opportunity.

A yes vote on this conference report, a yes vote on cloture says it was OK to strip that out. A yes vote says it is OK to turn our backs on our kids once again on this issue. A yes vote says it is OK, the status quo is fine, and business as usual is fine.

How long are we going to tolerate this? How long are we going to say tobacco is different than every other product in this country? How long are we going to say tobacco should not be regulated? How long are we going to say when one goes in and buys products

on the market, every other product is regulated, one knows what they are buying but not tobacco? Why should tobacco be different?

Some Members may say, I cannot vote against this bill; there is too much in it. It has too much for my State, too many good things.

There are a lot of good things in there. There are things for my home State of Ohio. There are some things in there that are not that good, but there are some good things in that bill, and I know that.

I have been in politics and Government for 30 years. I have been in the Senate for 10 years. I have cast a lot of votes. When people say, I cannot vote no, when people say I have to do it, I say this to them: I have been in politics for 30 years, and they do not have to do anything. There is nothing that compels anybody to vote any way on any bill. The longer one is doing this, I think the more they realize that.

So I say to my colleagues, they do not have to vote for this bill. They do not have to vote for cloture. There is nothing that compels them to. It is the wrong vote.

Sometimes one has to look at the big picture. Sometimes I think my colleagues have to stand back from what would appear to be the parochial interests and look at the big interests, but I would maintain that if they look at the interests of their State and look at the interests of the people of their State, not to mention the interests of the people of their country, they will come to the conclusion that voting no on the motion on cloture, no on this bill is the right thing to do.

Look at my home State of Ohio. Yes, there are good things in here for Ohio, but I will read to my colleagues the statistics from Ohio. I share them with my colleagues as an example of what their State is probably like as well.

Here are the statistics from the State of Ohio: 22.2 percent of high school students smoke; 12.8 percent of the male high school students use smokeless or spit tobacco. The number of kids under 18 who become new daily smokers each year is 36,800. The number of kids who are exposed—this is all just Ohio, now. The number of kids who are exposed to secondhand smoke at home, 919,000; packs of cigarettes bought or smoked by kids each year in Ohio, 36.3 million; adults in Ohio who smoke, 2,251,000. That is 26.6 percent.

How about deaths from smoking? Adults who die each year from their own smoking, that is 18,900 just in my home State of Ohio. Kids now under 18 and alive in Ohio who will ultimately, if they continue to smoke, die prematurely from smoking, 314,000. Adults, children, and babies who die each year from others' smoking, that is secondhand smoke, is estimated between 1,800 to 3,200.

If we do not care about people, what about dollars and cents? Well, annual health care costs in Ohio directly caused by smoking, \$3.41 billion. That

is "billion." Portions covered by the State Medicaid program, that is what you and I pay if you are a resident of Ohio, \$1.11 billion, and it goes on. Smoking-caused productivity losses in Ohio, that is \$4.14 billion; resident State and Federal tax burden from smoking-caused Government expenditures, that is \$534 per household.

Those are the figures. I look at this vote and I try to balance the fact that there are some good things that might be in here for my State versus what we could have achieved, what we could have done, and it is a pretty easy choice.

The conference committee had no business scuttling the will of the Senate and throwing out the FDA provision. It was wrong. They should not have done that.

I ask unanimous consent to use a few items in my speech. I am looking at them right now. They are some packages of cigarettes, a macaroni and cheese carton, yogurt, as well as a Sports Illustrated Magazine.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DEWINE. I will explain a little bit to my colleagues what the bill we sent to the conference committee would have done, because I want to explain the gravity of this. I will talk a little bit about the nature of what the tobacco companies can do that nobody else can do.

I will start with macaroni and cheese. We all buy it. If one has kids, they buy it, anyway. We all know what it is. I ask my colleagues, when they go home tonight, to look at the carton of macaroni and cheese and read what is in it. I am not going to bother to read everything that is in it but it has everything. It has calories, salt; then there is a whole long list of enriched macaroni, durum wheat flour, citric acid, sodium phosphate. It goes on and on. The thing one has to do is have pretty good eyes. If one is my age, they have to hold it back a little bit to make sure they can read it well, but it is there, and it can be read. Everything one wants to know, and probably more; every health item in the world.

The same company makes Marlboros. Try to figure out what is in here. If you do not smoke, go buy one, anyway, and take a look at it, or pick it up if you do not want to support the tobacco companies. Take a look. There is nothing on here. There is a Surgeon General warning but there is not a whole lot on here. One cannot tell what is on here.

Do my colleagues know why? Tobacco is exempt. Nobody regulates them. Nobody requires them to list what is in here. The same company: One makes macaroni and cheese and one makes Marlboros. Why? Because it is not in the law. How long are we going to put up with this? It is wrong.

Now I will turn to the claims that cigarettes make. Marlboro Lights, well, that must mean something. I am sure it means something, but we do not

know what it means. Yogurt, light yogurt. When you see light yogurt, it means something. When you turn it around, it says one-third fewer calories, and it better be one-third fewer calories. Definable, measurable; it means something. If it is on cigarettes, it doesn't mean anything. It may mean something. I don't know what it means. Again, no Government regulation. Cigarette companies are exempt. A loophole this law would have closed, now they stripped it out and it will not close it now. Tell me that is right. Explain that to the American taxpayer. Explain that to American citizens. Why? No explanation. There is no logic behind that.

How about the claims of cigarettes? "Premium Lights." Again we are back to the "lights." "All of the taste, less of the toxins." The average person who buys cigarettes probably thinks this means something. Maybe it does. Maybe it doesn't. We will never know. We will never know as long as this Congress continues to refuse to regulate the tobacco industry. We will never know. The American consumer will never know whether, when the cigarette companies put claims on here like "all of the taste, less of the toxins," that is really true or whether "less of the toxins" means anything. Most people would think it would. Maybe that is healthier or not as dangerous, but we don't know that and we never will know it until this Congress changes the status quo.

Here is another one. This is Eclipse, "20 Class A cigarettes," it says. Here is what it says on the back, and again who knows if this is true:

Scientific studies show that compared with other cigarettes, Eclipse may present less risk of cancer, bronchitis, and possibly emphysema, reduces secondhand smoke by 80 percent, leaves no lingering odor in hair or clothes.

That is important. Then, of course, they add:

All cigarettes present some health risk, including Eclipse.

That is nice of them to say. Again, how do we know the accuracy of this claim? But again the average consumer picks this up and feels a little better with this. There is nobody to test it, nobody to regulate it.

Some people say: MIKE DEWINE, adults ought to know no cigarette is safe. So buyer beware. Who cares?

I don't think that is the right attitude because I believe some adults do rely on less tar, less this, lighter, and scientific studies have shown that.

But what about kids? It is here that the cigarette companies reach the low point, absolutely the low point where nobody can defend them. I will challenge anybody to come to this floor and defend what they are doing. I have a whole bag of these. This is what they are doing. The cigarettes I am holding in front of me are not focused on a 57-year-old Camel smoker, I will guarantee. I don't see any 57-year-old Camel smokers smoking this stuff.

These are aimed at kids. Let me read it to you:

Camel Mandarin Mint:

A blend of menthol and citrus flavor.

This is Liquid Coconut Flavor, Liquid Zoo:

An exotic blend of coconut flavored tobacco for a sweet, fresh taste and aroma.

Camel Beach Breezer:

Sultry, smooth and swingin'.

Oh, this one, this is the old one, I guess; this is a

Camel Kauai Kolada:

Hawaiian hints of pineapple and coconut.

There we go. It goes on and on.

This is really exotic. This is Mocha Taboo:

Inviting and surprising, Mocha Taboo will entice you with its sweet indulgence, while leaving you with a refreshment that's unmistakably menthol.

And again, Liquid Zoo flavored cigarettes:

An exotic blend of coconut flavored tobacco for a sweet, fresh taste and aroma.

I invite my colleagues, if any Senator wants to, to come up later and actually smell these; it will not permeate the entire Chamber, but if you get close you can smell them. This is something kids would like. This is clearly targeted at kids, and this is what they are selling. Nothing stops them from selling this. This bill would at least stop them from selling this trash. It is not prohibition. But these products are designed for one reason and one reason only—to get kids hooked. It is an entry level drug. You entice them, you get them in, start them on this, and move them to something else. There is no other reason. When we vote for this conference report and condone what the conferees have done, we are saying it is OK to allow this to continue.

