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Senate

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

The PRESIDENT pro tempore. Today's prayer will be offered by our guest chaplain, Dr. Clarence Newsome, dean of chapel, Howard University School of Divinity, Washington, DC. We are pleased to have you with us.

PRAYER

The guest chaplain, Dr. Clarence G. Newsome, dean of chapel, Howard University School of Divinity, Washington, DC, offered the following prayer:

May we pray.

Almighty God, by whose permissive will the counsels of men and women are privileged to convene, we pause at the outset of a new day to acknowledge Your power and dominion and to proclaim Your goodness. We call upon Your grace to consecrate this hallowed Chamber so that Your power and goodness may guide the affairs of state to which these honored and honorable men and women will this day attend. Grant that they may see a vision of government for the people and by the people, in which the people are daily inspired by the law of the land to live, work, and play together according to a higher law: the law of love.

By the power of Your love, empower them to discharge the duties of their office in the confidence that they neither labor in vain nor without the abiding appreciation of a grateful republic. Be the source of refuge and peaceful release for them, the members of their staffs, and especially their families who sacrifice much so that they may dutifully serve the common good with dedication, devotion, and distinction.

Fill them with strength for today and bright hope for tomorrow. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, the able Senator from North Carolina, is recognized.

THE GUEST CHAPLAIN

Mr. FAIRCLOTH. Mr. President, it is, indeed, a special privilege for me today to welcome as our guest chaplain, Dr. Clarence Newsome.

Before I get into the other distinguished things about Dr. Newsome, I would like to mention that he is a native North Carolinian, born in Ahoskie, NC, and spent 18 years at one of our premier universities, Duke University, not only as a professor, but as a football player and a great leader of that university.

He is now dean of the Howard University School of Divinity. Dr. Newsome is a distinguished clergyman, an impelling preacher, and a very visionary educator. He is known throughout the Nation as one of the most insightful and sensitive thinkers on religion, culture, and social issues of our time. Dr. Newsome continues to play a major role in the strategic development of Howard University.

His presence with us today is an opportunity for the Senate to affirm the crucial and important contribution of Howard University to the city of Washington, to the District of Columbia, and to our Nation and world as a whole, being one of the leading producers of diplomats throughout the world.

I welcome Dr. Clarence Newsome.

SCHEDULE

Mr. FAIRCLOTH. Mr. President, on behalf of the majority leader, I want to announce that this morning, the Senate will immediately resume consideration of Senator SESSIONS' second-degree amendment to Senator DURBIN's amendment, concerning the tobacco agreement, to S. 1061, the Labor-HHS appropriations bill. As Members are aware, the Senate has been able to dispose of all but a very few amendments remaining in order to the bill. Therefore, the cooperation of all Members will be appreciated in the scheduling of time agreements and floor action on amendments. Members can anticipate rollcall votes throughout today's session of the Senate as we attempt to complete action on the Labor-HHS appropriations bill. Thank you, Mr. President.

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 1061.

The assistant legislative clerk read as follows:

A bill (S. 1061) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1998, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg amendment No. 1070, to prohibit the use of funds for national testing in reading and mathematics, with certain exceptions.

Coats-Gregg amendment No. 1071 (to amendment No. 1070), to prohibit the development, planning, implementation, or administration of any national testing program in reading or mathematics unless the program is specifically authorized by Federal statute.

Nickles-Jeffords amendment No. 1081, to limit the use of taxpayer funds for any future International Brotherhood of Teamsters leadership election.

Craig-Jeffords amendment No. 1083 (to Amendment No. 1081), in the nature of a substitute.

Durbin-Collins amendment No. 1078, to repeal the tobacco industry settlement credit contained in the Balanced Budget Act of 1997.

Mack-Graham amendment No. 1090, to increase the appropriations for the Mary McLeod Bethune Memorial Fine Arts Center.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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Coverdell amendment No. 1097, to enhance food safety for children through preventative research and medical treatment.

Coverdell amendment No. 1098 (to Amendment No. 1097), in the nature of a substitute.

Specter amendment No. 1110, to reduce unemployment insurance service administrative expenses to offset costs of administering a welfare-to-work jobs initiative.

Harkin (for Wellstone) amendment No. 1087, to increase funding for the Head Start Act.

Harkin-Bingaman-Kennedy amendment No. 1115, to authorize the National Assessment Governing Board to develop policy for voluntary national tests in reading and mathematics.

Harkin (for Daschle) amendment No. 1116, to express the sense of the Senate regarding Federal Pell grants and a child literacy initiative.

Murray-Wellstone amendment No. 1118, to clarify the family violence option under temporary assistance to needy families program.

Domenici (for Gorton) modified amendment No. 1122, to provide certain education funding directly to local educational agencies.

Sessions modified amendment No. 1125 (to Amendment No. 1078), to provide for certain limitations on attorneys' fees under any global tobacco settlement and for increased funding for children's health research.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

AMENDMENT NO. 1125, AS MODIFIED FURTHER

Mr. WELLSTONE. I thank the Chair.

Mr. President, I rise today on the floor of the Senate to express my strongest opposition to an amendment which I am sure has been offered in good faith but the effect of which really will be to intimidate advocates of public health and, in particular, I think amounts to an intimidation of the attorney general of the State of Minnesota and, again, the public health community who have hired legal advocates on their behalf and on the behalf, I might add, of the collective public health people in this country.

Mr. President, let me give a little bit of information about Minnesota's tobacco case, because this amendment does not have a neutral effect. My colleague, Senator DURBIN from Illinois, last night pointed this out. In a State like Minnesota we have pored through 36 million pages, 36 million documents, in what promises to be the biggest court case this winter. This will bring to light a tremendous amount of information in all likelihood, I think, dealing with some very serious abuses by the tobacco industry, which could lead to a very far-reaching and major financial settlement for Minnesota and also lead the way for other States. It also could lead the way toward some really dramatic protection for people in this country. This amendment amounts to nothing less than an effort to intimidate advocates of public health and to intimidate the attorney general of the State of Minnesota.

The $250 per hour or $5 million cap altogether does not take into account, as my colleague from Illinois mentioned last night, different efforts that have taken place in different States. But to me, again, regardless of the motivation, the effect of this amendment is a get Minnesota amendment and, I might add, it really goes after, again, most importantly, advocates of public health.

I have no idea—I am not a lawyer—what the particular arrangements are between the attorney general and the contract with lawyers who are working with our State, but I doubt very seriously that we, the U.S. Senate, have the constitutional right to directly intervene in that. I do know this amounts to nothing less than an effort to get people to back down. I don't think that will happen, I say to my colleagues, not in Minnesota.

Let me say a little bit about Minnesota's tobacco case. Minnesota is the first State in the Nation to charge the tobacco industry with consumer fraud and antitrust violations and the second State to seek Medicaid reimbursement.

It is the only State with a private coplaintiff, Blue Cross and Blue Shield of Minnesota.

Minnesota's outside counsel, Robins, Kaplan, Miller, & Ciresi, has a national reputation for resolving complex litigation battles against corporate giants, including the Dalkon shield case and the Bhopal, India, chemical spill case.

This case was launched in August 1994. There are 36 million documents. The State has won the majority of pretrial motions and all appeals, including one in the U.S. Supreme Court.

The State has secured 30 million pages of documents through discovery. Minnesota has the largest collection of tobacco documents in the world, housed in two secured depositories in Minneapolis and London.

Public documents already cited as evidence in the case have detailed youth marketing, enhancement of the effect of nicotine, admissions of health problems, and other disclosures central to Minnesota's allegations. Most of the evidence remains under seal at the tobacco industry's insistence.

The court is reviewing tobacco companies' most secret documents, formerly hidden under attorney-client privilege claims, for possible disclosure. That is the current status.

The Minnesota case is rated by top tobacco stock analysts at Bernstein Research as ''the biggest threat'' to the industry.

The trial begins January 1998.

I think that is what this is all about, at least in its effect. Minnesota's court case is the biggest threat to the industry. We will see a disclosure of information that will be so critical to the health of people all across the country. This amendment amounts to an effort at intimidation toward the advocates of public health who have hired lawyers as their advocates and, again, I think is really aimed right at the State of Minnesota, really aimed right at the attorney general of Minnesota.

This is a tobacco industry amendment. This industry doesn't want a State like Minnesota to go forward. This industry doesn't want lawyers out there representing the public health community. Let's be realistic about it. The only way you can go through all these documents, the only way you can put together this kind of case, the only way you can go after these tobacco companies, these giants, is by having lawyers working for you. That is what the State of Minnesota has done. That is what the public health community has done. This amendment is an amendment aimed at trying to bring a halt to this process.

Mr. President, I am not, again, an attorney, but I will raise two or three final points. One, I don't really know how we in the Senate can say to the attorney general of Minnesota or the State of Minnesota, whatever your contractual arrangements are—and I don't even know what they are with lawyers representing your State—we're going to come in and essentially declare that null and void; we're going to supersede that contractual arrangement. I don't even know if we can do that.

No. 2, I will just tell you that when you are talking about 30 million pages of documents through discovery, this cap is not neutral in its effect on a State like Minnesota, and $5 million compared to what Minnesota might very well be able to accomplish by way of a damage suit, by way of compensation for the people of Minnesota, by way of information for the public, by way of what information comes to those of us in the Congress, by way of what we can do with that information to protect the public health really amounts to hardly anything.

Finally, Mr. President, there is a world of difference between $5 million and the amount ultimately that that kind of legal counsel on behalf of the public health community will be able to obtain, again, by way of financial compensation and by way of information and by way of protection for the public health, all of which has to do with research and protection of people's health in this country.

So let us just be real clear about this amendment. This is the tobacco company's dream amendment. That is what this is all about. And that is what this vote is all about. I think my colleagues will be making a big mistake if they do not think that people cannot see through this.

Just a little bit of chronology here so that people in the country understand this debate right now. And I think they do already. My colleague from Illinois, Senator DURBIN, joined by Senator COLLINS, Republican from Maine, in a bipartisan effort, came to the floor of the Senate—let us just be sort of historical about this for a moment—and said, wait a minute, we had this tax package, and we had this budget bill,

and that is what it was supposed to be all about. And lo and behold, somebody slipped in a $50 billion relief package for the tobacco companies that they could use as credit toward any final compensation that they owed to people in this country.

My colleague from Illinois was very polite. I will be just as polite because I do not really know who did it. He said that the tobacco industry's lobbyists put this in the bill. They did not actually, literally do that. Senators and Representatives did that. Actually, the tobacco companies' lobbyists are very powerful, obviously. We see it again with this amendment. But they are not actually so powerful, as the Chair knows, that they can actually directly write the amendment, literally be the ones who put the amendment in in the conference committee. They cannot actually do that. They cannot actually sit there and pretend like they are Senators and Representatives. Actually some Senator or Representative has to do that.

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

Mr. WELLSTONE. I will be pleased to.

Mr. SESSIONS. I have three questions.

First, do you know whether the attorneys in the Minnesota case are being compensated on a contingent fee basis, that is, in which they would get a percentage of the recovery, and in many of these States they have done not much more than file a lawsuit, and already the tobacco industry is willing to pay large sums of money which would enable attorneys to receive huge fees for almost no work? I understand perhaps Minnesota is different and that they may be, perhaps, the only State in which the attorneys are employed on an hourly basis. Does the Senator know whether that is true or not?

Mr. WELLSTONE. Mr. President, why not take all three questions and then answer all three of them.

Mr. SESSIONS. That is the first one.

Second, is the Senator aware that, with regard to the receipt or copying of the documents, those are expenses which are not covered by this bill, or at least this bill provides a full payment of expenses to attorneys who incur them legitimately, even in furtherance of these lawsuits, and would be reimbursed? I pose those two questions to the Senator.

Mr. WELLSTONE. My understanding is that on the first arrangement—and I am just learning about the arrangement right now—it is a contingency fee, which was challenged by the tobacco industry, and the tobacco industry lost that in court, in response to your first question.

On the second question, I think, still, it does not have anything to do with the——

Mr. DURBIN. Would the Senator yield for a question?

Mr. WELLSTONE. I would be pleased to.

Mr. DURBIN. I believe the point by the Senator from Alabama is his covers the expenses but does not cover the legal fees. So the expenses of literally physically collecting all these documents would be covered, but to have the first attorney sit down and try to read them is going to be limited. So it is one thing to have a warehouse full of documents, but if you want to have competent legal minds reading those documents, deciding what is important for the lawsuit, the Senator from Alabama says that is fine, but we are going to put a ceiling on this, there is just so much money to spend.

Mr. SESSIONS. I guess the answer to the question, Mr. President, was the Minnesota case is not on an hourly basis but on a contingent fee basis?

Mr. WELLSTONE. That is my understanding.

If I could go on—I think I have the floor—I was going to say to my colleague, it is my understanding also that the tobacco industry challenged that and that they lost in court.

Then in response to the second question, actually what my colleague from Illinois said was what I was going to say as well. Again, I am not a lawyer, but it is pretty clear to me that it is fine to get the compensation for the copying or whatever needs to be done with all the documents, but somebody has go through those documents, somebody has to read the documents, and somebody has to try to determine what those documents really are saying in terms of culpability, in terms of what might have happened. That is, of course, the work that the lawyers are doing on behalf of the public health community.