This is Sports Illustrated. Any kid in this country who likes sports—I have had a whole household full of them, and I still have one at home—reads Sports Illustrated. This is a new edition, "Smashing In St. Louis." Everybody reads Sports Illustrated. Why should kids be subjected to full-page ads in Sports Illustrated, full-page, color, inviting ads? There it is.

We have tolerated this for too long in this country. I had a Senator, when we were discussing this off the floor, tell me that he didn't trust the FDA. I have had people tell me that. I guess my reaction to that would be, do you trust the people who are trying to hook our kids with this stuff? Do you trust them? Do you want them to continue to try to hook our kids with this stuff? I hope not.

People would say it is too late, this bill is already done. I agree, this bill is done. But we should be sending a message and we should be saying we are not going to tolerate this Senate passing this bill, this FDA reform, sending it on to the House, and then having it stripped out of this conference report. It is too serious an issue. It is too important.

I am not the only one who feels that this is a public health vote of immense

importance. I have a letter from the American Lung Association dated October 7. I would like to read it in part:

DEAR SENATOR DEWINE: How can the Congress give \$10 billion to tobacco growers without requiring anyone to exit the tobacco farming business and fail to do anything for public health? This is unconscionable.

Over 440,000 people die prematurely from tobacco-related illness each year and two thousand children become addicted regular smokers every day. Nearly 90 percent of lung cancer and 80 to 90 percent of emphysema and chronic bronchitis are caused by tobacco use. Despite this deadly assault on lung health, tobacco products are the most unregulated consumer products on the market today....

Please implore your colleagues to change course and include the FDA oversight of tobacco in the FSC bill.

Tobacco companies continue to aggressively market their products to our children, cynically targeting "replacement smokers" for those who die or quit smoking. New flavored cigarettes including R.J. Reynolds' Camel Exotic Blends Kauai Koloda with "Hawaiian hints of pineapple and coconut" and Kool Caribbean Chill and Mocha Taboo are aimed at young people. The tobacco companies make health claims of "reduced carcinogens" or "less toxins" without any oversight of the veracity of the statements or their impact on health.

FDA regulation of tobacco would:

Ban flavored cigarettes.

Stop illegal sales of tobacco products to children and adolescents.

Require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive.

Restrict advertising and promotions that appeal to children and adolescents.

That was from the American Lung Association.

This is a letter from the American Thoracic Society:

DEAR SENATOR DEWINE: Congress is about to give the Big Tobacco the one thing they want, continued access to the most attractive market for their deadly products—our children. Don't let Big Tobacco continue to peddle their products to our children.

The best way to protect our nation's children from the continuing disease and addiction caused by Big Tobacco and their deadly products is by granting the Food and Drug Administration (FDA) the authority to regulate tobacco.

The bipartisan compromise reached in the Senate FSC bill would have granted the FDA the authority needed to regulate tobacco and reduce underage smoking throughout America. Unfortunately, during conference the supporters of Big Tobacco struck the one provision that would have given our children a fighting chance against the pervasive marketing power of tobacco companies.

If Congress fails to give FDA the authority to regulate tobacco, our children will pay the price. Children will pay the price through a lifetime of addiction to tobacco products. Children will pay through the diseases associated with tobacco addiction—lung disease, heart disease and cancer. Children will pay the price, literally, with their lives.

Here is another letter from the Ohio Children's Hospital Association:

DEAR SENATOR DEWINE: I write today to express the terrible disappointment felt among Ohio's children's hospitals that Congress has lost an opportunity to protect the health of America's children. This is a shameful waste of

*a rare opportunity to take the bold action needed to reduce a staggeringly dangerous health risk that hurts kids and increases the cost of health care.*

Ohio has been working hard to reduce youth smoking, and children's hospitals have long been at the frontlines of this battle to protect our children from the devastating tool that tobacco exacts. But, for every step forward we take (youth smoking in Ohio is down recently), we face a barrage of new and cunning attempts by the tobacco industry to regain its foothold with Ohio's children. The tobacco industry is spending more than ever to market its products in ways that appeal to children. As a depressing example, we now face the prospect of candy-flavored cigarettes.

Across the country, every day 2,000 more children become regular smokers, one-third of whom will die prematurely as a result.

FDA regulation of tobacco products represents the best tool for combating the tobacco industry's reckless assault on our children's health. We need the FDA to have the authority to subject tobacco products to the same rigorous standards we impose on other consumer products, including ingredient disclosure, truthful packaging and advertising, and manufacturing controls.

Here is a letter from the American Heart Association:

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the American Heart Associations' 22.5 million volunteers and advocates, I write you to express our deep dismay over the Foreign Sales Corporation (FSC) conference vote that failed to grant the Food and Drug Administration (FDA) authority to regulate tobacco products. This represents a squandered opportunity to protect the public against dangerous tobacco products, a failure to protect our children from the marketing of tobacco products, and also the adoption of the wrong tobacco buyout plan. How can Congress explain such neglect for our nation's health?

Tobacco use is responsible for more than 440,000 deaths each year, with more than one in three from heart disease or stroke. Each day, 4,000 youth try their first cigarette and 2,000 become regular daily smokers. This FDA legislation offered our best chance to reverse that trend and reduce the senseless death and disease that results from tobacco use.

Finally, a letter from Campaign for Tobacco-Free Kids:

DEAR SENATOR DEWINE: We were profoundly disappointed by yesterday's decision by the House/Senate conference on the FSC legislation not to include provisions establishing FDA regulation of tobacco products. An historic opportunity to protect the Nation's children and the nation's health was lost.

Enacting FDA regulation of tobacco products is the single most important thing Congress could do to reduce cancer, heart disease, emphysema, chronic bronchitis and a host of other diseases. It is the single most important thing Congress could do to improve the health of our children and protect our children from unscrupulous marketing by an industry that produces a product that kills one out of two long-term users. Close to 90 percent of all tobacco users start as children. First and foremost, it is our children who were ignored and who are the big losers by the decision not to include FDA in the FSC/ETI legislation.

The tragedy is not only that an opportunity to prevent disease has slipped through our fingers, but also that literally hundreds of thousands, if not millions of kids, one addicted, eventually will die of these tobacco-

related diseases. And these deaths will be needless. They will occur because of the actions of the House/Senate Conferees who failed to include FDA in the original Conference draft and who voted not to add it to the final bill. Tobacco use is also a leading cause of premature birth. If congress had given FDA authority over tobacco products, Congress could have dramatically reduced the number of children born prematurely with serious medical programs due to tobacco use.

Rarely does Congress have the opportunity to take an action that will improve the lives and well being of millions of Americans. This was such an opportunity. Tobacco companies market candy flavored cigarettes, promote their products in a myriad of ways that make them more appealing to children, hide the truth about the dangers of their products and fail to take even the most minimal steps to reduce the number of Americans who die from tobacco use. By the decision not to include the FDA provisions adopted overwhelmingly by the Senate in this bill, Congress is doing nothing to stop them.

Yesterday's vote by the FSA conference committee against FDA authority over tobacco is a big victory for the tobacco industry that will carry a heavy price in lives lost and kids addicted to tobacco. The Nation will also pay a price in growing cynicism about government when Congress appears willing to trade tax breaks for kid's lives. We urge all Senators and Members of Congress to oppose the FSC Conference Report until the FDA provisions are included.

In conclusion, I think if you gave the average American a list, maybe if you give them a quiz and you said here is a list of macaroni and cheese, peanut butter, granola bars, milk, cheese, cigarettes, bottled water, and asked them to check which one of these products the Government does not regulate, check which one of these products the maker of the product doesn't have to list the ingredients, which one of these products was not tested, which one of these products the maker of the product can put a claim on and not have to substantiate, which one will the average American pick?

You would think they would pick the one product that by design or if it is used as intended, admittedly we all know is dangerous to your health.

I don't think so. It defies common sense. No one in their right mind would pick that product. No one in their right mind, if we were starting all over again, would say, That is the product we are not going to regulate; we are not going to list the ingredients on that product; that is the worst product we are going to allow the manufacturer to make any claim they want—lighter, better, safer, whatever they want to say. Yet that is the status of the law today.