But, Mr. President, since there isn't a third question, let me go back because there are other colleagues on the floor. And I will be pleased to——

Mr. SESSIONS. I will be glad to present my third question.

Mr. WELLSTONE. Sorry. You have the third question. I will be pleased to yield for the third question.

Mr. SESSIONS. Did the Senator know that this Senator refused to take money from the tobacco industry as attorney general and has sought tougher laws against the sale of tobacco to children and is not a tool or pawn of any tobacco company? In fact, I am offended it would be suggested otherwise.

I believe tobacco is a very unhealthy substance. I think it is quite plain it causes cancer and premature death, and we ought to do everything we legitimately can to reduce its use. In fact, I am supporting the amendment of the Senator from the State of Illinois and also of the Senator from Maine, Senator COLLINS, that would prevent them from having a $50 billion benefit. My concern is $14 billion in legal fees to many attorneys who do not deserve anything like that kind of fee.

Mr. WELLSTONE. Mr. President, let me respond to the third question. Then I will just finish up. But the first question actually raised by my colleague from Alabama raises an interesting question.

In response to the third question, I say to my colleague from Alabama, I very much appreciate what he said. That is why I was very careful in the beginning saying—I learned a long time ago to assume good faith on the part of other colleagues, to basically assume people are doing what they think is right. I would not suggest that my colleague is a pawn of anybody.

What I said was that the amendment, whatever the intention, has the effect, will have the effect, of intimidation of the public health community and will have the effect of and amounts to an effort in terms of its effect to intimidate the attorney general in Minnesota and the State of Minnesota. That is exactly true, and in that respect, it is a tobacco company amendment.

Mr. President, actually—to go back to Minnesota—I find it interesting that what happened apparently is Minnesota went to a contingency fee, and then as a result of that, the tobacco companies challenged this in court. So now we have an amendment on the floor which is another way of essentially trying to deal with this arrangement in Minnesota. I do not think we in the U.S. Senate should be doing this as it affects different States.

Mr. President, just a little bit of history to bring us to where we are right now.

So what happened is that unnamed colleagues—I mean, it was not the tobacco industry; they did not actually sit down in the committee and put the amendment in—somebody tucked the amendment in. Old politics, back room politics, you know, it just happens in the dark, just happens behind the scenes. I mean, once upon a time people viewed that as being clever legislators. It just does not work that way any longer.

So my colleagues come to the floor, and they essentially say, ''Look, let's just at least knock that out. That ought not be in there.'' That is what this amendment is about. That would be a proposition that we could have an up-or-down vote on.

When I was back in Minnesota and the stories broke that in the tax bill we had this $50 billion tax break, tax credit, tax giveaway to the tobacco industry, people in Minnesota were saying to me, ''Congratulations, PAUL. You voted against that tax bill. You voted against that budget bill. You knew, and a lot of other people didn't.'' And I said to them, ''You know, I've got be honest. I voted against that bill for other reasons. I didn't know. I would love to tell you I was the one person who did and that is why I voted against it, but actually I didn't know.''

This was just sort of tucked in there. Some Senators, Representatives—one, two; I do not know how many—put it in there. It was very cleverly done. But my colleagues have come to the floor and said, ''Look, we didn't know that

was in there. This is not the way it's supposed to work. This is not exactly a political process with a lot of accountability. We ought to take it out. We can have an up-or-down vote on that.''

Now what we have is an amendment with the intended effect to intimidate advocates of public health. I mean, that is not the motivation, but that would be the effect of it. I do not know that it is an intended effect. It probably isn't. But the effect of it would be to intimidate advocates of public health, to intimidate States like Minnesota where we have plowed through, again, 30 million pages of documents. The Minnesota case is rated by top tobacco stock analysts at Bernstein Research as ''the biggest threat'' to the industry. And I can see exactly what is going on here.

This is an amendment that is a dream come true for the tobacco industry to try to go after States like Minnesota, to try to make sure that States cannot go through with this. If that is what happens, then we all lose.

So, Mr. President, let me just make it clear that this amendment, if passed, would have the effect of intimidating the public health community, advocates for the public health community, and States like Minnesota that promised to bring to light, in what would be a huge court proceeding, information that will be vital to the public health of this country.

This amendment is not neutral in its effect. This is a tobacco industry amendment. That is what this is all about. Therefore, I urge my colleagues to vote no. As a Senator from Minnesota, I am proud that the Minnesota case is viewed as the biggest threat to the industry. I am proud that the trial is going to begin in January 1998. I am proud that, I think, a whole lot of information is going to come to light and we are really going to learn much more about what exactly has been going on within this industry and how it has affected our families and how it has affected our children.

But, Mr. President, this amendment is a get Minnesota amendment. This amendment, with its caps, is an effort to go after Minnesota, to go after advocates for Minnesota, to go after the public health community, to make sure that we do not have lawyers that are working on this and to make sure that ''the biggest threat'' to the industry court case may never take place. It is an outrageous amendment. I hope colleagues will see it for what it is and it will be voted down resoundingly.

Mr. President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I know that it is the desire of the Senator from Illinois and others to have the Senate make a judgment on this issue. But it is a very, very important issue. I welcome the opportunity to join my colleagues in making comments about the implications of this particular amendment. And I do so at this time.

Mr. President, the Sessions amendment is really one more attempt to aid the tobacco industry at the expense of the public interest. Make no mistake about it, its effect would be to set up a major roadblock preventing the States from pursuing their cases against the tobacco industry.

The Sessions amendment, as I read it, would restrict the ability of States to retain the attorneys to pursue States' claims against the tobacco industry. As we all know, 40 States have filed suit against the tobacco companies. So far only two of those cases have been settled. Just yesterday, the tobacco industry said that it will no longer be settling cases. The Texas case is scheduled to go to trial within the next few weeks.

As Senator WELLSTONE has pointed out, Minnesota, which has done an enormous amount of work on covering the sordid history of the tobacco industry, is scheduled to go to trial in just a few months.

So it would be an outrage for this Senate, acting at the behest of the tobacco industry, to handcuff the States as they seek to compensate their citizens from an industry that kills 400,000 citizens each year.

If Senator SESSION'S intent is to regulate the amount of attorney's fees to be paid as part of a national settlement, clearly, this amendment is premature and unwarranted. Congress has not even begun to seriously debate the merits of the national proposal. The issue of attorney's fees in a settlement should be considered after there is a settlement, not before.

The real intent of the Sessions amendment is clearly demonstrated by the fact that, as originally drafted, it only sought to restrict the attorney's fees of attorneys representing the States, not the attorney's fees of the tobacco industry. To restrict the plaintiff attorney's fees would dramatically tilt the already uneven playing field even more in favor of the tobacco companies. While Senator SESSIONS has now added defense attorneys to his amendment, regulating the amount of attorney's fees paid by the private party is highly questionable and probably unconstitutional. Thus the effect of the amendment would still be to place a burden just on the States.

Since under the terms of the settlement plaintiff attorney's fees would be paid by the tobacco industry and those funds are not to come out of the proposed $368 billion national settlement, limiting plaintiff attorney's fees would not produce an additional dollar for either the State governments or the Federal Government. It would merely further enrich the tobacco industry.

While the amendment says that the money saved would be paid to the Federal Government for use by the National Institutes of Health, the amount saved would never be determinable, and thus no significant payment to the Government would result.

So make no mistake about this amendment, blessed by the tobacco industry, it is a ploy to kill the Durbin amendment. We were all outraged when we learned that a paragraph had been slipped into the budget agreement to give the tobacco industry the $50 billion credit. The amendment, if it is allowed to remain law, would cost the taxpayers $50 billion.

There has been a justified outcry against that gross abuse of the legislative process. And there is now widespread support for repealing that ill-conceived provision. Big tobacco knows that it cannot prevent repeal directly, therefore, it has embraced the Sessions amendment as a diversionary tactic.

Let us decisively reject this cynical gambit, beat the Sessions second-degree amendment, and overwhelmingly approve the Durbin amendment. To do otherwise would be to erect an enormous roadblock in the path of the States pursuing justice for their citizens against the tobacco cartel.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Thank you, Mr. President. I speak in favor of the Sessions amendment.

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

Mr. ENZI. I have not even given my speech. I don't know how you could have a question.

Mr. DURBIN. It is about the procedure we are to follow during the remainder of this debate.

Mr. ENZI. I yield for a question on the procedure.

Mr. DURBIN. I wonder if the Senator would join Senator SESSIONS and myself in a discussion of a limit on the remaining debate on this amendment, if we could reach an accommodation and agreement as to how much time we would spend on the remaining debate?

Could I suggest, if the Senator would be kind enough to be party to this discussion, that perhaps we agree to 40 minutes, equally divided, between us, if that is agreeable to the Senators on the other side.

Mr. SESSIONS. Will the Senator yield?

Mr. ENZI. I yield.

Mr. SESSIONS. I think there is some discussion about us voting at 10:45. I think that would be agreeable with me if there is no objection. I think I indicated to the Senator from Illinois that I might need 15 minutes. That would be for me, personally. I think there are some other Senators that would want to talk during that time on this issue. I would be prepared to agree to that, but I would not want to limit my own time, the whole argument, in favor of this bill, to 15 minutes.

I want to say that to the Senator so I am not misleading him about the time.

Mr. DURBIN. I might not have caught the last comment made by the Senator, but it is my understanding we are going to take a vote on a motion to

table that I will offer at 10:45 and the time between now and then will be equally divided between the proponents that Senator SESSIONS shall acknowledge, and the opponents that I shall acknowledge on my side, is that correct?

Mr. SESSIONS. I have some concern. My concern about that is that the opposition to this amendment has already been talking at least 20 minutes, so I do not think it would be appropriate and I would not be able to agree to an evenly divided 22 minutes on each side. Perhaps if you added 15 minutes to that to our side and we voted at 11 o'clock, I would be prepared to consent to that.

Mr. DURBIN. I have no objection.

The PRESIDING OFFICER. Is there any objection?

Mr. ENZI. I agree to that time limit as well.

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

Mr. DURBIN. Mr. President, I am sorry, I want to make sure there is clarity here.

The debate will continue now for an hour, evenly divided, is that the point, and the vote to be taken at 11 o'clock?

The PRESIDING OFFICER. The debate will conclude at 11.

Mr. SESSIONS. What I indicated I would agree to would be that we would add 15 minutes to the 22 minutes that you have, making 37 minutes for the proponent of the amendment and 22 minutes for the opposition. I think that would be fair in light of the fact that you have already taken more time than that this morning in opposition to the Senator's amendment.

The PRESIDING OFFICER. The Chair understands that clarification. That would be in order.

Mr. DURBIN. Thank you.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I do not have very many remarks on this but my remarks have grown just since I have been here this morning.

I am fascinated with this accusation that my fellow Senator from Alabama is doing this on behalf of the tobacco folks. I have not seen him do anything that has looked like it was on behalf of the tobacco folks in this settlement. I have not done anything on behalf of the tobacco folks in this settlement, and during my campaign, even though I was desperate for money, I didn't accept any money from the tobacco folks.

I am in support of the second-degree amendment and I am in support of the first-degree amendment. I am in support of both of them because they both leave all the money on the table. That is kind of hard to determine. We do not know at this point what the money is that is on the table. The Senator from Kentucky last night went through quite a discussion of how much it might be in addition to $368.5 billion, but this debate is about how much less than $368.5 billion it might be.

Quite frankly, I am fascinated with the whole discussion on the tobacco settlement. I hear these comments about whether it is constitutional to limit attorney's fees or not. I cannot tell you for sure that it is constitutional for us to be talking about a tobacco settlement at all. This is an arrangement that the States entered into, through some lawsuits, and then some discussions, and now they are asking us to seal the deal on their behalf. Usually they are asking us to keep our hands out of their business, and I am in favor of doing that. I think the States have some rights that we have infringed on for a long time and that it is our job here to return as many of those rights to the States as we possibly can.

So now we have the States saying, ''Please meddle in our affairs and seal this deal for us.'' Quite frankly, I am not hearing them say, ''Meddle in this deal but don't meddle in the attorney's fees.'' They are not saying that. We are not even sure what the attorney's fee arrangements are between the different States.

If we have a constitutional right to do one, seal the deal, I think we have a constitutional right, too, to make sure that we understand what the attorney's fees are.

When this passes it will not be the final time that it will be debated. There will be a conference committee on it and one of the things I have learned in the short time I have been here in the Senate is that those conference committees can do almost anything they want. When this particular amendment comes back it can have eliminated every concern of the people in the House and the Senate. Everything we have debated here can be changed or it can be left out.

I think at this point it is extremely important that we talk about the attorney's fees and not let everybody in the country go running off to hire more attorneys at whatever rate they can entice them. Quite frankly, I think this could turn into one of the biggest lotteries in the United States. I think we need to have some parameters.

Now, the parameter that is in this amendment is $5 million, or $250 an hour for each and every hour they put in the process. It was mentioned just a little while ago that you have to have people read the documents and determine what is important out of several million documents. Well, each and every one of those people reading those documents would get $250 an hour, not just the lead attorney, and him having to separate it out to the people reading the documents for him, everybody gets $250 an hour. That is quite an economic boon. The only limitation on it is $5 million per State.

Do you think these people went out and obtained $5 million worth of State money or even suggested that attorneys ought to be able to get that through a contingency fee? If they did do that, why are they turning around and asking us to confirm what they did, but saying, ''We cannot give you the details?'' This amendment will bring out the details, and it is not the final action. The first-degree amendment brings out the details.