By approving this conference report and by saying, yes, we are going to move forward with it—that will be the vote tomorrow—we are acquiescing in that. We are saying it is OK to give up the opportunity we had, the best shot we have had in years to change the status quo and to say we are not going to tolerate this anymore; we are not going to put up with this anymore. The time is here to change that. It defies common sense.

There are historic votes in this Chamber. This is a historic vote. This is a historic time. This was a historic opportunity to make a difference and to change things.

I often think, as a public official and as an American, we do not want to be on the wrong side of history. We all have our own list of things that if we were here or if we were involved in this debate 10 years, 20 years ago, 50 years ago, 100 years ago we would not have wanted to be on a particular side. I don't want to be overly dramatic, but Members do not want to be on the wrong side of this debate. We may lose this time, but there will be a day when the American people rise up and say they have had enough, and this Congress hears it and this Congress takes votes to finally regulate this product, as we do every other product, and finally say we have had enough. We are going to make the tobacco companies list what is in the product, list the ingredients, come clean with the American people and say, This is what is in it, and hold them to the same standard we hold for a company that makes peanut butter of macaroni and cheese, a granola bar, a bottle of water or milk. They should not be above the law.

Someday that will happen. I say to my colleagues, that day will come. That day may not be this session of Congress, but it will come. People do want to be on the right side of history. We will regulate them. We will bring them into the mainstream.

This is a very dangerous product. We are not going to go to prohibition. That has not worked in this country. It did not work with alcohol, and it will not work with cigarettes. That is not what this debate is about. This debate is about common sense, about doing what is rational, about doing something that makes good common sense.

I conclude by urging my colleagues to vote no on this bill, to vote no on cloture, to send a message strongly and loudly that we have had enough, and it is time to bring tobacco into the mainstream of the law. No longer should they be outside the law. A "no" vote tomorrow is a vote for safety and the health of our kids. It is a vote for the safety and the health of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the hour is late in the afternoon on a Saturday, and I know there are many different matters of interest, primarily sports taking place across this country at the universities and high schools across our Nation. Young people are out there, parents are out there, families are out there, but I hope there are some who had the good opportunity to listen to my friend and colleague from Ohio State who spoke so clearly and eloquently as to what the real challenge is for this institution, the Senate, in protecting the children of this Nation.

The Senator laid out the kind of persuasive and irrefutable case that helped gain 78 Members of the Senate who supported the DeWine-Kennedy proposal earlier this last month, but the amendment was dropped, as the Senator from Ohio pointed out, in the course of the consideration of the underlying legislation.

There are public leaders who are talking about children all over this country. They talk about children being our future. They are our future. As the Senator from Ohio points out, we have missed the golden opportunity to make an extraordinary difference in the lives of their children and families.

We hear a great deal, as we should, about family values. This legislation is as much a part of family values as we could have, to the extent that legislation is bound in family values. We know that basically family values start with parents, work through their children's relationship with each other and their parents, and their own common sense about their responsibilities as young people for themselves and for their families and for others. Family values involves caring about what happens not only to our children and our immediate families but also to children whose lives we can impact.

This legislation which was supported by the overwhelming majority of this Senate, could make such an extraordinary difference to children today, tomorrow, and to the future. As has been pointed out, we have missed that extraordinary opportunity.

For that reason and for other reasons which I will outline briefly in a few moments, I intend to vote no on the conference report and no on cloture.

This country has had a very full education about the dangers of smoking. I can remember the 1964 Surgeon General's report that talked about the dangers of smoking and youth. That was a wake-up call to parents all across this country. Then we had Surgeon General Koop, who was an extraordinary Surgeon General.

Last night the President of the United States was asked about any mistakes he might have made in public life, and we did not hear any. I freely admit one of the important mistakes I made was voting against Everett Koop to be Surgeon General because we saw through his life and through his commitment not only as the Surgeon General but afterwards, as well, that once he made that judgment that cigarettes were addictive and cancerous, he spent a great part of his life educating families all across this country. This Nation owes a great deal to his work and his commitment and his education to families.

That was a wake-up call for America. We went on through the period of the 1980s when we had Dr. Kessler, head of the FDA, who drafted the regulations which were circumvented by the tobacco industry, and put aside those regulations that were the result of hours and hours and hours and hours

and weeks and weeks and weeks, and days and days and days and months and months and months of careful, scientific testimony, those for and against it.

Nonetheless, he came through with outstanding recommendations. We incorporated those recommendations as a point of reference to put them into effect because they have been tried and tested and they should have been put into effect to provide the protections for the young children of this country.

Then we had—I can remember, and I bet most families can remember—that extraordinary day when we had the presidents of all the important tobacco companies who testified in front of my friend and an extraordinary Congressman, HENRY WAXMAN, who all raised their hands and swore—swore—to the Lord on high that they, as the chief executives of the tobacco companies, did not believe cigarettes were addictive and did not believe they were dangerous to your health, in complete conflict with all the evidentiary science at that time.

Well, we heard so many of them recant that testimony later. It has all been part of a parade, a parade of distortion and misrepresentation by the tobacco companies and their representatives to not the older members of our society but to the children in our society in order to bring them in and start them smoking and get them on the path to addiction.

I have been fortunate to be the chairman of the Health Committee in the Senate. I am ranking member now. How many days, how many weeks, how many months of hearings we have had about the problems young people have with their addiction, their attachment to dangerous drugs. Cigarettes are right up there. As the science would say, they are as addictive as heroin and cocaine. That is the science. That is not just an opinion of the Senator from Massachusetts, that is the science. It is as addictive as cocaine and heroin, yet we allow that to take place.

Then we had the comprehensive legislation in 1998 to try to deal with a range of different tobacco issues. The basic core part of the DeWine-Kennedy legislation on FDA was here before the Senate essentially at that time for 6 weeks and no one contested its importance. Go back and read the record. No one really questioned that if we were going to have a comprehensive tobacco bill at that time that particular provision deserved at least support. There were no amendments on that, none. All these voices now: Oh, well, we can't have the FDA, absolutely not. We don't need more regulation—we did not have a single amendment on that, none; no amendments.

I had the good opportunity to effectively reintroduce that legislation with the majority leader, Senator FRIST, who did so much in the drafting of the original legislation, one of the important leaders in this body on health care policy. This provision is basically very

mainstream, if that gives assurance to some people. It is a very mainstream proposal, but it does the job in terms of protection.

So we had this proposal that was considered in the Senate, and was accepted, that would make such an extraordinary difference. As I was mentioning, the very simple fact is, this product, which is so addictive, so dangerous to the children of this country, not only to the children themselves but also to their families, is something that we should have addressed.

But this administration and, quite frankly, the leadership on that Ways and Means Committee, our Republican leadership, said: Absolutely not. We are not going to tolerate it. We are not going to accept it. We will not let it happen. And it did not.

I pay respect to my colleagues on the other side of the aisle because the progress that we made has not been just a partisan effort. The good Senator from Ohio has been a leader. There have been many. The Senator from Oregon, Mr. SMITH; the Senator from Maine, OLYMPIA SNOWE; JOHN MCCAIN from Arizona; ORRIN HATCH from Utah; Senator CHAFEE from Rhode Island; and many others have been willing to stand on this issue. This has not been a Republican or Democratic issue. But this administration has made a different judgment than those good Republicans who supported this effort in here and also a number of them supported us in the conference.

There has to be responsibility. There should be some accountability around here somewhere. We are elected as officials. We make judgments, we make choices, and we ought be held accountable for them. That was a decision that was made by the administration not to include it. If this administration said to include it, it would be in that bill tomorrow when we vote on it on the floor of the Senate. We had the support of some of the tobacco industries, with the Philip Morris industry.

Tomorrow, when the Senate addresses the underlying legislation, we are also going to voice vote and send back to the House of Representatives the DeWine-Kennedy FDA legislation. The Senate will pass that. We will send it back to the House. We have not given up hope.

Senator DEWINE and I have not given up hope that perhaps in some lameduck Congress, perhaps when the glare of the campaign in the last 4 weeks of the campaign—I would have thought it would have been a pretty good issue because people, parents, care about this, to indicate support for it. But, in any event, perhaps after the glare of the campaign is over, in a postcampaign time, when we meet, perhaps we can get a different reaction. So we take some hope and we want to give the assurance to those who have given us strong support that we are not giving up and we are not giving in.