We found that there was a stipulation in the last conference report—it was not an action we took, it was a conference report action—that there would be a credit against the tobacco tax, and we say, no, we will put that back on the table. I am all for putting that back on the table. We are starting to commit settlement money without having a settlement, without having a deal and without knowing whether the money is for the Federal Government or for the States. It is too premature to make those kinds of deals.

I commend the Senators from Maine and Illinois for their effort to get the cigarette tax back on the table so we can decide, and I commend the Senator from Alabama, Senator SESSIONS, for putting the attorney's fees on the table so we can take a look at whether they earned them or not and what part they played in this process. It seems to me to be logical.

Another little twist on this whole tobacco settlement is we are talking about several years of payments in the tobacco settlement, but we are talking about upfront, putting them out of business. There is not much clamor against putting them out of business, but you do not get money over a long term from somebody that you put out of business.

We want to stop the cigarette sales. We want to get people to quit smoking and having the harmful residuals that are showing up from the tobacco, but are we going to give away the first money that comes in, the money that is most assured of having, to the attorneys? And then when we put them out of business, saying ''What happened to the other $300 billion we were going to get out of the bill? How come we don't get the money?'' We committed that money.

So I certainly hope that the Senate will be careful and not commit money that we do not have, commit money that we do not understand how we are going to get, commit money that it may not be constitutional to take. But I do hope we will investigate and work this thing to the greatest benefit possible for stopping smoking and helping the health situation in this country.

I yield the floor.

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

Mr. SESSIONS. I thank the Senator from Wyoming for his comments. He is a very thoughtful Member of this body and watches after the taxpayers' money with great interest. I think his comments are right on point. I am delighted to have him share those with us today.

We are talking about allowing $5 million in attorney's fees to be paid. In addition to that, we are talking about allowing unlimited amounts of money to be spent for expenses in a litigation.

That could be for computerization, committees, receiving records, clerks analyzing records and collating records, filing records, and storing records.

I have been an attorney for a long time. This idea about 30,000 documents, that is what you normally say when you come to court and you are not ready to go to trial and you say, ''Judge, we have 5,000 documents.'' Well, probably 4,999 of them are some sort of receipts or documents that do not even need reviewing, have no real significance to the issue at hand, but there may be a few in there that do. That is a price of fame about how many documents it is—suggesting the great complexity of the case that may have very little to do with the complexity of the case.

Let me say this, there has been a lot of talk about big tobacco. I am not supporting big tobacco. I am supporting the amendment that is on the floor today.

What I would like to say is there is another big political force in this country, there is another big force in this country that attempts to work its will, and that is the plaintiff lawyers. They are one of the major contributors to campaigns in this Nation. They receive settlements of millions of dollars in lawsuits and contribute millions of dollars to people, politicians and judges and others who further their view of what litigation is about.

Now, I believe in litigation. I am not against litigation. I am not against the lawsuits. I do not want to pass a bill that would stop these lawsuits. I am going to tell you we are talking about not just millions of dollars, not just tens of millions of dollars, not just hundreds of millions of dollars in legal fees. We are talking about billions of dollars, tens of billions of dollars.

Published reports indicate that this time that the plaintiff attorneys, these private attorneys who are hired to do these cases by the State attorney generals, they expect to receive $10 to $14 billion—billion dollars.

In the State of Alabama, outside the education, the general fund budget of the State of Alabama is less than $1 billion. We are talking about a small group—not hundreds and hundreds of attorneys, but a small group of probably less than 100 firms, probably less than 50 firms, receiving $10 to $14 billion in legal fees. Many of these States have only just filed their lawsuits. The tobacco company comes in and agrees, and they put the money out on the table—$300, $400, or $500 billion on the table. Most of these attorneys have contingent-fee contracts, in which they intend to receive a percentage of that money, and they did little more than copy a lawsuit and file the same lawsuit some other lawyer filed in some other State. They are entitled to do that under their fee agreement. It is not right. It is money that ought to be going to the health of children in America.

This bill says we are going to put a limit on it, and $5 million is a pretty good legal fee. In my opinion, $250 an hour is high-paid attorneys. I think anywhere else you would see that. So we think that is a good limitation on it. And it is unlimited on expenses that may be incurred. I think, Mr. President, this is a good way to deal with this matter.

I am going to tell you what has offended me. I was a State attorney general just last year, and I had some knowledge of how this litigation was being managed and how these attorneys were being hired on a contract basis. So I have asked about that when we have had hearings in the Senate Judiciary Committee of which I am a member. I have asked one of the attorneys general what the fee agreement was in his State. He avoided answering that. Others have asked that question. We have gotten no answers. I have written an attorney general and two of these plaintiff lawyers and asked them, over a month ago, to tell me the nature of their fee agreement and how much they expected to get. I have yet to hear from them. Senator GRASSLEY, a member of the Judiciary Committee, has also written letters asking about how much money is going to be paid for attorney's fees, and they won't say. They have everything else spelled out in this global settlement, but they don't talk about the billions of dollars that will be going to plaintiff attorneys, many of them who put little work into the case. They don't want to talk about that.

In fact, this whole settlement agreement is designed to conceal the amount of money paid as attorney's fees. There is no other way to describe it. I hate to say that. It is a serious matter, what is happening here. Let me explain to you, as a litigator and attorney myself, and former attorney general, I have an appreciation for this matter. These private plaintiff attorneys who expect to make themselves rich on this settlement representing the States involved have said: We won't talk about our attorney's fees publicly. We will just enter into a side agreement with big tobacco and they will pay our attorney's fees. The tobacco industry will pay our attorneys' fees. The State of Alabama, the State of Minnesota, or the State of Illinois won't have to pay our attorney's fees. The tobacco industry will pay our attorney's fees. That is a joke. That is not a way to settle a lawsuit. These attorneys work for the State, who is supposed to be paying their fee, not the party on the other side, not the person they are suing. They should not be paying the fee in a secret arrangement.

These attorneys are representing the State, the people. We need to know and we are entitled to know how much they are being paid. This bill says that they must make public any fee agreements they have and report to the people how much they expect to receive. I think that, at a minimum, we need do that. It is time to send a message that we are not going to tolerate this behavior. Everything else is going to be on the table. We are not going to have bills that go through to provide tax benefits to tobacco and we are not going to have plaintiff lawyers, who are some of the biggest contributors to political campaigns in America, enriching themselves any more than tobacco ought to enrich itself with a secret, side agreement.

Now, let me talk about that just a little more. The problem —and I think any lawyer would recognize this—is a conflict of interest. The attorney for one side says to his client: Don't worry about the attorney's fee, Mr. Client. I will get the attorney's fees from the guy we are suing. He will pay me and we don't need to bother to tell you about that. See? So the deal is, well, you get into a tough point in the negotiation and you can't reach a settlement, and big tobacco says to the attorney for the State of Alabama, or the State of Illinois, or the State of Minnesota: Well, why don't we just add a billion dollars for attorney's fees, Mr. Attorney. Maybe you can agree to this idea.

See, that is the fundamental conflict that is there. I think this probably would violate the standard rules of ethics. Certainly, it would violate the high standards of the legal profession. And I am sure any group of prominent attorneys asked about that would express very serious concerns about that because it presents a conflict of interest and the kind of activity that ought not to be tolerated. So I think we need to get into this. I think we need to limit these fees and take that money, as our bill does, and send it to the National Institutes of Health so it can be used for research on children's diseases. I think that is the appropriate use of any of these excess fees.

Mr. President, let me just say this. There are a lot of States who have just recently filed these suits. I submit they have done little more than copy the suits that some of these other States have filed. Yet, they are large States and they are going to receive tens of billions of dollars, and based on what I understand may be a common fee arrangement, these attorneys would be entitled to receive 25 percent of the recovery. I don't know why the published reports say that it is $10 to $14 billion. That seems to me to be less than some of these arrangements. Maybe, but at any rate, it is too much. Twenty-five percent of that may be $100 billion in legal fees, which could provide all kinds of assistance and aid to dealing with children's diseases and health-related matters, many of which we ought to focus on tobacco, because we do know that tobacco is a very unhealthy substance. We know that teenagers who become smokers find it extremely difficult to quit later as an adult. In fact, it is many times more difficult for a person to quit smoking if they commence smoking as a teenager than if they began as an adult. That is why we

need to deal with the health question of teen smoking and why I think it is an important national issue. I salute those who believe in doing something about it.

Finally, let me just say this. What business do we have in involving ourselves in this kind of litigation and trying to involve ourselves in what kind of attorney's fees should be paid? The reason we are involved in it is because we have been asked to. The attorney generals, these plaintiff lawyers, and big tobacco have all asked us to involve ourselves and legislate this settlement. That is an interesting, probably unprecedented event, so far as I know, in the history of this country. We are talking about dealing with that professionally and analyzing it. A number of committees in this body are looking at it today, and I am sure it will be hammered out and much will be done. But I simply say that if this body does not legislate a global settlement concerning this litigation, this amendment will have no effect. It takes effect only if there is a global legislative confirmation of some sort of this settlement. At that point, I think it is appropriate for us to limit attorney's fees and deal with this. As a matter of fact, I think it is more than appropriate; I think it is absolutely essential that we do so.

So, Mr. President, I say to this body that this amendment is, in no way, designed to assist big tobacco. I am offended that anyone would suggest that it does. It is designed to put money in the hands of children by taking it from lawyers who are about to receive one of the biggest windfalls in the history of litigation—not one of the biggest, but the biggest windfall in the history of litigation in the entire world is about to occur. Attorneys are about to receive tens, hundreds of millions of dollars for cases they only worked on a few months. A few firms may have worked longer, but most only have worked a few months on these cases and have not expended large sums of money. This amendment gives them a very generous $5 million in attorney's fees and an unlimited expense account to carry on their litigation. And, in addition, it says there has to be some reasonable limits. We are not going to allow them to have a jackpot justice and make tens of hundreds of millions of dollars off of litigation of this kind.

So I say to the distinguished Members of this body that this is a proper thing for us to do. It is a proper time for us to do it. I also say there is something unhealthy here, something that does not quite smell right, when we have secret agreements on attorney's fees, representing billions of dollars, and they won't even be discussed at a time we are being asked to evaluate this entire settlement.

So, Mr. President, I strongly believe that this is a reasonable and fair amendment. It allows very generous attorney's fees and expenses to be paid, but sets a cap on it so the people of this country can know that the recovery in these lawsuits is going to help and not go to attorneys in a windfall.

Mr. President, I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Would the Chair be kind enough to alert the Members as to the remaining time allocated to both sides?

The PRESIDING OFFICER. The Senator from Illinois has 22½ minutes. The Senator from Alabama has 16 minutes and 8 seconds.

Mr. DURBIN. I thank the Chair.

Why are we here today? Because the tobacco company lobbyists, at the last minute, in our tax bill, which we considered several weeks ago, managed to sneak in a provision that was not debated on the floor of the Senate, nor on the floor of the House. It was never brought to public light. It wasn't discussed by the leadership, by anyone. And this provision, which is 46 words at the end of the tax bill—a provision which they hoped no one would notice—gave to the tobacco companies a $50 billion setoff against any tobacco settlement. The tobacco companies that came to us and said, ''We have learned our lesson, we are a new industry, we are sensitive to the public health problems we have created,'' managed to sneak in in the dead of night and put in this provision, which gave them a $50 billion setoff.

Outrageous. When it was discovered and when we went about Capitol Hill, from office to office, saying, ''All right, who is going to claim pride of authorship here?'' Not a soul would admit they authored this provision. After weeks of investigation, finally, a staff member came forward and said to the USA Today that it was prepared, word for word, by the tobacco companies. They put this provision in the law. They put it at the tail end of this bill, and the leadership on Capitol Hill looked the other way, at best. As a result, this $50 billion outrage is now in the law.

Senator COLLINS of Maine and I have offered an amendment to repeal that. Now, the tobacco companies don't like our amendment. They have already said publicly that if the Durbin-Collins amendment is adopted, it is going to jeopardize the settlement. They want a $50 billion windfall. Well, I sense from the debate today that when this is over, that provision is going to be repealed. But I have learned from over 10 years of fighting these tobacco companies never to assume a thing. They always have one trick left in the bag. Unfortunately, that trick is the Sessions amendment.

Let me tell you this. I don't, for a moment, question the sincerity of my colleague from Alabama. Nor do I suggest that he is a cat's-paw of the tobacco companies. But make no mistake, if he ends up winning his amendment, you will see a smile on the grizzled mug of Joe Camel, because the Sessions amendment will achieve what the tobacco companies have failed to achieve. The Sessions amendment is the effort of the tobacco companies when they can't stop the lawsuits to stop the lawyers.

Oh, how they must despise these plaintiffs' lawyers—this army of lawyers who joined with attorneys general across the United States in 40 different States and said, ''We will join with you in suing the tobacco giants. We understand each State is hard pressed to have the resources to bring the lawsuits. We will be involved in the lawsuits on a contingent basis. If you win, if your State wins, then we get a fee. If you don't, then our fee is reduced.''