Mr. President, I have a few letters that I will mention, and then there are

a few final items I want to talk about. We have a detailed presentation on exactly what this legislation does. I want to make sure that is in this part of the RECORD. I ask unanimous consent that be printed in the RECORD.

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

I started smoking when I was 12 years old. My mother smoked, and my friends told me it would make me "cool." Since my mother was always at the hospital with my father, helping him while he was losing his battle against cancer, there was no one around to notice that I had begun smoking. That was in 1973. I smoked until Jan. 1, 1990, when I was 28 years old, and I have been smoke-free for almost 14 years. Quitting was probably the hardest thing I have ever done, but it was definitely the smartest. My mother smoked until she got diagnosed with lung cancer in 1994, which is also the year her only grandchild was born. They removed part of her lung, and since she believed she had "beat" the cancer, she began smoking again. Five years and five CT scans later, they found another tumor in her lung, this time inoperable and supposedly untreatable. The doctors gave her six to ten months to live. Knowing how short her time was, 1999 turned out to be an extremely painful year for all of us. Over the next four years, my mother suffered terribly, often unable to eat and using a stomach tube, constantly taking medication and losing lucidity, often too tired and too weak to be with her little granddaughter, whom she completely adored. We watched her waste away to 80 pounds, the cancer having invaded her bones, causing her to fall, taking away her independence, which she always valued highly. She died on April 21, 2003, the day after Easter, at only 67 years old. She was my best friend, and my daughter's, too. I miss our daily phone calls, and I will miss her warm, inviting presence this holiday season, as I do every single day. My 9 year-old daughter has seen what horror cigarettes can cause; I doubt that she will ever forget that cigarettes took her "Nonni" away from her, but she is coming to the age where social pressures will be on her to conform to the "crowd." I hope that she will be strong, and that there will be enough education in her school to help her to learn how to deal with people who try to coerce her into using this drug, among others. Thank you for allowing me to share my story.—Lorraine T., Ipswich MA, November 10, 2003.

My father never liked to dance much. Yet, as we stood hugging, watching my best friend dance with her father at her wedding, Dad promised to dance with me at my wedding.

At age 39, he had a stroke that left him paralyzed on his left side. He was able to regain most of the use of his limbs through years of hard work. Unfortunately, he wasn't able to quit his addiction to cigarettes.

One month before his 50th birthday, he died from a tobacco related heart attack. He didn't live to fulfill his promise to dance with me at my wedding.—Donna M., Melrose MA, January 12, 2004.

Today is like every other day I miss my mom so much. I look at my kids and realize "nanny" is not here to see how cute they have become. I am a only child and lost my mom 3 years ago to lung cancer. I can remember the moment the doctor told me she was going to die, and in the same breath she said "I truly believe what the tobacco companies are getting away with is criminal." I have from that day on not been able to understand why they are allowed to sell something that has killed so many, and is going to kill so many more. It is heartbreaking to

see a young teen smoking. Sometimes I say something, yes they think I'm crazy. However there life to me is so precious. No I may not know them, but I wish they would listen. If they saw their mom or dad gasping for breath, if they saw their moms pelvic bones vividly sticking out would this change their minds and make them want to quit? I hope so, I don't want any more families to feel this pain and utter loneliness that I have had to endure. My children are the ones who get me through the bad days. They warm my heart taking away the sadness. I have taught them early on how bad and deadly tobacco is, and they also know that's why "nanny" is no longer here, and how much she loved them! Thank you.—Linda F., Middleboro MA, September 23, 2003.

In November 2002 we learned that my mother, Gloria, had stage four lung cancer. What started as pain in her hip and was explained away as arthritis pain was actually bone cancer—yes, it had already spread from her lungs before she knew she even had it. Mom had quit smoking what seems like a very long time ago . . . yet, it came back to haunt us.

She fought a fight I never knew she had in her. An agonizing fight that I hope her story will prevent someone—or many someones—from ever having to fight. She lost all of the weight she had struggled to lose most of her adult life. She lost her hair. She lost her appetite. She lost sleep. She lost her freedom—unable to get around without pain, unable to drive, often unable to be alone. There were so many things that she lost . . . too many to mention.

But, what she did not lose was her faith. And it was her faith that carried her through those long months.

Mom fought for a year. She fought to the end. She died last October with one regret. That she would not live to see her new Granddaughter.

Her Granddaughter was born 8 months and 23 days after Mom passed away. She is now 4 weeks old (today!) and it is my hope that she will never breathe someone's secondhand smoke. That she will never have a friend who takes up smoking. And that she will never have to watch someone she loves die from such a horrible, preventable thing as lung cancer. I will share Mom's picture with all of the children I know. I will show them her smiling face. . . . even at the end when she smiled because she knew that she was going to be going home soon. And I will tell them of how much she loved children. And how she never, never wants to hear that they have taken up smoking. I will tell them that the reason she is so thin in the picture is because she was sick. I will show them the pictures when she had lost most of her hair. I will tell them how much I miss her. And I will make them promise me—and Mom—that they will never, never smoke or be around anyone who is smoking. I LOVE YOU MOM!—Sarah Z., South Easton MA, October 4, 2004.

I have now been a smoker for over 8 years. I am only 24 years old. I already have a severe smokers cough that only gets worse with the cold weather. I live in New England. I sometimes read the side of the packs with the Surgeon Generals warnings. They say that smoking can cause babies to be low birth weight. Well two years ago I had a daughter. I did not smoke all the time when I was pregnant but I guess you still could have called me a smoker. My daughter was 8 pounds she was definitely not under-weight. Now don't get me wrong I am not saying this to be proud. Every time I look at her I wonder if I did any other damage to her. I am so ashamed of myself. Yet right now I am dying for a smoke. This is such an addiction I don't think that I will ever overcome it, I want to and God knows how I have tried. I want to be

around when my daughter grows-up, to see her get married and to see any future grandchildren I might have. If I keep up this way I am not going to see any of it, it is so depressing.

Well the only thing I can say is that if there were stricter regulations when I was a minor I probably never would have started smoking. I know that sounds cliché but you can't miss something you never had . . . now I have had it and I cannot go without it. I feel like a junkie even though I am not. I will be scorned by the non-smoking community. I will be the pariah for the smokers. I only wish that I could quit.

I hope someone will not smoke once reading this . . . but then again I am only one person . . . barely able to make a difference. Maybe just once before it's too late. Just to quit for my little daughters sake . . . she does need to know . . . mommy cares what she thinks.—Tori H., South Boston MA, November 12, 2003.

(Mr. WARNER assumed the Chair.)

Mr. KENNEDY. Mr. President, here is a letter from Lorraine T. from Ipswich, MA. I will include the whole letter, but I will just read parts of it:

My mother smoked until she got diagnosed with lung cancer in 1994, which is also the year her only grandchild was born. They removed part of her lung, and since she believed she had "beat" the cancer, she began smoking again. Five years and five CT scans later, they found another tumor in her lung, this time inoperable and supposedly untreatable. The doctors gave her six to ten months to live. Knowing how short her time was, 1999 turned out to be an extremely painful year for all of us. Over the next four years, my mother suffered terribly, often unable to eat and using a stomach tube, constantly taking medication and losing lucidity, often too tired and too weak to be with her little granddaughter, whom she completely adored. We watched her waste away to 80 pounds, the cancer having invaded her bones, causing her to fall, taking away her independence, which she always valued highly. She died April 21, 2003, the day after Easter, at only 67 years old. She was my best friend, and my daughter's, too. . . .

My 9 year-old daughter has seen what horror cigarettes can cause; I doubt that she will ever forget that cigarettes took her "Nonni" away from her, but she is coming to the age where social pressures will be on her to conform to the "crowd." I hope she will be strong, and that there will be enough education in her school to help her to learn how to deal with people who try to coerce her into using this drug, among others. . . . Lorraine T., Ipswich MA.

Here is another letter from Donna M., from Melrose, MA, of this year:

My father never liked to dance much. Yet, as we stood hugging, watching my best friend dance with her father at a wedding, Dad promised to dance with me at my wedding.

At age 39, he had a stroke that left him paralyzed on his left side. He was unable to regain most of the use of his limbs through years of hard work. Unfortunately, he wasn't able to quit his addiction to cigarettes.

One month before his 50th birthday, my Dad died from a tobacco related heart attack. He didn't live to fulfill his promise to dance with me at my wedding.

Here is a letter from Linda F., of Middleboro, MA:

Today is like every other day. I miss my mom so much. I look at my kids and realize "nanny" is not here to see how cute they

have become. I am an only child and lost my mom 3 years ago to lung cancer. I can remember the moment the doctor told me she was going to die, and in the same breath she said "I truly believe what the tobacco companies are getting away with is criminal." I have from that day on not been able to understand why they are allowed to sell something that has killed so many, and is going to kill so many more.

Then the letter continues.

This is from Sarah Z. from South Easton, MA, October 4, 2004:

In November 2002 we learned that my mother, Gloria, had stage four lung cancer. Mom fought for a year. She fought to the end. She died last October with one regret. That she would not live to see her new granddaughter. Her granddaughter was born 8 months and 23 days after Mom passed away. She is now 4 weeks old (today!) and it is my hope that she will never breathe someone's secondhand smoke. That she will never have a friend who takes up smoking. And that she will never have to watch someone she loves die from such a horrible, preventable thing as lung cancer.

And Tori H, South Boston:

I have now been a smoker for 8 years. I am only 24 years old. I already have a severe smoker's cough. It only gets worse with cold weather. I live in New England. I sometimes read the side of the packs with the Surgeon General's warnings. They say smoking can cause babies to be low birth weight . . . I did not smoke all the time when I was pregnant but I guess you could have called me a smoker . . . My daughter was 8 pounds; she was definitely not under-weight. Now don't get me wrong—I am not saying this to be proud. Every time I look at her I wonder if I did any other damage to her. I am so ashamed of myself. Yet right now I am dying for a smoke. This is such an addiction. I don't think I will ever overcome it. I want to and God knows how I have tried. I want to be around when my daughter grows up, to see her get married and to see any future grandchildren I might have. If I keep up this way I am not going to see any of it; it is so depressing.

The letters go on, and they make the case. If there are any who think this is a partisan issue, look at what the Bush administration's Department of Justice filed in the final proposed findings of fact of the United States in the tobacco litigation brought by the Federal Government against tobacco companies.

This is the current administration's finding, page 21: Cigarette smoking, particularly that begun by young people, continues to be the leading cause of preventable disease and premature mortality in the United States. For children and adolescents, one out of three will die of smoking-related disease. As part of a scheme to defraud, defendants have intentionally marketed cigarettes to youth under the legal smoking age and falsely denied that they have done so.

We could go on. I have their brief notes right here about what is happening. These are the statistics in terms of the young people who get started smoking. It begins early. When adults who are daily smokers began smoking: 89 percent by the age of 18; 62 percent by the age of 16; 37 percent by the age of 14; and 16 percent by the age of 12.

You can ask why. Well, just look at this chart. This is advertising in billions of dollars. These are billions of dollars of advertising and how this has gone up and has continued in 2003 and 2004. That is targeted, as these various ads demonstrate: Winston, three young people out in the surf with a surfboard. The sun is setting. Additive free. Naturally smooth. Leave the bull behind, just pick up a Winston.

This is from Elle magazine, all targeted toward young people: Camel, Turkish blends. And there you see the advertisement, all focused on the youth.

Here is Rolling Stone: Stir the senses, Salem. All to appeal to the young people.

And it has great success because, like any narcotic, you get them hooked at that age, and it is very difficult to stop.

My friend from Ohio mentioned the costs for the taxpayers as well. We are motivated because of our concern for the children and children's health and the family's health. But if that doesn't move you, just look at the annual cost in the United States: the Medicaid payments, \$23 billion; \$20 billion in Medicare payments; other Federal payments, \$8 billion; smoking during pregnancy, \$4 billion; total health cost, \$75 billion. And if you add lost productivity to that, you are talking over \$150 billion a year in direct costs to the American taxpayer.

This makes sense, obviously, and is the most important for the children so they aren't going to be addicted and their health is going to be protected. It is for the other members of the families as well so that those young people who are eventually going to be parents are going to be protected. But if that doesn't get you and the pocketbook issues don't get you, you can see that you are paying billions and billions of dollars.

These are the conclusions about the activities of tobacco companies even by this Justice Department.

This is why this is so important and an opportunity missed.

Let me conclude on this subject by referring to the letters of support we received from some groups:

Dear Senator KENNEDY, Congress has a historic opportunity to embrace responsible legislation that will help to reduce suffering and death caused by the tobacco. The House-Senate conferees should include the DeWine-Kennedy language. On July 15, the U.S. Senate took an unprecedented step towards granting the Food and Drug Administration effective authority. The Senate passed the DeWine amendment. The overwhelmingly bipartisan amendment linked the FDA with the tobacco buyout. Our organizations view this approach as critical to accomplishing our goal, securing FDA authority over tobacco products. Tobacco use kills more than 400,000 Americans each year. Across our Nation, more than \$75 billion in health costs and, according to the Centers for Disease Control, tobacco use by pregnant women alone costs \$400 million to \$500 million. And every day another 2,000 children become regular smokers. A third will die prematurely

as a result. Now we have an opportunity to do something about it. Yet tobacco products are virtually unregulated. For decades the tobacco companies have marketed to our children, deceived consumers about the harm their products caused, and failed to take any meaningful steps to make their products less harmful. The DeWine-Kennedy language would finally end the special protection enjoyed by the tobacco industry to protect our children and the Nation's health. This legislation meets the standards long established by the public health community for a strong FDA regulation bill that protects the public health. It would give the FDA the necessary tools and resources to effectively regulate the manufacture, marketing, labeling, distribution and sale of tobacco products.

Then it continues:

The public health community worked in good faith to achieve this much-needed bipartisan legislation that protects the public health and can be enacted in this session. We remain concerned that opponents of an effective FDA will seek to weaken the provision prior to final passage. Our organization will work. Please support.

Those include the American Academy of Family Physicians, American Academy of Nurse Practitioners, American Academy of Pediatrics, American College of Cardiology, American College of Obstetricians and Gynecologists, American College of Physicians, American College of Preventive Medicine, American Heart Association, American Lung Association, the Medical Association, American Women's Medical Association, the Public Health Association, the School Health Association, the Children's Defense Fund, and the Campaign for Tobacco Free Kids.

I thank them in particular.

The FSC conference report that we are being asked to consider ignores fundamental issues that broad bipartisan majorities of the Senate have strongly supported. On vital matters concerning the protection of children's health, preserving the overtime rights of workers, and defending American jobs from outsourcing to foreign lands, the cynical actions of a few have blocked the will of the majority.

The House conferees were more interested in protecting big tobacco companies' profits than they were in protecting children. They would rather create tax incentives for multinational corporations to move millions of American jobs overseas than save millions of our kids from a lifetime of addiction and premature death.

We were not the ones who chose to link tobacco issues to this tax bill. That was a decision made by the House Republican leadership. But it is absolutely irresponsible to address a quota buyout for tobacco farmers, as this conference report does, while ignoring the urgent need for FDA authority to prevent cigarette companies from entrapping our kids. The conferees have left us no choice but to oppose passage of this conference report.

The importance to our children of authorizing the FDA to regulate tobacco products cannot be overstated. Smoking is the number one preventable

cause of death in America. It kills well over 400,000 Americans each year, and nearly all of them started smoking as children. They are seduced by the tobacco companies before they are mature enough to recognize the enormous health risks of smoking, and become addicted while still teenagers.

We feel so strongly about this issue because FDA authority is the most important legislation Congress can pass to protect our children from the number one preventable cause of death in America—smoking. We cannot in good conscience allow the Federal agency most responsible for protecting the public health to remain powerless to deal with the enormous health risks of cigarettes.

The stakes are vast. Each day, 5,000 children try their first cigarette. Two thousand of them will become daily smokers, and nearly a thousand will die prematurely from tobacco-induced diseases. The fact is that more than 90 percent of adult smokers began smoking as teenagers.

Smoking can cause lifelong dreams to go up in smoke. Smoking can mean your hopes for an active life—of hikes with your children, and bike riding and long walks—are beyond your reach. You simply don't have the lung capacity and the stamina to do what you wish you could do. It can mean that your hope of enjoying your grandchildren and appreciating your retirement are gone, as you suffer from tobacco-induced disease and an early death. The most recent studies document the fact that smokers, on average, die 10 years earlier than non-smokers. That is what can happen to your lifestyle when you start smoking as a teenager.