It is a contingent-fee basis. It is a basis for many lawsuits. There is nothing inherently evil or outrageous about it. Many people come to lawyer's offices every day without the resources to prosecute a lawsuit, and a lawyer says, ''I will take it on a contingency. If you win, I win a fee. If you lose, I don't win a fee.'' There is nothing sinister about this. It is a contingent fee.

So that is what we are debating here today. The Senator from Alabama calls it jackpot justice. I have heard him in committee and on the floor. And he has very strong personal feelings about contingent-fee lawsuits. That is his point of view. I don't share it. But consider what his amendment would do.

First, it would limit the total attorney's fees paid in the United States of America to all the plaintiffs' lawyers assisting all the attorneys general to $250 million maximum—a huge sum of money, is it not? But in the context of a tobacco settlement of $368 billion, how big is it? It is one-tenth of 1 percent. That is the contingency fee which the Senator from Alabama thinks is a reasonable amount. I would suggest to him that he shouldn't prejudge what each State attorney general faced when they were asked by their taxpayers and consumers in the State to bring a lawsuit against these giant tobacco companies and entered into agreements with the various attorneys to help them do that.

In fact, I think quite honestly the Sessions amendment is designed to stop one lawsuit in particular—the Minnesota lawsuit. Attorney General Skip Humphrey of Minnesota said he is going to try it. Unlike the States of Mississippi and Florida, which have settled, the State of Minnesota has said we are going to take this to trial. The tobacco companies dread that prospect because, if, in fact, Minnesota goes to trial, then the documents which they have secreted, the documents which they have concealed for decades, will finally come to light.

I went to a meeting a few weeks ago, Senator DASCHLE's task force on this subject. And a representative of the tobacco companies came in, and said that if the Minnesota case goes to trial there will not be a tobacco settlement. They dread so the prospect that the things which they have secreted away

from public scrutiny will come to light that they, in fact, have said, ''Stop the Minnesota case.''

I believe the Sessions amendment wittingly or unwittingly will stop the Minnesota case. Is that fair? Is that fair after the State of Minnesota and so many other States have invested so much in this effort for us to step in at this moment, and say, ''We will void your agreements, we will void your contracts, we are the Federal Government, after all, and we will second-guess you?''

Some people even question whether Senator SESSIONS' amendment is constitutional. They wonder if we, in fact, under article I, section 10, of the Constitution can impair the obligation of contracts already entered into. But I don't know that we will resolve that constitutional question on the floor.

What we can accept as a reality is that if the SESSIONS amendment goes forward it will at least put a damper on any future lawsuits and perhaps stop them in place. They will be jumping for joy on tobacco road, if the Sessions amendment is successful. In aiming at the attorneys and their contingency fees, the Sessions amendment hits the public health community, which has had the courage to step forward with 40 attorneys general and sue the tobacco companies. The Senator from Alabama may think that he is sending a message to the attorneys of America about contingency fees. He is sending a message to tobacco companies that they still have a chance on the floor of the U.S. Senate.

I hope my colleagues will not support this amendment. In fact, I would like to let them know that if, in fact, my motion to table prevails and the Sessions amendment is not agreed to, that I will then offer a sense-of-the-Senate amendment of my own.

I would like to read it.

It is the sense of the Senate that attorney's fees paid in connection with an action maintained by a State against one or more tobacco companies to recover tobacco related costs affected by Federal tobacco settlement legislation should be publicly disclosed and should not displace spending in the settlement legislation intended for public health.

The bottom line of my substitute would require each State, each attorney general, to make a public disclosure of their fee arrangement with any attorneys that have been brought into this lawsuit, and no moneys paid to those attorneys will be at the expense of the public health initiatives that are part of this settlement. Then in each State the attorney general, in most cases elected, will have to be held accountable as he or she should be for their decision.

I don't think that is unreasonable. And I think, as they come forward to explain to the taxpayers of their State that they entered into this contingency fee arrangement knowing that they might or might not recover, that the attorney's fee ultimately paid will be justified by the money coming back from the tobacco companies to the taxpayers of the State. Public disclosure—I don't think that is unreasonable.

But I do believe the Sessions amendment is unreasonable. What it seeks to do is begin to draft the national tobacco settlement agreement. And I don't think that is fair, and I don't think this is the appropriate time to do it.

The purpose of the Durbin-Collins amendment is to go back to where we started—to that point in time where the tobacco companies' offer of $368.5 billion, through the State attorneys general, came to Capitol Hill to be debated. It wipes off the books the $50 billion set-aside—the $50 billion giveaway—and it says we are back to the starting point.

If we adopt the Sessions amendment, I think we are going to jeopardize not only the active prosecution of these tobacco companies but jeopardize this settlement agreement.

I yield the floor. I reserve the remainder of my time.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Will the Senator from Alabama yield 5 minutes?

Mr. SESSIONS. I yield 5 minutes to the Senator.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 5 minutes.

Mr. GREGG. Mr. President, first off, I am a cosponsor of the underlining Collins-Durbin or Durbin-Collins amendment. Second, I am a very suspicious of this tobacco agreement.

I tend to think that there are some serious concerns here relative to what we are getting and what is being done. And especially I am concerned about the fact that I think the only winners out of this may be the trial lawyers and the tobacco companies. And I don't think that should be the result of the settlement.

But I also strongly support what Senator SESSIONS, the former attorney general from Alabama, is proposing here because basically what we have here is an unholy alliance between the tobacco industry and the trial lawyers.

It was pointed out very effectively by Senator SESSIONS that there is almost an ethical question here of whether then you pay off the people suing you to stop suing—pay them all off in terms of multiple billions of dollars. We are talking about here potentially $40 billion to $50 billion in attorney's fees, and whether or not when such an occurrence happens, whether you have any sort of agreement which is fair, ethical, or appropriate. So Senator SESSIONS has raised an extraordinarily legitimate question.

I think it is extremely inconsistent for those who are opposing the tobacco settlement generally, and who have put forward this amendment—the underlying amendment, which is a good one, to try to knock out at least one section of this proposal which was moved in the middle of the night—for that same position to be arguing on behalf of the trial lawyers, I find that to be entirely inconsistent.

Moreover, I find the arguments that have been made from the either side to be filled with straw dogs and red herrings. Let's talk about them for a second.

First is the argument that the Minnesota case wouldn't go forward. Of course the Minnesota case will be forward because the trial attorney's fees, which will be affected by the Sessions amendment, apply to the agreement—not to trying cases when there is a case tried, when it goes to trial, or when it is outside the parameters of the agreement. Then clearly the contingent fee will lie if the case is successful. So that is a red herring in the first order.

The idea that this is unconstitutional because there is some sort of contract that is being abrogated, obviously it is constitutional because the fact is the Congress is being asked to create this contract. That is what we are being asked to do. There is no contract yet. The Congress is being asked to create a contract. If we are going to be asked to create this contract, we can certainly dictate one of the terms. And one nice term might be that we not end paying the trial lawyers $40 billion but rather pay NIH that $40 billion. In fact, by my estimate you can fund almost all the uninsured health care in this country today. Almost all of the people who do not have health care could be funded if we were to take $40 billion of the trial lawyer's fees and apply it to the uninsured people in this country. And, as a result, for almost a 5-year period I think you would have funding for the uninsured health care of people who do not have health insurance in this country. In fact, in the major debate that we just had over child health care insurance the issue was whether we should go from $16 to $24 billion in order to cover uninsured children in this country today—$24 billion for a 5-year period.

This $50 billion for trial lawyers—let's put it toward the kids. Let's put it toward health care. It is a heck of a good idea that the Senator from Alabama has come up with. NIH can use this money much better. Uninsured people in the health care community can use this money much better.

At the absolute minimum we should have some disclosure here as to what is going on. You talk about deals in the middle of the night, which the Senator from Illinois has so aptly pointed to, and the Senator from Maine has so aptly pointed to in the passage of this tax break, which is totally inappropriate, a deal in the middle of the night. This is a deal in the middle of night on some other continent. I mean, we can't even find out what this deal is. At least we found out what the tobacco deal was on the tax side, and the Sessions amendment will get us to the bottom of that issue to find out what the heck really happened here, and how much

the attorney's fees are going to be. But we know they are going be massive. Otherwise they wouldn't be fighting so hard to keep us from finding out about them.

So the Senator from Alabama has raised a totally appropriate amendment. It is a red herring to allege that this in any way assists the tobacco industry. It does just the opposite. The fact is that the trial lawyers have had a stranglehold on, regrettably, this administration. They have seen this administration veto two major product liability bills—the securities bill and the product liability bill, one of which we were smart enough to override, the other of which we couldn't override as a result of the trial lawyer influence. Now when we are trying to get to the bottom of just how much is going to be paid here, how much is coming out of the people's pockets, we run into this argument that it is inappropriate.

The amendment of the Senator from Alabama is totally appropriate. And I strongly support it.

The PRESIDING OFFICER. Who yields time?

Ms. COLLINS addressed the Chair.

The PRESIDING OFFICER. Who yields to the Senator from Maine?

Mr. DURBIN. I yield 5 minutes to the cosponsor of my amendment, Senator COLLINS.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Thank you, Mr. President.

Mr. President, I rise in very reluctant opposition to the amendment offered by my friend and colleague from Alabama, Senator SESSIONS. I do believe that the issue of attorney's fees is an important one. But it should be debated in the context of the global tobacco settlement. My fear is that despite the best intentions of the sponsors of this amendment that passage of the Sessions amendment would jeopardize the underlying Durbin-Collins amendment to repeal the $50 billion tax giveaway to big tobacco. For that reason, I am going to vote to table Senator SESSIONS' amendment.

I do want to point out one issue that has become obscured in this debate, and that is that the money that will be paid in attorney's fees does not come out of the $368.5 billion global settlement. Instead, the attorney's fees will be paid by the tobacco industry, separate from the settlement. So the attorney's fees do not diminish the amount of the $368.5 billion settlement. I think that is an important point that has been lost in this debate.

I share the concerns of my colleague from Alabama about an attorney's fees. I think there are, however, constitutional issues about whether Congress can step in and abrogate contracts that were reached between the States attorneys general and private law firms. That is an issue that deserves to be thoroughly explored. But, most of all, I urge my colleagues, whatever their position on the tobacco settlement, whatever their position on the issue of attorney's fees, to save this debate for a more appropriate time. And that is when the global tobacco settlement is before the Senate. My fear is that the passage of this amendment would jeopardize the underlying amendment to repeal the $50 billion tax break, and I do not believe we should allow that to happen. For this reason, I will support the motion to table, offered by the Senator from Illinois.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Mr. President, could the Chair inform us of the time remaining?

The PRESIDING OFFICER. The Senator from Illinois has 9½ minutes; the Senator from Alabama has 10½ minutes.

Mr. DURBIN. Mr. President, I am prepared to yield some time to my friend, the Senator from New Jersey. I would like to yield 5 minutes to the Senator.

Mr. LAUTENBERG. I thank the Chair. I thank the distinguished Senator from Illinois for the courtesy. I will not talk long now. It is my understanding this is the only vote that has been registered for consideration at this juncture, and I assume that there will be time between the vote on the Sessions amendment and the underlying Durbin amendment.

Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LAUTENBERG. Mr. President, I just want to register my support for the Durbin-Collins amendment to repeal big tobacco's rebate in the tax reconciliation bill that granted a $50 billion giveaway—$50 billion giveaway—to the tobacco industry. The condition that has created so much suspicion about the tobacco companies and their industry is that there is no time, no time at all when they come forward cleanly, let the smoke clear away, and offer direct and candid explanations about what it is they have been up to all these years.

I will have some comments later about the speech given last night by the distinguished chairman of the Judiciary Committee, Senator HATCH. He asked for a quick conclusion—let's get going. He asked that the President send down a bill that we can discuss and vote on, get it done with.

Well, Mr. President, this attack on the American people's health has been going on for decades, more than 50, 60 years. I remember when I was a soldier and part of the ration kit that I got to be used as an emergency food supply had some cigarettes stuck in it. It was so much a part of our structure, so much a part of our culture that cigarettes became more valuable than currency in some of the countries during the Second World War.

So there is a lot of information that has been accumulated over a lot of years, and contrary to the comments of the distinguished Senator from Utah last night, I think we ought to take our time. I think we ought to make sure that we have the most complete review of millions of pages of information. I think that we can find what we want within a group of documents about 1.5 million pages long. They are called the Minnesota Select Set. There has been a consolidation of information to fewer pages than the full 33 million that the court in Minnesota is going to have for review.

Last night, the distinguished Senator from Utah talked about 33 million pages. He said, what do we need that for? Well, I think it is quite clear to people within earshot here and who have been watching what has been going on in the Capitol when the committee now reviewing campaign expenditures or campaign revenue raising, fundraising, has requested over 10 million documents for review from the AFL–CIO alone, by the Senator who is chairman of that committee, Senator THOMPSON.

So, Mr. President, we are talking about a very complicated piece of agreement. We have by the most conservative yardstick probably 5 million people killed as a result of smoking, who died prematurely as a result of smoking. We know that 430,000 die each year from respiratory-related conditions—lung cancer, you name it, emphysema. We learned recently from a study by the Harvard public health school that 50,000 heart attacks per year, fatal heart attacks per year, take place among those who are subjected to passive smoking, not smoking themselves. So again by the most conservative of calculations we say that some 500,000 people have been dying as a result of smoking-related illness.

If I might ask, Mr. President, my friend from Illinois for another minute.