How many addicted smokers today are glad to be smoking? How many Americans with smoking-induced lung cancer or emphysema are glad to be smokers? How many addicted smokers can look their children and grandchildren in the eyes and say they are proud to smoke cigarettes. How many wish they could easily put out that last cigarette, and never look back? I think we all know the answers to these questions. That is why this issue is so important.

The Senate amendment which passed with the support of 78 Members set forth a fair and balanced approach to FDA regulation. It created a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It was sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gave FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

The Senate amendment also provided financial relief for hard-pressed tobacco farmers, much more generous relief than is contained in the conference report. It incorporated bipartisan legis-

lation introduced by thirteen tobacco-state Senators led by Senator MCCONNELL, to buy back tobacco quota from farmers. It would have provided \$12 billion to financially vulnerable tobacco farmers and tobacco communities. The money to fund the buyout would come from an assessment on tobacco companies. This proposal was a legitimate buyout plan designed by tobacco-state members for the benefit of their tobacco farming constituents. Instead, the House designed proposal in the conference report forces tobacco farmers to settle for more than \$2 billion less than they would have received if the Senate proposal had been accepted. For example, it will pay North Carolina farmers \$800 million less than the Senate amendment. It will pay Kentucky farmers \$500 million less. That is a very substantial difference. For small farmers who actually tend the land themselves, it is a 25 percent cut in what they will receive. So in reality, the farmers are losers too. Only the tobacco companies who will pay billions less are winners.

The heart of the Senate amendment was the FDA provision—which would lead to fewer children starting to smoke, and to fewer adults suffering with tobacco-induced disease and now that provision is gone. Public health groups told us it was the most important legislation we could pass to deal with the nation's number one health hazard.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco. The tobacco industry currently spends over eleven billion dollars a year to promote its products. The amount has actually grown dramatically since the Master Settlement Agreement was signed.

Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. The Senate-passed legislation would give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. It grants

FDA full authority to regulate tobacco advertising "consistent with and to the full extent permitted by the First Amendment."

FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales, except in adult-only facilities. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. The Senate legislation would give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health

consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA have the authority to effectively regulate them for the protection of the public health. Over 40 million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as "reduced risk" cigarettes. The Senate legislation would require manufacturers to submit such "reduced risk" products to the FDA for analysis before they can be marketed. No health-related claims would be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Tobacco use kills more Americans every year than AIDS, alcohol, car accidents, murders, suicides and fires combined. Nearly 90 percent of lung cancer cases, nearly 1 in 3 cancer deaths, and 1 in 5 deaths from heart disease are tobacco-related. Tobacco use results in \$75 billion in annual health care costs and \$157 billion in total cost. Unfortunately, smoking will remain the number one preventable cause of death in America until Congress is willing to do what it takes to bring this health crisis under control. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

The Senate legislation would give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading

the public about the dangers of smoking.

If the conference report is approved in its current form, we will have lost a golden opportunity to address this critical health issue. Congress will have put the well-being of our children last, behind a long parade of special interests clamoring for their tax breaks. It is not enough to just pay lip service to what is right for our children. You have got to be willing to fight for their health and their future. You have to make it a top priority.

While we are extremely disappointed that FDA authority over tobacco products is not in the conference report, this legislation will, I am confident, become law in the not too distant future. It is clearly an idea whose time has come. It passed the Senate on a strong bipartisan vote last summer. I am very pleased that the Senate has agreed to pass a freestanding FDA bill this weekend and send it to the House as a reaffirmation of our support. It is a powerful statement of this body's commitment to protecting the health of our children, and seeing this legislation through to enactment. The battle goes on, and we will prevail.

They have been spectacular spokespersons for children and children's health and we are indebted to that organization.

The list goes on. There are 68 March of Dimes organizations. Every organization in public health is behind this proposal.

Mr. President, I thank my good friend from Ohio. I join him in letting families know we are not going to let up, give up, or give in. This was a very reasonable measure, a reasonable response. As he has pointed out, it is the most important public health legislation this Congress, or any recent Congress up to the Congress of 7 years ago, when we passed the CHIP program, with the difference this would make in terms of children and children's health. We missed this opportunity. We are not giving up and we are not giving in. We want to let those who are opposed to us know we are coming at them and we are going to keep after this until we get the job done.

Mr. KENNEDY. Mr. President, another provision was included in the bill that passed the Senate and was dropped by the conference as well. We had the dropping of the FDA provisions—which I believe in and of itself is enough to oppose this legislation—but we also know there was another provision that related to how we were going to treat American workers that was dropped.

Since this legislation initially was drafted, in order to respond to the World Trade Organization which found some tax provisions worked in such a way as to violate various international agreements, it was about a \$5 billion fix that was needed. Instead, we have a \$140 billion solution for a \$5 billion fix. Do you hear me? The rest of those are tax goodies for special interests. So

since this was allegedly a jobs bill, we thought we would add an amendment to it. The principal sponsor was my friend and colleague Senator HARKIN, who provided such extraordinary leadership on this overtime issue. We added this provision that would effectively declare the proposal of the administration that dealt with denying workers overtime who worked more than 40 hours a week, that we would effectively vitiate the administration's proposal. Since the underlying legislation dealt with workers and the impact on manufacturing and jobs, this was a related matter.

It is useful to remind ourselves how often this institution has addressed the question of the proposal by this President in terms of overtime. We have voted three times in the Senate to reject the administration's proposal to deny overtime. We rejected it on September 10, 54-45; it was a bipartisan effort. On May 4, 52-47. Also on May 4, 99-0. So we acted on that and we added to it.

You can say, well, the House of Representatives has not faced this issue. Our answer to that is the House has faced this issue. They voted October 2, 2003, 221-203, effectively to vitiate the Bush overtime proposal. They voted September 9, 223-193. So that is two times in the House and three times in the Senate. We had it in the conference and, nonetheless, this administration said no.

The administration has said no to an increase in the minimum wage for 7 million Americans who are working at minimum wage. They said no to an extension of unemployment compensation for workers who paid into the unemployment compensation fund. And they have said no to eliminating the ban on the elimination of overtime.

I watched the debate, like many other Americans, last night, and I listened to one of the questions that my friend and colleague, the next President of the United States, answered in talking about the lost number of jobs. He indicated that under this administration they had lost 1.6 million jobs. Lo and behold, today, with all the fact-checkers all over the country, they said that is not right; JOHN KERRY should have said they only lost 800,000 jobs. Do you want to know why? The other 800,000 have been added in the public sector. I thought this administration was adding jobs in the private sector. They have failed in the private sector. They are trying to sharpshoot on that issue, and it doesn't go.

Let's look at where we are now in the last month with the administration's economy. They had announcements yesterday that 96,000 jobs had been created last month. It is interesting to note that a third of those jobs are temporary. What does that mean? Temporary jobs pay 40 percent, on average, less than regular jobs. Yes. What else? Temporary jobs don't give you benefits. Very few, if any, give you health insurance, let alone pensions. We have

a third temporary jobs, and a third government jobs, and a third private jobs out of the 96,000. So it is not a good time in terms of the American economy.

I want to point this out again and come back to the issue of overtime. As I mentioned, we had passed those provisions in the House and in the Senate. Now the administration continues to want to implement them. Who are the people affected most by overtime? The people who are affected the most by overtime are interesting: Nurses are affected by overtime; nursery school teachers, the ones who are going to work with the children in nursery schools and programs in the Head Start Programs; clerical workers; computer programmers, et cetera. These are the ones. Nurses, of course, are first responders.

It is almost as though this administration doesn't understand how hard American families are working in the United States of America. This is an extraordinary chart. This chart demonstrates that Americans' work hours have increased more than in any other industrialized country from 1970 to 2002. It is effectively up 20 percent. The next nearest country is Canada, up 16, and Australia is up 3.2 percent.

Americans are working harder and harder, and they are having an enormous difficulty in keeping pace. They cannot even keep economic pace, in terms of what they have to buy. One of the few benefits, of course, is the question of overtime. What happens when you eliminate overtime? Let's remind the workers who are out there who may be watching; let's remind them of something they know all too well. If you have overtime protections, your chances of working more than 40 hours a week are only 19 percent. But if you don't have overtime protections, your chances of working more than 40 hours a week are 44 percent. That is for 40 hours a week. If it is 50 hours a week, your chances of working are three times more if you don't have the overtime protections than if you do.