Mr. DURBIN. I yield an additional minute to the Senator from New Jersey.

Mr. LAUTENBERG. So, Mr. President, I hope that we will not be rushed into doing something, get it behind us, get it over with. There is much too much to be gained by a thorough review of all of the documents, and we should not ask the President of the United States to come down here pell-mell, willy-nilly with a bill for us to consider and pass. If it takes time, I think that time can be valuably used despite the fact that I would like the assault on our children to stop as quickly as possible. I do not want any more seduction of our children to pick up smoking because the tobacco industry knows, in their spurious attempts at trying to ensure their marketplace, they have directed their marketing at children, trying to get 3,000 kids a day to pick up the smoking habit so a million a year of new smokers will be there to replace that market which is affected by those who are dying prematurely.

So, Mr. President, I look forward to an extended debate. I hope that the

Durbin-Collins amendment will be supported overwhelmingly to show the American people that we are not going to knuckle under to the machinations of the tobacco industry. We are not going to let it get through the front door or the back door. We want to close down what the tobacco industry has been doing to our citizens for these many years, and it is perhaps going to take more time than would be thought to be necessary to arrive at a proper settlement.

With that, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DURBIN. Will the Senator from Alabama yield for two very brief questions about his amendment?

Mr. SESSIONS. Certainly.

Mr. DURBIN. I want to clarify something that has been said during the course of debate. First, is it the intention of the amendment of the Senator that the limitation on attorney's fees would apply in those cases where States decide to go forward and prosecute a case as opposed to those that are involved in the national settlement agreement?

Mr. SESSIONS. I believe that the correct interpretation of this amendment and the intention of it would be, if a case went on to litigation and was not a part of the global settlement, it would not be covered by this agreement. But any settlements that were entered into now or subsequently that asked to be part of the global settlement by Congress would be appropriately covered.

Mr. DURBIN. So the Senator is saying—I am trying to reconcile his section (b). He applies this limitation to court orders as well as any settlement agreement. It would seem his limitation on attorney's fees would apply in either instance, whether the State decides to prosecute the claim and ignore the possibility of a national settlement or in fact reaches a settlement agreement. It would appear that his limitation on the attorney's fees would apply in either case.

Mr. SESSIONS. I don't think it would apply if the case went on to litigation because it would not be part of the global settlement. Our bill does not take effect unless there is an act of this Congress that globally settles the litigation.

Mr. DURBIN. I might say to the Senator I think his amendment needs to be clarified because that was not clear to me.

The second point I would like to raise, in section (e) where you provide for funds for children's health research, if in fact attorney's fees are not to be paid out of the $368.5 billion and in fact are to be paid separately, from what source is the Senator drawing these funds that would go to the National Institutes of Health?

Mr. SESSIONS. Mr. President, I don't mind responding to the Senator's question. I sought the floor. But I choose to have it on his time.

The PRESIDING OFFICER. The Senator may decline to yield further time.

Mr. SESSIONS. I have some comments that I would like to make and my time is getting short, but I think it would support the National Institutes of Health and that is what we would favor.

This is a matter of real seriousness. We are not talking about a little game or gimmick here. We are talking about huge sums of money. The Senator from New Hampshire talked in the debate on this floor of from $16 to $20 billion of children's insurance and how $4 billion was considered carefully before the Congress appropriated that money. We are talking about perhaps $40 billion in attorney's fees, and they refuse to tell the American public how much the fees are. They refuse to produce their agreements. These are attorneys representing public bodies, not private individuals.

With regard to contingent fees, I am not against private contingent fees. I think in many cases that is an effective and appropriate way to handle litigation for a private party. But I am very concerned about public bodies hiring attorneys to represent them and the people of their States on a contingent fee basis that could result in awards of attorney's fees of tens of billions of dollars. So I would think very seriously about that.

I was amazed to hear the comment made that this would intimidate and hamper the public health community. The public health community will benefit from this because we would see this money go to the National Institutes of Health and not to attorneys, so they could use it for research and other good things. It will not stop the ongoing litigation. I certainly believe it will continue in every State in the Nation that chooses to proceed.

Finally, I think the Senator from Maine is incorrect in suggesting that this is somehow not money that counts because it was money not made part of the settlement but added on to it by the tobacco industry. If you have been a part of the litigation, before you know it, the defendant, before the award is paid, wants to know the total bill, and when he finally agrees what his total bill is, he does not care how it is spent or how the other side uses it. So he will call it attorney's fees, he will call it anything else. He just wants to spend the $386 plus billion, and that money is money the tobacco company is prepared to spend to end this litigation. Therefore, it is money that ought to be spent, as much as possible, on children and not on lawyers.

Mr. President, I see the Senator from Kentucky is here and I will yield for a question, or time. I will yield the floor at this time and yield my time to the Senator from Kentucky for 4 minutes.

Mr. MCCONNELL. Yes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. I thank my friend from Alabama. Again I want to commend him on an outstanding amendment. I have been able to pick up part of the debate, and I might ask my friend from Alabama if one of the arguments being made by those who oppose his amendment is that somehow these lawsuits are not likely to be brought if a lawyer could only bill $250 an hour? Is that, I gather from my friend from Alabama, one of the suggestions being made by the opponents of his amendment, that somehow being restricted to a mere $250 an hour is going to deter the lawyers of America?

Mr. SESSIONS. That is correct—$5 million is not a sufficient fee for a lawsuit.

Mr. MCCONNELL. Right. That is the other part, I gather, of the Senator's amendment, either $250 an hour or $5 million, whichever is——

Mr. SESSIONS. Less.

Mr. MCCONNELL. Less. I would ask my friend from Alabama, who has had a distinguished career over the years, has he ever known a lawyer to be deterred from representing a client when there was a potential $5 million or $250 an hour fee on the line?

Mr. SESSIONS. I have not, and I consider $5 million to be a very substantial fee on any market in America, certainly.

Mr. MCCONNELL. I do not know how the economy is in Alabama, but I would say to my friend I am not aware of many people in Kentucky that make $5 million over a year, or even 2 or even 3—just a small handful of people. Would my friend from Alabama agree with me that this is not likely to be a deterrent to representation of a client if the fee is so restricted?

Mr. SESSIONS. I do not think it is a deterrent, and also I point out that these are attorneys representing the people, the States involved, and it is not unusual at all for lawyers to work for less an hour rate for a governmental body than they do for a private individual.

Mr. MCCONNELL. So, further, I ask my friend from Alabama, if I understand this correctly, whatever fees were proposed to be paid above the $5 million cap would then be diverted to the National Institutes of Health for children's health research; is that correct?

Mr. SESSIONS. That is correct. We think there are going to be some real jackpot fees awarded here, under the way this case ended so abruptly. That really exacerbates the unfairness of it. The litigation was filed. Many people thought it would last for years. Then, all of a sudden, there is a settlement entered into with huge sums of money being paid by the tobacco industry, allowing attorneys, under their agreements, to receive huge sums of money for very little work.

Mr. MCCONNELL. So, I say to my friend from Alabama, it seems to me in my 13 years in the Senate, this is one

of the clearest choices I have ever observed laid before the Senate on an amendment.

I ask the Senator from Alabama, if the Senator from Kentucky understands this correctly, if this is a choice between plaintiffs' lawyers on the one hand and children's health research on the other? Does the Senator from Kentucky understand this correctly?

Mr. SESSIONS. The Senator from Kentucky understands completely.

Mr. MCCONNELL. So a Member of the Senate who would vote for the Sessions amendment would be voting, in effect, for children's health care?

Mr. SESSIONS. A vote for the Sessions amendment is a vote to put that extra money in the children's health care.

Mr. MCCONNELL. And a Senator who voted against the Sessions amendment would in effect be saying paying legal fees in excess of $250 an hour, or more than $5 million a State, is a more important priority than children's health care research; is that correct?

Mr. SESSIONS. That is precisely correct, as I see it.

Mr. MCCONNELL. So it seems to me that this is about as clear as it gets. It is about as clear as it gets. The Senator from Alabama is giving the Senate an opportunity to enhance the ability of NIH to discover the cure for the diseases that afflict the children of America, and he is asking the Senate to pay for that through what most people would consider excessive legal fees for representing various State governments around America. Does the Senator from Kentucky have this correct?

Mr. SESSIONS. The Senator from Kentucky has it correct. The fees we are talking about in this case would be the largest fees in the history of the world.

Mr. MCCONNELL. Mr. President, I want to commend the Senator from Alabama. I think this is a very, very important amendment. It certainly relates not only to the debate currently before us, but to the debate yet to be had in the coming months, or maybe even next year, about a global tobacco settlement, if that should be forthcoming.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from Alabama has expired. The Senator from Illinois.

Mr. DURBIN. Mr. President, how much time is remaining under our agreement?

The PRESIDING OFFICER. Two minutes twelve seconds.

Mr. DURBIN. Two minutes twelve seconds I have remaining. And the Senator from Alabama?

The PRESIDING OFFICER. His time has expired.

Mr. DURBIN. Mr. President, let my say in conclusion, I was really captivated by this closing argument. Now the tobacco companies, after all these years of exploiting children, come in with this ''God bless Tiny Tim'' amendment which says if we can just stop these mendacious lawyers, we are going to find money for children's health research. I think the American people have seen through this before and will see through this amendment. There is no money in here for children's health research. The $368.5 billion settlement does not include attorneys' fees. So, any money saved, according to the Senator from Alabama, is not going to be there for us to appropriate to the National Institutes of Health.

No, I think this is window dressing on an amendment which is very clear. It is late in the ball game. The score is very heavy on the side of public health and very heavy against the tobacco companies. So, on the last play, as the quarterback or the State attorney general tries to down the ball, in come the tobacco boys trying to sack him. They are angry. They hate to lose and they hate to lose big, so they come in with this amendment, this amendment to get even with these plaintiff lawyers for having brought these lawsuits to try to limit any State attorney general's authority to regulate a fee.

I agree with others who have spoken. I am not sure this is constitutional, but it is certainly not fair. It is not fair at this moment in time to presume, on every attorney general who brought this lawsuit, that they were, in fact, making a bad bargain for the taxpayers of their State. I think they should be held accountable. My substitute amendment, when this is defeated, will say there will be a public disclosure and none of the attorney's fees will come out of the money for the public health aspects of this settlement. But make no mistake, the Sessions amendment is an amendment which the tobacco companies want. It will put a damper on lawsuits. It will give the tobacco companies the upper hand in the settlement negotiations. And it will completely discount the sincere and good-faith efforts of 40 different States that had the courage to step forward and sue the tobacco companies.

The Senator from Alabama says their decision to go forward was a wrong one; their decision to pay the attorneys was a wrong one. I do not think he should presume to make that decision. It is a decision made by each of them, and we should respect it.

At this point, I move to table the amendment offered by the Senator from Alabama.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. HUTCHINSON). The question is on agreeing to the motion to table the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah [Mr. BENNETT] is necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA] and the Senator from New Mexico [Mr. BINGAMAN] are necessarily absent.

I further announce that, if present and voting, the Senator from Hawaii [Mr. AKAKA] would vote ''yea.''

The result was announced, yeas 48, nays 49, as follows:

[Rollcall Vote No. 224 Leg.]

YEAS—48

Baucus	Feingold	Lieberman
Biden	Feinstein	Mikulski
Boxer	Glenn	Moseley-Braun
Breaux	Graham	Moynihan
Bryan	Harkin	Murray
Bumpers	Hollings	Reed
Byrd	Inouye	Reid
Cleland	Johnson	Robb
Cochran	Kennedy	Rockefeller
Collins	Kerrey	Roth
Conrad	Kerry	Sarbanes
D'Amato	Kohl	Shelby
Daschle	Landrieu	Snowe
Dodd	Lautenberg	Torricelli
Dorgan	Leahy	Wellstone
Durbin	Levin	Wyden

NAYS—49

Abraham	Gorton	McCain
Allard	Gramm	McConnell
Ashcroft	Grams	Murkowski
Bond	Grassley	Nickles
Brownback	Gregg	Roberts
Burns	Hagel	Santorum
Campbell	Hatch	Sessions
Chafee	Helms	Smith (NH)
Coats	Hutchinson	Smith (OR)
Coverdell	Hutchison	Specter
Craig	Inhofe	Stevens
DeWine	Jeffords	Thomas
Domenici	Kempthorne	Thompson
Enzi	Kyl	Thurmond
Faircloth	Lott	Warner
Ford	Lugar	
Frist	Mack	

NOT VOTING—3

Akaka	Bennett	Bingaman

The motion to lay on the table the amendment (No. 1125), as further modified, was rejected.

Mr. STEVENS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DURBIN. I ask for the yeas and nays on the motion to reconsider.

The PRESIDING OFFICER. The motion to reconsider was just laid on the table by consent.

Mr. LOTT. Mr. President, are we ready to vote on the question?

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

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I ask unanimous consent that the Sessions amendment be agreed to, and the Senator from Minnesota, Senator WELLSTONE, be recognized to offer a second-degree amendment, and there be 30 minutes for debate to be equally divided.

I further ask that at the conclusion of the debate, the amendment be laid aside and Senator DURBIN be recognized to offer an amendment, which would be in the form of a sense-of-the-Senate resolution, with debate limited to 5 minutes, and following that debate the Senate proceed to vote on or in relationship to the Wellstone amendment to be followed by a vote on or in relation to the Durbin amendment, to be followed immediately by a vote on or in relation to the Durbin amendment No. 1078, as amended.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Amendment No. 1125, as modified further, was agreed to

Mr. LOTT. Mr. President, therefore, there will be three back-to-back votes beginning in approximately 35 minutes.

I thank Senator DASCHLE for his cooperation in working out this arrangement. It will allow us to complete this section of consideration on the Labor-HHS bill, and hopefully we can go on then with other amendments that can be agreed to, or accepted, or voted on, and hopefully we can complete this very important appropriations bill before the day is out.

I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, let me also thank the majority leader for his cooperation in coming to an agreement, and I thank Senator DURBIN who waited patiently to present this issue and debated it eloquently and forcefully over the last several days. We wanted a way to bring to closure the issue with regard to the deductibility question. And we will now have that opportunity for a final vote within the hour.

So I think we have made great progress in the last 30 minutes. I am pleased now that we are at a point where we can have a final vote.

I yield the floor.

The PRESIDING OFFICER. Under the previous agreement, the amendment of Senator SESSIONS, No. 1125, was agreed to.

The Senator from Minnesota is recognized to offer a second-degree amendment.

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

AMENDMENT NO. 1126 TO AMENDMENT NO. 1078

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 1126 to amendment No. 1078.

At the end of the amendment, add the following: ''Nothing in this Act may be construed to interfere with, or abrogate, any agreement previously entered into between any State and any private attorney or attorneys with respect to litigation involving tobacco.''

The PRESIDING OFFICER. On this amendment, there will be 30 minutes of time equally divided.

The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair.

Mr. President, and colleagues, I shall be brief.

I, too, thank the majority leader, the minority leader, Senator SESSIONS, and Senator DURBIN for their cooperation.

Mr. President, this amendment is very simple and straightforward, and in a way the context for this is Minnesota. But it really affects all of our States.

This amendment just says that nothing in the act may be construed to interfere with, or abrogate, any agreement previously entered into between any State and private attorney with respect to litigation involving tobacco.

For example, in Minnesota the case is in a State court.

What are we doing? I am not a lawyer. But what are we doing here in the U.S. Senate telling Minnesota that its contract with lawyers that are working with the State of Minnesota could be declared null and void? What are we doing saying that to the State of Minnesota, or what are we doing saying that to any State? I thought we had a States rights Congress. This goes just in precisely the opposite direction.

Mr. President, again a little bit of information about Minnesota, so we know what is at stake here. I mean I am out here fighting for my State of Minnesota. But I think this is important to all of our States.

I cannot believe that my colleagues want to be in a position of arguing against the proposition that we should pass an amendment that tells the State it has to abrogate its contract with attorneys that are representing that State in State court. That is absolutely unbelievable.

Mr. President, in Minnesota, against some background, is the first State in the Nation to charge the tobacco industry with consumer fraud and antitrust violations. It is the second State calling for Medicaid reimbursement. It is the only State with a private coplaintiff, Blue Cross and Blue Shield of Minnesota.

The case was launched in August 1994. We have won the majority of pretrial motions, and all appeals, including the one that went to the U.S. Supreme Court. Minnesota secured 30 million pages of documents through discovery. Minnesota has the largest collection ever of tobacco documents in the world, housed in two secured depositories in Minneapolis and London.

The Minnesota case is rated by the top tobacco stock analysts of Burnstein Research as the ''biggest threat to the industry.''

I want to talk about what that means—''biggest threat to the industry.''

We go to trial in January. This trial stands to be important not just for Minnesota but for the whole Nation—not just in terms of financial compensation for my State, for the people in my State, but the discovery, the information that will come to light about past abuses, about what the tobacco industry has known, about marketing techniques, and all of the rest.

This amendment, which is an amendment albeit for my State of Minnesota but really applies to every single State, just says to colleagues that in whatever action we take let us be clear that nothing that we are doing here can be construed to interfere with or abrogate any agreement previously entered into between any State and private attorney or attorneys with respect to litigation involving tobacco.

We have a case in Minnesota. It is in State court. What are we doing in the Congress telling Minnesota that it will have to abrogate its contract with attorneys? The arrangement is made with attorneys so those attorneys can represent the public health community, so those attorneys can represent the State of Minnesota and people in Minnesota, so those attorneys can represent all of us who would like to see these documents and this information come to light. I do not think this is constitutional and I certainly think it is inappropriate.

Mr. GREGG. Will the Senator yield?

Mr. WELLSTONE. I yield to my colleague from Illinois.

Mr. DURBIN. If the Senator will yield, I support the Wellstone amendment. Make no mistake, what Senator Wellstone is proposing before this Senate is the other side of the argument of the Senator from Alabama. The Senator from Alabama came before us and basically said, even though we are not talking about any Federal dollars here, even though we are not talking about any action in any Federal court, we as a Federal legislature will dictate to the State of Minnesota, the State of Illinois, I suppose even the State of Alabama that they cannot enter into an agreement with any attorneys to proceed with tobacco litigation unless it meets the Federal guidelines proposed by the Senator from Alabama.

Well, I am sorry, but I do not believe that that is our responsibility. I think it goes beyond our constitutional responsibility. I think what the Senator from Minnesota has offered is reasonable. How can we ever presume to judge what are the appropriate attorneys' fees and arrangements in a State like Minnesota where Attorney General Humphrey has probably gone to greater lengths than any attorney general in the United States bringing these documents together, filing a creative lawsuit, being assertive, making certain that the people of Minnesota are represented. For any Senator from Illinois, Alabama or anywhere to stand up and say, I am sorry, Minnesota, this is not yours to decide, this is to be decided by the Federal Congress, even though there is no Federal money, no Federal court. We are dealing in State courts, we are dealing with tobacco companies making payments. I think it is entirely presumptuous for us to go along with the premise that we in the

Senate will decide attorneys' fees case by case and State by State.

I stand in support of the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 6 minutes 45 seconds.

Mr. WELLSTONE. I thank my colleague. I reserve the remainder of my time.

Mr. SESSIONS. Mr. President, will the Senator from Minnesota yield for a question?

Mr. WELLSTONE. I would be pleased to yield on the Senator's time.

Mr. SESSIONS. All right. Just briefly, what is the percentage contingent fee that has been given to the plaintiff attorneys who are representing the State of Minnesota?

Mr. WELLSTONE. My understanding is 25 percent.

Mr. SESSIONS. I thank the Senator.

Mr. President, I think that points out the problem we are dealing with here. This is the first time, in any inquiry that I have made in a number of different instances, that I have gotten a figure on the detail of the fee agreements that have been entered into in these kinds of cases.

Twenty-five percent. That sounds fine, but the truth of the matter is the tobacco company has just pleaded guilty. They put $300 billion, $400 billion, the Senator from Kentucky says $500-plus billion on the table. Now the lawyers who were saying they were going to trial and spent these huge sums of money all over America are not going to trial. They are just collecting the money, and they have agreements like this.

Now, I would assume, with regard to Minnesota, that they are an average size State and they probably would be entitled to something like a $10 billion settlement of this matter. If that is true, then this law firm would be entitled to $2 billion—$2 billion, not $2 million but $2 billion. That would be probably as of this date the largest legal fee ever paid in the history of this country, largest legal fee probably ever paid in the history of the world.

So I submit that is exactly what has happened. Many States, I understand, because less than a year ago I was an attorney general, have entered into contracts of 25 percent. I know of another State which, I understand, has entered into a settlement for 20 percent of the recovery. These cases are not even going to trial if this body acts. If this body does not act and Minnesota goes on and litigates its own case, then Minnesota is not covered by our agreement. So only if there is a congressional action that takes over these cases, should we question attorneys' fees. Otherwise that issue is between the attorneys general and the States.

But the plaintiff lawyers, the very same ones who are now complaining about their fees through Members of this body, these very same plaintiff attorneys are the ones asking this Congress to review this settlement and to take appropriate action that we think is just and fair.

So, first of all, I want to point out that we are talking about incredibly huge attorneys' fees, not just large. These are incredibly huge. Probably as much as, at 20 percent, $40, $50, $60 billion in attorneys' fees. Publicly the figure has been floated in the press a number of times at $14 billion. If the percentages are the same in most States, 20 percent, the figures will be much higher than $14 billion.

So the tobacco lawyers who have entered into this private agreement with these plaintiff attorneys to pay them their fee, all these lawyers are now coming to us and saying just ratify this matter but don't ask us about how much they are paying; don't question these fees because we had a contract. We had a contract.

They can't prevail in their cases in an effective way without the legislation of this Congress. So I think it is right for us to question it.

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

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

Mr. SESSIONS. I yield to the Senator from Kentucky.

Mr. FORD. Mr. President, we are hearing now States rights, and I have tried to be on that side for some 23 years now. But the attorneys general are here asking us to approve their pact, to pass a Federal law and to have so-called protocols or side agreements that we would wind into the package. So it appears to me that it is no longer a States rights agreement. In Minnesota it may be somewhat different. But now they have come to the Congress and said here is our deal; you approve it and don't ask any questions.

Well, back home we call that a mailbox job. You get a job and go out to the mailbox the first of each month and get your check. Am I correct it has reached a higher level than it would be under normal circumstances since we are asked to make the judgment? We are attempting to make the judgment now, and in making that judgment we say we are trampling on States rights. You can't have it both ways. Am I correct?

Mr. SESSIONS. The Senator from Kentucky is precisely correct. These parties, both sides—do not forget, the tobacco industry is in here, too, asking us to approve it, and the tobacco industry also does not want to talk about how much they are paying these plaintiffs' lawyers. So they have asked us to review it. In effect, they have suggested in testimony before my Committee on the Judiciary that we approve it and analyze it fairly and justly, and that is our responsibility.

Mr. FORD. Mr. President, will the Senator yield for one additional question?

Mr. SESSIONS. Certainly.

Mr. FORD. The Senator has been an attorney general. He is from the legal profession and I am not. Is it kind of unusual for a side agreement to be made by a defendant with a plaintiff lawyer?

Mr. SESSIONS. I say the distinguished Senator from Kentucky raises a very important and troubling point. It is, in my opinion, at least improper if not unethical for an attorney representing a party to enter into private negotiations with the person he is suing to establish how much his fee ought to be. You see, there is a conflict there.

Mr. FORD. I thank my colleague.

Mr. SESSIONS. All of a sudden it becomes important to that lawyer that the settlement be approved so he can get his fee. And if the person he sues, the tobacco industry, says: ''You are being too hard on this issue; give up on this issue.'' ''No, I won't.'' ''Well, we will sweeten your attorney's fee if you will give up on it.'' That puts them in conflict. I am not saying that has happened. But I am saying good attorneys should not allow themselves to be put in a position of interest.

So we are talking about, if it is 20 percent of a $600 billion settlement, $100 billion in attorney's fees. We fought for weeks on this floor to raise from $16 to $20 billion the amount of money spent for health care for children. We are talking about $100 billion in this bill in attorney's fees, and in many cases in many States very little legal work has been done on these cases. It is important and necessary for us to act on this matter, and this amendment as presented by the Senator from Minnesota would, in effect, undermine and abrogate the true effect of the amendment that I have offered, so I strongly oppose it.

I will yield the floor and reserve my time.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, first of all, it is certainly not true that very little legal work has been done in Minnesota. The tobacco industry has already spent $125 million defending the Minnesota case alone—$125 million.

Mr. President, it takes a whole lot of resources to uncover a massive, decades-old coverup of fraud and conspiracy. The Sessions amendment that my amendment speaks to is an attempt to shut down the discovery process, to perpetuate a coverup and to keep secret documents concealed for a long time. The effect of this amendment, unless the second-degree amendment passes, is to punish States like Minnesota and Texas and Massachusetts and Connecticut and Washington and others that have invested heavily in exposing the coverup and bringing the industry to justice.

I do not know all the specifics of the arrangement between the State of Minnesota or Connectict or Massachusetts

or any other State and attorneys that are working for the States and for, I might add, the public health community. Without this work, we would not have been able to bring these documents forward. There will not be the discovery. There will not be the information. There will not be the information to people in this country about a whole pattern of abuse.

But what I do know, one more time, colleagues, is this is in State court. This is an agreement between my State of Minnesota and attorneys. What in the world are we doing interfering and essentially saying to the State of Minnesota you have to abrogate your contract with your attorneys? Whatever you have decided upon, whatever you do in State court, State court is null and void. My State is not a party to this global agreement here in Washington. Attorney General Humphrey has made it very clear that we are going forward. This is an agreement in a State. This is an agreement between a State and attorneys. This is an effort to deal with a very long, unfortunately protracted, period of time of coverup by an industry. This is an effort that takes on a tobacco industry that spent $125 million on this case alone with lawyers defending it. And you are going to vote against an amendment that says ''nothing in this act may be construed to interfere with or abrogate any agreement previously entered into between any State and private attorney or attorneys with respect to litigation involving tobacco''?

I do not know how colleagues can vote against that proposition. Have whatever views you want, but we do not have any business telling the State of Minnesota that in its best judgment and its best effort, and, indeed, what is being called ''the biggest threat to the industry,'' it has no right to enter into an arrangement with lawyers and to represent the people in Minnesota and represent the people in the country. And we in the U.S. Senate are going to try to vote against the proposition where we go on record saying we are certainly not going to tell a State it has to tear up its contract?