Make no mistake on what this is about. This is about exploiting American workers, treating them on the cheap. That is what this is about.

Well, Senator KENNEDY, how can you say that? Let me give a couple of examples why we can say it.

When the Bush rule was in the making, the Department of Labor asked for comment on the proposed regulation. In looking through the records, this is what we find out: Here is when the rule to eliminate overtime was being considered. The administration solicited the views of a number of different groups and industries. Now we have the National Association of Mutual Insurance Companies supports the section:

. . . of the proposed regulations that provides that claims adjustors, including those working for insurance companies, satisfy the FLSAs administrative exemption. . . .

That is from the National Association of Mutual Insurance, June 25, 2003.

On April 23, 2004:

Insurance claims adjustors generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or the other type of company. . . .

There is the industry's interest. There is the administration's answer.

Here is another group that got exemption. Here is the overtime for funeral directors and embalmers:

[T]he National Funeral Directors' Association believes that funeral directors and embalmers who have successfully completed a course of study . . . licensed by the state in which they practice are professional employees.

Then we have:

Licensed funeral directors and embalmers . . .

It is almost the same direct language for industry after industry, right down the line. This was not an issue for simplification. This was looking out for special interests. And who is paying the piper? It is going to be the workers, working longer and harder for less.

As a result, this is what happens in this country:

In the last 3 years, we have seen 800,000 more children who are living in poverty. The total percent of those living in poverty in the United States has grown, but the number of children is 800,000 more living in poverty; 12 million children hungry or on the verge of hunger; 8 million Americans unemployed. Nearly 3 million have lost unemployment benefits since the Republicans ended the program. Seven million low-wage workers waiting 7 years for a minimum-wage increase. These are men and women of dignity. They work hard, play by the rules. They are primarily women. The income of low-income single mothers has gone down by three percent every year in the Bush economy.

There are 7 million who have been waiting for an increase in the minimum wage. Bush 1 supported an increase in the minimum wage. This did not use to be a partisan issue. It was so interesting in the course of this session, when I offered the increase in the minimum wage, when we had what they call the welfare reform proposal, the TANF proposal. What did the Republican leadership do? They pulled the bill so we could not even get a vote on it. Imagine that. They would not even let the Senate of the United States vote on it. I offered it again on the State Department reauthorization bill because the Republican leadership would not give us an opportunity to vote on the minimum wage. What did they do? They pulled that bill, too. They do not even let us get a vote in the Senate on the issue of increasing the minimum wage.

Sixty percent of those who receive the minimum wage are women. One-third of those have children. This is a civil rights issue, a children's issue, a fairness issue. Americans understand if someone is going to work 52 weeks of the year, 40 hours a week, they should

not have to live in poverty. But do my colleagues think we have an opportunity to do something about it? No.

Still, we are taking away the—we have 4.3 million more Americans in poverty than when the President took office and we have 2.6 million fewer Americans who have a pension under Bush's watch.

On the issue of overtime, I will take a moment of the Senate's time to relate the concerns of one worker who will be affected by the new regulation. He says:

My name is Randy Flemming. I live in Haysville, KS—outside Wichita—and I work as an Engineering Technician in Boeing's Metrology Lab.

I'm also proud to say that I'm a military veteran. I served in the U.S. Air Force from August 1973 until February 1979.

I've worked for Boeing for 23 years. During that time, I've been able to build a good, solid life for my family and I've raised a son who now has a good career and children of his own. There are two things that helped make that possible.

First, the training I received in the Air Force made me qualified for a good civilian job. That was one of the main attractions when I enlisted as a young man back in Iowa. I think it's still one of the main reasons young people today decide to enlist. Military training opens up better job opportunities—and if you don't believe me, just look at the recruiting ads on TV.

The second thing is overtime pay. That's how I was able to give my son the college education that has opened doors for him. Some years, when the company was busy and I had those college bills to pay, overtime pay was probably 10 percent or more of my income. My daughter is next. Danielle is only 8, but we'll be counting on my overtime to help get her a college degree, too, when that time comes. For my family overtime pay has made all the difference.

That's where I'm coming from. Why did I come to Washington? I came to talk about an issue that is very important back home and to me personally as a working man, a family man and a veteran. The issue is overtime rights.

The changes that this administration is trying to make in the overtime regulations would break the government's bargain with the men and women in the military and would close down opportunities that working vets and their families thought that they could count on.

When I signed up back in 1973, the Air Force and I made a deal that I thought was fair. They got a good chunk of my time and I got training to help me build the rest of my life. There was no part of that deal that said I would have to give up my right to overtime pay.

This was the threat that was going to be under the initial regulations and rules by the Department of Labor that said the training in the military would count as professional training for the first time in the history, if you got the training in the military. Then they pulled those regulations back and they changed the language around. Interestingly, all they had to do was just say, for veterans it did not count. But the Department of Labor would not do that, and many of the veterans groups still feel that they are threatened by the existing rules and regulations.

And then he continues:

You've heard of the marriage penalty? Well, I think that what these new rules do is create a military penalty. If you got your training in the military, no matter what your white collar profession is, your employer can make you work as many hours as they want and not pay you a dime extra. If that's not bait and switch, I don't know what it is. . . .

I'm luckier than some other veterans because I have a union contract that will protect my rights for a while anyway. But we know the pressure will be on, because my employer is one that pushed for these new rules and they've been trying hard to get rid of our union.

And for all those who want to let these military penalty rules go through, I have a deal I'd like to propose. If you think it's okay for the government to renege on its deal, I think it should be your job to tell our military men and women in Iraq that when they come home, their service to their country will be used as a way to cut their overtime pay.

I am still very concerned about those provisions. The administration says it has addressed it. It did not address it the way the veterans want.

We should not be about cutting off overtime when we are having the economic challenges we are facing in this country today. It is the wrong economic policy. It is unfair and it was wrong for the administration to cut this out.

There is one final point I want to make on the proposal we have before us.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 16½ minutes remaining.

Mr. KENNEDY. Mr. President, there is one other provision of this underlying conference report I want to address. A top worry of many Americans is that their jobs may be shipped overseas. We have heard for years about manufacturing jobs being sent to other countries. Today, millions of Americans with other types of jobs face that risk, too. Every day we hear new stories about jobs in health care, financial services, information technologies going overseas in this high-tech age.

Yet, the Bush administration says shipping jobs overseas is a good thing. It was in the President's own annual economic report:

When a good or service is produced more cheaply abroad, it makes more sense to import it than to make it or provide it domestically.

The President's chief economic adviser Gregory Mankiw has even said that shipping jobs to other countries is "probably a plus for the economy in the long run."

Treasury Secretary Snow has also defended corporations sending jobs overseas, saying they need to do what they need to do. He said anything that makes a company more competitive, including offshoring jobs, is good for corporate shareholders, it is good for their consumers, and it is good for their employees.

As recently as July, John Marburger, the President's science adviser, said

that shipping jobs overseas is not necessarily a bad thing. American workers deserve better than this. They deserve better than to have their jobs exported with the President as the cheerleader in chief waving goodbye.

Shipping jobs overseas is a problem that is only going to grow. Experts project 3.4 million jobs, with total wages worth more than \$150 billion, could be sent overseas in the next 11 years, including more than a half-million computer jobs and more than 600,000 business and management jobs. Lou Dobbs on CNN is keeping a running tally of companies that have sent jobs overseas. He is now at almost a thousand companies.

Many jobs that have already gone overseas have been in manufacturing. This is a loss that has taken a heavy toll on our economy. We have lost nearly 2.7 million manufacturing jobs since this Bush administration took office. It is a nationwide problem affecting almost every State in the Union. Forty-seven of the 50 States have lost manufacturing jobs under this President. For example, Ohio has lost 165,000 manufacturing jobs; Pennsylvania has lost 150,000 jobs; Massachusetts, my home State, has lost 84,000 jobs; Texas, the President's home State, has lost 170,000 manufacturing jobs.

The loss of these manufacturing jobs is especially serious because they pay good wages and benefits, and each manufacturing job creates close to three other jobs in other sectors of the economy.

As this chart indicates, for every 100 jobs in retail, they create 88 more jobs; for every 100 jobs in business services, they create 154 jobs; for every 100 jobs in manufacturing, 291.

The Bush administration wants to ignore this serious problem, too. They have suggested cooking the books to create the appearance of job growth in the manufacturing sector. They want to count flipping hamburgers and other fast food jobs as manufacturing jobs to make up for the loss of millions of manufacturing jobs under President Bush's watch.

Providing more tax breaks for multinational corporations is the wrong thing to do, and that is exactly what this bill does. For any of those Members who are interested in the particular details, they ought to just read Senator BOB GRAHAM's excellent presentation on this very point. He has addressed the Senate frequently on it, and has identified it.

I have not the time this afternoon to go into it, but I want to give assurance to the Members on this, that we are providing in this legislation tax breaks for multinational corporations. It is more than the loss of the \$40 billion in tax revenue which has been added in this jobs bill that could be used for many better purposes that is troubling. What is most disturbing is the fact that many of these international provisions will actually encourage companies to shift even more American jobs to low-wage countries.

The international provisions should have been removed from the bill and the tax dollars saved should be used to increase the tax benefits for domestic manufacturing. It makes no sense to expand the value of the foreign tax credits which multinational corporations receive.

Under the legislation, these companies would pay even less in U.S. taxes on the profits they earn from their business abroad than they do today—\$40 billion less. This will create further incentives for them to move jobs abroad, undermining the intent of the legislation.

From the perspective of preserving American jobs, one of the worst features of this corporate tax law is a special tax subsidy for multinationals known as deferral. If a U.S. company moves its operation abroad, it can defer paying U.S. taxes on the profits it makes overseas until the companies choose to send those profits back to America.

In essence, it allows the corporation to decide when it will pay the taxes it owes the U.S. Government. That is a luxury that companies making products and providing services here at home do not have. This is an enormous competitive advantage which the Tax Code gives to companies doing the wrong thing, eliminating American jobs, over companies doing the right thing, preserving the jobs in the United States. That feature alone ought to be enough to have Members of this body vote no at the time of the consideration of the conference report.

I appreciate the indulgence of the Chair. I will reserve the remainder of my time.

Mr. GRASSLEY, Mr. President. I make a few points regarding the FDA issue and the regulation of tobacco. I voted for the FDA provision in this bill. I voted in conference to include FDA regulation of tobacco. But the House refused to accept it.

I voted for this, despite the growing problems that are coming to light about the FDA falling down on its current responsibilities.

Just in the last few months, the FDA has come under investigation, including from my own committee, regarding the way its failed regarding drugs causing suicide in children.

And where was the FDA regarding the recent Vioxx catastrophe and how it causes heart attacks? Just yesterday, it was revealed by my Finance Committee that it looks like the FDA pressured employees to suppress negative findings regarding Vioxx.

And, in today's paper, we read about what looks like the FDA falling down on the job in regard to the Flu vaccine crisis.

So, I hope some around here aren't trying to mislead the American people into thinking that FDA regulation is some kind of panacea for smoking.

I heard one Senator from the other side say that we sided with the tobacco companies when the FDA provision failed. Well that's interesting.

That's surely what opponents would like you to think. But, there's a dirty little secret involved here. Or, at least it's a secret vis a vis the public.

The fact is, the tobacco companies are divided on whether there should be FDA regulation. In fact, the largest tobacco company actually supports FDA regulation, and has been lobbying heavily and pouring money into the effort to get it.

Why? Well, for one thing, a great deal of its business is overseas, and it will therefore be immune from FDA regulation. This will give it a competitive edge against its competitors. So, the tobacco companies, or at least the biggest one, is much more in favor of FDA regulation than against it.

Therefore, anybody trying to frame this as tobacco versus kids, or tobacco versus health groups, is just flatly misleading the public.

But, even for those of us who pushed for FDA oversight, our legs were cut right out from under us during the negotiations. And guess who cut the legs right out from under us? The leadership of the Democratic party cut the legs right out from under us. That's who.

The leader of the Democratic party, Senator KERRY, went down to North Carolina to talk to tobacco farmers. Guess what he said? He said he'd support a tobacco buyout with or without FDA regulation.

So, it looks to me like the senior Senator from Massachusetts didn't communicate very well with the junior Senator from Massachusetts—or vice-versa.

Moreover, we had the democratic Senate campaign chairman saying the same thing last week. He said he didn't need FDA regulation with a tobacco buyout.

And, he even had his candidate for the North Carolina Senate seat up here lobbying right over in the conference committee room to get this buyout through, with or without FDA. Can you believe that?

And, to add insult to injury to the Democratic Senators from Massachusetts, and Iowa, the Senate Democratic leader even signed the conference report.

So, obviously, when the House leadership knew the votes were there in the Senate for a buyout without FDA, they weren't about to agree to it in conference, and there's no way we could have successfully pushed it.

Now, what more does it take from their own leaders to undermine what the Democratic Senators from Iowa and Massachusetts wanted to do? Seems to me the need to get their own house in order before criticizing others.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, we still have a number of speakers. Under the order which we had set up, in which we would go back and forth with the majority and minority, it is now the majority's turn.

It is my understanding Senator STEVENS, the chairman of the Appropriations Committee, is on his way here to give a very short statement. I am wondering if that is, in fact, the case.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I will change places with you so you can make the unanimous consent request.

As I understand it, Senator STEVENS has asked for 5 minutes to make a speech before I make mine.

Mr. REID. It is my understanding we are also ready to move to the Defense Authorization conference report.

Mr. HATCH. Then, as I also understand it, the order should be Senator WARNER to make his unanimous consent request, Senator STEVENS for 5 minutes, then I for whatever time I need, and then Senator LANDRIEU for whatever time she wanted.

Mr. REID. I thought it was going to be Senator WARNER for 5 minutes, Senator STEVENS for 5 minutes, and then Senator LANDRIEU for an hour and half.

Mr. HATCH. If we can do it the way I suggested, it would be very acceptable.

I ask unanimous consent that be the order.

Mr. REID. The order has already been established. As soon as we finish with Senator WARNER and Senator STEVENS, Senator HATCH will take the floor.

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

Mr. REID. I thank the Chair.

The PRESIDING OFFICER (Mr. HATCH). The Senator from Virginia.

#### RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—CONFERENCE REPORT

Mr. WARNER. Mr. President, I submit a report of the committee of conference on the bill (H.R. 4200) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4200), to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD for Friday, October 8, 2004.)

Mr. WARNER. Mr. President, on behalf of the distinguished ranking mem-

ber, Mr. LEVIN, and myself, I now ask unanimous consent that the conference report be adopted and the motion to reconsider be laid on the table, all with no intervening action or debate.

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

The conference report was agreed to.

Mr. WARNER. Mr. President, this conference report represents the hard work of many, many individuals. I first thank my distinguished ranking member, Mr. LEVIN of Michigan, together with our subcommittee chairmen and all members of the committee. This was truly a bipartisan effort from start to finish. We achieved an extraordinary piece of legislation. I am proud to say, at the request of the chairman, myself, the bill is named the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

We do that in honor of our late President's extraordinary contributions to the men and women of the Armed Forces in his capacity as President and in his role as Commander in Chief at that time.

This conference report provides \$420.6 billion for defense, an increase of \$19.3 billion above the amount authorized by Congress last year. The report also authorizes an additional \$25 billion for war-related costs in Iraq and Afghanistan.

I am proud to bring the conference report for the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 before the Senate for final passage. I thank my ranking member and partner for these 26 years, the senior Senator from Michigan, CARL LEVIN, for his consistently constructive help and leadership in bringing this important legislation to the floor. I would also like to thank our subcommittee chairman and ranking members, and all committee members for their hard work on this conference report. I am pleased that this legislation report has the unanimous support of the members of the committee.

I also want to thank Chairman DUNCAN HUNTER and Congressman SKELTON for their leadership and teamwork in producing this conference agreement.

No committee succeeds without a dedicated, professional staff, and I believe our committee has one of the finest on Capitol Hill. I particularly want to recognize the efforts of the Committee Staff Director, Judy Ansley and the Democratic Staff Director, Rick DeBobs in bringing this process to a successful conclusion. They have led a great staff, all of whom deserve great credit and recognition. This dedicated professional staff worked very long hours and helped the members reach the agreements that are contained in the conference report before us. I ask that the names of all members of the committee staff be printed in the record following my remarks.

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

(See exhibit 1.)

Mr. Warner. As we consider this conference report, we remain a nation at