Minnesota gets to decide that. Massachusetts gets to decide that. Connecticut gets to decide that. Illinois gets to decide that. Kansas gets to decide that. The U.S. Senate doesn't decide that.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator yields the remainder of his time. The Senator from Alabama has 6 minutes and 50 seconds remaining.

Mr. SESSIONS. Mr. President, first of all, if Minnesota proceeds to litigate its case and gets a judgment, then Minnesota would not be covered by this act. And I would be willing to consider Minnesota's case, because it is somewhat different than most. Perhaps it is more unusual than any of the others. However, I would say this to the Senator from Minnesota, his bill covers all States. It doesn't just cover Minnesota. It doesn't just cover unusual fact situations. It says we cannot deal with contracts in any of the States.

I have to oppose his amendment because it applies to every State including States bigger than Minnesota that filed lawsuits just a few months ago. Attorneys have done almost no work on these cases. Yet they would stand to receive billions of dollars in attorney's fees without this legislation.

So I would say, first of all, I would be willing to discuss the unique problems of Minnesota. But I cannot, and must resist with every bit of strength that I have this amendment because it applies throughout the Nation and it will prevent this body from being able to stop great windfalls. And that money doesn't need to go to attorneys. It needs to go for the purpose of this lawsuit, which is health care.

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

Mr. SESSIONS. I will yield.

Mr. GREGG. As I understand your underlying amendment, which has now been adopted, in the case where there is a settlement and the settlement has to come to the Congress to be confirmed, your amendment applies. But, in the case of Minnesota, where there is litigation going forward, and where there is a trial going forward and the matter will be decided by the courts through the litigation process rather than through a settlement confirmed by the Congress, your amendment would not apply.

Mr. SESSIONS. The Senator is correct.

Mr. GREGG. So basically the amendment of the Senator from Minnesota doesn't apply to the Minnesota situation because the Minnesota situation is outside the underlying amendment. The amendment of the Senator from Minnesota applies to all the other States, except Minnesota, that are trying to reach an agreement through negotiation which has to be confirmed by this Congress.

Mr. SESSIONS. That is correct. To my understanding, Minnesota is the only State that has objected to the global settlement. They are going to have to be treated separately in any case.

Mr. GREGG. If I might ask a further question, it appears the Senator from Minnesota has launched an arrow that has missed its mark?

Mr. SESSIONS. I think that is fair to say.

Mr. WELLSTONE. Mr. President, I ask unanimous consent to reclaim what time I have left.

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

The Senator has 2 minutes and 20 seconds.

Mr. SESSIONS. Mr. President, I yield the floor and reserve my time.

Mr. WELLSTONE. Mr. President, I might ask my colleague from Illinois to comment. I would like to look at the amendment again, the Sessions amendment, but my understanding from reading that amendment is that if there is a global settlement, it applies to all the States. Otherwise, I would have much less difficulty with his amendment.

Mr. DURBIN. I thank the Senator for yielding. I might say at this point neither the Senator from Alabama, the Senator from Illinois or the Senator from Minnesota knows how this story is going to end. We don't know what this global settlement will say and how it affects the agreements heretofore entered into by other States, whether it's Minnesota, Mississippi, or Florida. I think it is presumptuous of us today to suggest we are going to set the guidelines.

The Senator from Alabama stood up repeatedly and said, ''I don't know what these legal agreements are. They could be awful.'' If the Senator doesn't know what they are, then how can he suggest they are awful? I don't know that some of those agreements might say if a case is settled either by global settlement or otherwise, the attorney's fees will be dramatically reduced. The Senator doesn't know, but he went forward with his amendment.

The Senator from Minnesota has hit the nail on the head. These attorneys general who had the courage to come forward in the lawsuits but didn't have the resources to prosecute them, entered into agreements to bring in other attorneys to help. They fought a big battle in Minnesota; $125 million spent by the tobacco companies, yet they fought on valiantly and they are going to bring this case on to trial in January. And for us to close the door today and say it's over, no more agreements in terms of attorney's fees—I think it's presumptuous. It's exactly what the tobacco companies are praying for.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota has 40 seconds remaining.

Mr. WELLSTONE. Mr. President, I think that is precisely the problem. That is what I am speaking to. I don't think the Senator from Alabama can argue otherwise, in terms of what his amendment does.

One more time I will say to colleagues, given this ambiguity, we can argue about it over and over again. This amendment is not ambiguous. It just simply says that nothing that we do may be construed to interfere with or abrogate any agreement previously entered into.

What are we doing, telling the State of Minnesota, which is a State court, whatever you had to do to get lawyers to represent your State and the people of Minnesota and the people in the country, we are now going to pass something that will tear that agreement up—we have no business doing that. I don't think it's constitutional and I certainly don't think it's right. So I'm out here fighting for Minnesota, but for other States as well.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SESSIONS. How much time have we have?

The PRESIDING OFFICER. The Senator from Alabama is recognized. The Senator from Alabama has 2 minutes and 32 seconds remaining.

Mr. SESSIONS. Mr. President, precisely on the question he raised, this amendment that I have presented, that has been passed by a large vote, without objection that I heard, maybe a few—says that it would only include States involved in the national tobacco settlement agreement.

My view is, if Minnesota wants to opt out of this deal, maybe they ought to be treated separately. But for the 49 other States who are in it, who have asked for this review and legislation by Congress, I think it is absolutely critical that we deal with attorney's fees. I repeat, I have sought on multiple occasions, and other Senators have, to find out what the agreements are that they have with these attorneys. They are hiding those agreements. They have been very secret about it. It's a secret agreement between plaintiffs' attorneys representing the States and the tobacco industry. And only today has the Senator from Minnesota indicated that they have a 20-percent contingency fee. That means that whatever recovery Minnesota has of all these billions that we are looking for and hope that we can recover, of all those billions, 20 percent of it will go to attorneys.

They talk about a lot of records and documents. I have been involved in litigation. People always talk about records. But you have paralegals, you have clerks, you have statisticians to go through those documents. They don't have to be read by every attorney involved in the case.

So I would say what really exacerbates this problem and makes it so critical is the fact that the tobacco companies, early on, agreed to this settlement. Therefore, a lot of attorneys general entered into contracts, maybe thinking it would be prolonged litigation and these fees might be justified, but now they find out that the money is already on the table and we have to work out an agreement to collect it. Attorneys do not have to justify these huge billion-dollar fees we are hearing talked about.

These are reasonable fees, $250 an hour, $5 million per State in attorney's fees. That is reasonable and fair. I think generous, in fact.

I believe that this body needs to send a message, for those people who think they can execute secret side agreements at the expense of the people they are supposed to be representing to divert $14 billion, $40 billion, $60 billion, $100 billion from health care for children and families and tobacco victims—taking that money and putting it in their pockets is not a good way for this Government to be run.

I feel very strongly about this. Unfortunately, the Senator from Minnesota chose not to limit his amendment to the situation in Minnesota but to apply it throughout the Nation, which in effect preserves the prerogative of the plaintiff lawyers to make themselves rich off of this settlement. Therefore I must oppose it.

Mr. WELLSTONE. Will the Senator yield?

The PRESIDING OFFICER. The time of the Senator has expired. Under the agreement, the Wellstone amendment will be set aside. The Senator from Illinois is recognized for purpose of introducing an amendment. The Senator from Illinois is recognized for 5 minutes.

AMENDMENT NO. 1127 TO AMENDMENT NO. 1078

Mr. DURBIN. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 1127 to amendment No. 1078.

At the end of the amendment, insert the following:

''SEC. . SENSE OF THE SENATE.—It is the sense of the Senate that attorneys' fees paid in connection with an action maintained by a State against one or more tobacco companies to recover tobacco-related costs affected by federal tobacco settlement legislation should be publicly disclosed and should not displace spending in the settlement legislation intended for public health.''

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I ask the time, the 5 minutes, be divided evenly between those in favor and those in opposition.

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

Mr. DURBIN. Mr. President, this amendment gets to the heart of the question. What are these agreements? Are they generous? Are they reasonable? Each attorney general, under my agreement, will be forced to put it on the table in front of the people and say, ''Here is what I agreed to. If I agreed to pay 25 percent of the settlement then I have to explain to the taxpayers of the State why that was a sensible thing to do at the time.'' If it is a reasonable agreement, so be it. If not, the public official will be held accountable. And none of the money paid in attorney's fees will come out of the amount to be spent for public health purposes. I think this gets to the heart of it.

The Senator from Alabama, in his amendment, says $5 million a State is more than enough to prosecute the tobacco companies; $5 million a State. It sounds like a princely sum until we hear the Senator from Minnesota stand up and tell us the tobacco companies spent $125 million in that State to defend themselves, 25 times as much. All of a sudden you step back and say maybe $5 million doesn't give you the resources for a fair fight.

The Senator from Alabama has repeatedly said he doesn't know what these agreements consist of in other States. I think that is the reason why his amendment is flawed.

Also, I think we should know in a State like Florida, which recently entered into an agreement, the question of attorney's fees was necessarily set aside. It is not part of the agreement that was announced. It is another amount to be paid by the tobacco companies, separate and apart from what is going to be paid to the taxpayers of Florida.

Finally, let me say in virtually every one of these cases, in every State, not only will the court of public opinion decide whether attorney's fees are fair, but the courts will decide. Ultimately they have to rule on any order of settlement and any kind of agreement which might, in fact, bring it into a lawsuit. So they will have to ultimately rule on these attorney's fees.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, just to correct the RECORD, the $5 million the amendment of the Senator from Alabama presented is $5 million on top of ordinary and customary expenses. So if it cost $20 million or $100 million in the area of expenses to bring this lawsuit, that can be added to the $5 million base cost.

My opposition—actually I probably will vote for it—but my position on the Durbin amendment is this. In concept, it is an excellent idea. But this is a sense of the Senate. A sense of the Senate means nothing. If the Senator from Illinois really means this, then he should have made it a matter of law. That is what it should be, a matter of law. We should be telling the tobacco companies you have to disclose. This sense of the Senate is a political document. It will give a lot of people in this body comfort politically, but it is not going to do one darned thing to get to the bottom of the question, which is how much are we going to end up paying to attorneys who are basically working with tobacco companies in obtaining their payment? How much is going to get paid to them as part of this settlement?

The gravamen of this issue—to use the one legal term I remember from my law school days—is the point Senator SESSIONS made. When you have attorneys working against tobacco companies, and the tobacco company comes in and says, ''Well, here's another $1 billion in settlement,'' how long do they work against them? How aggressive are they in opposing them?

If there is $40 billion of attorney's fees going out the door here, which is what is represented in some of the periodicals that have discussed this issue, how can you say that there is any sort of independence on the part of the plaintiff's counsel in the cases? The fact is, there are very few attorneys I know who, if somebody comes forward and says, ''Let's make this agreement,'' and they say, ''No, I can't agree

to that,'' and then the person who says let's make this agreement says, ''Well, I'll give you another billion dollars in fees''—the attorneys are going to say that's pretty hard to turn down.

Until we know what these attorneys are getting paid, we can't answer a lot of these questions. This Durbin amendment, as well-intentioned as it may be, accomplishes nothing in obtaining that knowledge. It is a sense of the Senate. We all know where those amendments go. This should be a matter of law.

The PRESIDING OFFICER. The time of the Senator from New Hampshire has expired. The Senator from Illinois has 40 seconds remaining.

Mr. DURBIN. Thank you. Mr. President, let me say at the outset, we don't have a settlement agreement. We are not talking about legislating one today. There is a good question, whatever we add to this appropriations bill, whether it is going to have an ultimate impact on that agreement.

Let me also say, on the question of expenses, I think the Senator from New Hampshire would acknowledge expenses are specified costs of a lawsuit and don't get to attorney's fees. So, I would quarrel with him on that.

Let me end by saying, there is on old poem:

While I was walking up the stair, I met a man who wasn't there.
I saw that man again today.
I wish that man would go away.

The man that many of the people on this floor would wish to go away is a $50 billion tax credit. That is the underlying issue, and that is the important part of this debate.

AMENDMENT NO. 1126

The PRESIDING OFFICER (Mr. GREGG). The time of the Senator from Illinois has expired. The question is on agreeing to the Wellstone amendment.

Mr. WELLSTONE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. SESSIONS. Mr. President, I move to table the Wellstone amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the Wellstone amendment.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

Mr. WELLSTONE. Mr. President, point of order. Would you read back the unanimous-consent agreement?

The PRESIDING OFFICER. The clerk will report the unanimous-consent agreement.

The assistant legislative clerk read as follows:

That the Sessions amendment be agreed to and the Senator from Minnesota [Mr. WELLSTONE], be recognized to offer a second-degree amendment and there be 30 minutes for debate, to be equally divided.

Further, that at the conclusion of the debate, the amendment be laid aside and the Senator from Illinois [Mr. DURBIN] be recognized to offer an amendment with debate limited to 5 minutes. Following that debate, the Senate proceed to vote on or in relation to the Wellstone amendment, to be followed by a vote on or in relation to the Durbin amendment, to be followed immediately by a vote on the Durbin amendment No. 1078, as amended.

Mr. WELLSTONE. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the Wellstone amendment No. 1126. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Vermont [Mr. BENNETT] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 225 Leg.]

YEAS—48

Abraham	Frist	Mack
Allard	Gramm	McCain
Ashcroft	Grams	McConnell
Bond	Grassley	Murkowski
Brownback	Gregg	Nickles
Burns	Hagel	Roberts
Campbell	Hatch	Santorum
Chafee	Helms	Sessions
Coats	Hutchinson	Smith (NH)
Coverdell	Hutchison	Smith (OR)
Craig	Inhofe	Specter
DeWine	Jeffords	Stevens
Domenici	Kempthorne	Thomas
Enzi	Kyl	Thompson
Faircloth	Lott	Thurmond
Ford	Lugar	Warner

NAYS—50

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Glenn	Moseley-Braun
Boxer	Gorton	Moynihan
Breaux	Graham	Murray
Bryan	Harkin	Reed
Bumpers	Hollings	Reid
Byrd	Inouye	Robb
Cleland	Johnson	Rockefeller
Cochran	Kennedy	Roth
Collins	Kerrey	Sarbanes
Conrad	Kerry	Shelby
D'Amato	Kohl	Snowe
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NOT VOTING—2

Bennett	Bingaman

The motion to lay on the table the amendment (No. 1126) was rejected.

The PRESIDING OFFICER. The yeas and nays have been ordered on the pending amendment.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

Mr. President, between the second and third votes, as a matter of management, it would be appreciated if the following Senators could be on the floor so we can sequence the balance of the amendments. We are fairly close to seeing light at the end of the tunnel. So if the following Senators would be good enough to stay on the floor for a brief scheduling discussion at that time it would be appreciated by the managers: Senator MURRAY, Senator WELLSTONE, Senator DASCHLE, and Senator COVERDELL. If those Senators would be on the floor, it would be appreciated.

The PRESIDING OFFICER. The yeas and nays have been ordered on the pending amendment, which is the Wellstone amendment.

Mr. SPECTER. Mr. President, parliamentary inquiry. Are the yeas and nays ordered on the Wellstone amendment?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. Mr. President, I ask unanimous consent that the yeas and nays be vitiated.

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

The question is on agreeing to amendment No. 1126.

The amendment (No. 1126) was agreed to.

The PRESIDING OFFICER. Is there a motion to reconsider?

Mr. DURBIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1127

The PRESIDING OFFICER. The question now is on agreeing to Durbin amendment No. 1127.

Mr. DURBIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1127. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah [Mr. BENNETT] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 226 Leg.]

YEAS—97

Abraham	Burns	Daschle
Akaka	Byrd	DeWine
Allard	Campbell	Dodd
Ashcroft	Chafee	Domenici
Baucus	Cleland	Dorgan
Biden	Coats	Durbin
Bond	Cochran	Enzi
Boxer	Collins	Feingold
Breaux	Conrad	Feinstein
Brownback	Coverdell	Ford
Bryan	Craig	Frist
Bumpers	D'Amato	Glenn

Gorton	Kohl	Roberts
Graham	Kyl	Rockefeller
Gramm	Landrieu	Roth
Grams	Lautenberg	Santorum
Grassley	Leahy	Sarbanes
Gregg	Levin	Sessions
Hagel	Lieberman	Shelby
Harkin	Lott	Smith (NH)
Hatch	Lugar	Smith (OR)
Helms	Mack	Snowe
Hollings	McCain	Specter
Hutchinson	McConnell	Stevens
Hutchison	Mikulski	Thomas
Inhofe	Moseley-Braun	Thompson
Inouye	Moynihan	Thurmond
Jeffords	Murkowski	Torricelli
Johnson	Murray	Warner
Kempthorne	Nickles	Wellstone
Kennedy	Reed	Wyden
Kerrey	Reid	
Kerry	Robb	

NAYS—1

Faircloth

NOT VOTING—2

Bennett Bingaman

The amendment (No. 1127) was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1078, AS AMENDED

The PRESIDING OFFICER (Mr. SANTORUM). The question is on the Durbin amendment, as amended.

Mr. LAUTENBERG. Mr. President, I rise today in strong support of the Durbin-Collins amendment to repeal Big Tobacco's rebate in the tax reconciliation bill. I will speak about this critical amendment in a minute, but first I would like to talk about an issue that was raised on the floor last night.

That issue is whether Congress should subpoena hidden tobacco documents.

Mr. President, we need to know the truth about nicotine and tobacco. That is why I, along with Senator LEAHY and many of our colleagues, have asked the chairmen of the various committees with jurisdiction over portions of the settlement, to subpoena critical documents that the tobacco industry has conspired to hide from the American people.

In debate on the floor yesterday, the distinguished chairman of the Judiciary Committee raised the issue of whether to subpoena these documents. The senior Senator from Utah has long been dedicated to saving our children from the dangers of tobacco. He has been outspoken about the critical need to reduce teen smoking rates.

Yet, the chairman questioned the necessity of Congress subpoenaing these documents which have been kept from the public because they were falsely stamped attorney-client privilege. The chairman raised some valid concerns, and I would like to respond.

Mr. President, we are at a critical juncture in the war between the tobacco companies and the public health. The tobacco industry wants the American people to disarm. They want to strip Americans of their right to seek punitive damages for harm caused by the tobacco industry's deceitful practices. The industry wants Congress to grant it unprecedented protections from legal liability.

In return, the American people are promised a reform of our public health laws that will protect loved ones in the future from the dangers of tobacco addiction and illness. It would be up to Congress to write these laws. That is a heavy responsibility.

In order to properly execute this responsibility, we owe it to the American people to collect the most complete information about the effects of tobacco and nicotine on human health. Through our subpoena power, we have the ability to collect this information. We need information on whether a safer cigarette could be manufactured, or if we can produce a less addicting form of nicotine.

Mr. President, that information is in the hands of the tobacco industry, and they have consistently hidden it from the American people for decades. If we are to enter into a legislative settlement with this industry, then it must come clean with Congress and the American people. Since it has not done so yet, we should start issuing subpoenas for the truth.

Mr. President, some have suggested that the document disclosure provisions in the proposed settlement are sufficient. However, I strongly disagree. The proposed settlement would merely set up a clearinghouse for documents already produced in court cases. In other words: it discloses nothing new.

Mr. President, we have learned more details in recent weeks about how the tobacco companies routinely funneled documents through their lawyers in order to fraudulently mark them as attorney-client privileged. In fact, many of these documents relate to health concerns and were simply given to the lawyers to cloak them in a false shroud of the attorney-client privilege.

These are the most critical documents. They hold the keys to saving millions of lives.

Congress has the power to subpoena and examine these documents before we enact a legislative settlement. We need that information to craft effective public health policy. The settlement would allow the industry to delay court review of these documents for years after a settlement is enacted.

Now, review of these documents might be time consuming. The distinguished chairman of the Judiciary Committee, in his floor statement yesterday, noted that over 33 million pages have been collected in the State of Minnesota's suit against the tobacco industry. Our estimate is that we'll find the information we need in at most 1½ million pages.

The Minnesota attorney general, in preparation for his trial against Big Tobacco, has bound, numbered and indexed around 500,000 pages into a volume called the Minnesota Select Set. This set of documents contains critical information we need in order to draft appropriate public health legislation. We should subpoena this set.

In addition, the Minnesota court hearing the case has collected around 1 million pages of material that the industry has claimed is privileged. However, we know that the Industry has a history of falsely claiming this privilege in order to hide critical health information.

It is unclear how many pages are in the privileged set, but it has been estimated to be about 1 million pages. Both of these sets are being held in warehouses in Minneapolis and London under the control of a Minnesota court.

Mr. President, I would like to clarify that my subpoena request is for, at most, about 1½ million pages. Although this is a lot of material, one need only watch another child light up a cigarette to realize it is well worth the time.

Let me put this into perspective: The Governmental Affairs Committee has subpoenaed over 10 million pages of documents from the AFL–CIO alone in its campaign finance investigation.

This subpoena request for tobacco industry documents is about the lives of American children. Isn't that worth the time needed to carefully review these documents? Why rush into a settlement in 50 days with an industry that has lied to America for 50 years?

Therefore, I ask my colleagues to support the request of Senator LEAHY and myself to the chairmen of relevant Senate committees to subpoena these hidden tobacco industry documents.

I hope that this discussion clarified this issue for my colleagues.

Now, Mr. President, I would like to address the Durbin-Collins amendment to repeal the provision in the tax reconciliation bill that granted a $50 billion giveaway to the tobacco industry. This clause should never have been snuck into that bill and it is time to remove it.

This provision of the recently enacted tax reconciliation bill would divert $50 billion away from the public health and into the pockets of Big Tobacco. If comprehensive tobacco legislation is eventually enacted, Big Tobacco will write 50 billion off the top of their payment obligations.

This shortfall could mean billions of dollars in programs to keep kids away from cigarettes will be lost. It could mean billions of dollars in smoking cessation programs will not be paid for.

In any settlement, the tobacco industry must pay its fair share. If the industry gets a $50 billion break in the settlement, that cost will have to come out of taxpayer's pockets. That is unacceptable.

The tobacco companies shouldn't get a rebate. They're not a car dealership—they're a drug dealership.

There are those who say that this rebate was part of the proposed settlement deal. Well, that's news to the attorneys general who negotiated it. They never signed off on such an arrangement.

Mr. President, this is another example of why we can't trust this industry. After claiming to act in good faith, they scheme behind closed doors to undermine the American people. As we embark on public health legislation for the next century, let's work to keep this process out in the open and get rid of the smokey back room deals on tobacco.

Mr. President, I therefore urge my colleagues to support the Durbin-Collins Amendment and join us in repealing the $50 billion credit for Big Tobacco. The last thing the tobacco industry is entitled to is a rebate.

Mr. FAIRCLOTH. Mr. President, I rise to say a few words about this amendment, which will probably sail through the Senate. I spoke to my colleagues, and I know that we don't have the votes now, but we will revisit this issue in the global settlement.

It is quite easy to come down to the Senate floor and rail about the tobacco companies. Well, Mr. President, let me say something about those tobacco companies. Mr. President, those companies employ more than 20,000 people in North Carolina, and those jobs are in jeopardy if we tax the tobacco companies into bankruptcy.

These are hard-working men and women punching the timeclock every day. They are raising families on these wages, paying mortgages, just trying to get by. These jobs represent a payroll of more than $1 billion. They are good jobs, well-paying jobs, and I will not be part of this attack on their livelihoods.

This is just another attack on tobacco carefully staged for the television cameras. This is a personal attack on tobacco farmers. The companies are the front this time. Just a subterfuge for yet another attack on the farmers and another potential source of revenues. In fact, they're ready to spend money we don't even have, and I think that this is the height of irresponsibility.

I hope that my colleagues will resist the lure of easy political points.

Mr. MOYNIHAN. Mr. President, I will support the amendment of the Senator from Illinois to repeal section 1604(f)(3) of the Taxpayer Relief Act of 1997, which purports to credit the increase in tobacco excise taxes against any federally legislated tobacco settlement agreement. While I have opposed other amendments that would have opened up the balanced budget agreement signed into law on August 5, 1997, a mere 5 legislative days ago, there are good reasons to support the amendment offered by Senator DURBIN. Unlike the other provisions of the reconciliation legislation that have been the subject of amendments, the provision at issue in the Durbin amendment is an orphan. No one is willing publicly to take credit for having written it and securing its inclusion in the tax bill—which was done at the last minute, without analysis or debate by the Members of either the House or Senate.

On July 31, 1997, during the debate on the conference report to the Taxpayer Relief Act of 1997, the Senator from Illinois sought to raise a point of order against the provision he now seeks to repeal. I voted, with 77 other Senators to waive all points of order against the conference report. I said at the time that the provision was meaningless and had no binding effect. I continue to hold this view, as the tobacco settlement is far from completed, and it is still subject to approval by the President and Congress. Yesterday's New York Times reported that President Clinton will not offer an opinion on the proposed tobacco deal until next week at the earliest, and that the White House will not endorse a settlement without significant changes. In fact, it is beginning to appear unlikely that Congress will complete action on the matter before adjourning for the year. In addition to any changes that the administration proposes, the Congress will want to exercise its independent judgment on the proposed agreement. The June 20, 1997, agreement does not contain all of the details necessary to effectuate a settlement. There are a number of areas where the agreement provides no guidance, the most striking of which is the lack of a mechanism to govern the payment and distribution of the $368.5 billion by the cigarette manufacturers.

A White House spokesman has indicated that President Clinton supports this amendment, and if Congress does not act to rescind this credit, the President will insist that $50 billion be added to any final settlement amount.

And so, although the provision has no real impact on legislation that this Senate may take up at some future date, I agree with Senator DURBIN that the mere existence of the provision, and the process by which it found its way into the statute, is troubling. Let us strike it and eliminate any concern that the tobacco companies are getting away with something.

Mr. SPECTER. Mr. President, if I might have the attention of all Senators to discuss sequencing. It might be possible, realistically, to finish the bill this evening. The next amendment, following the vote, will be the Murray amendment, where there is 1 hour equally divided. But it is my anticipation that Senator MURRAY will use her 30 minutes, but there will not be a reply. The next amendment will be the Wellstone amendment, 40 minutes equally divided. Here again, I think that will be disposed of in less than 40 minutes. Then we have the Daschle amendment, which is 20 minutes equally divided, and then the Coverdell amendment, 10 minutes equally divided.

It is the manager's intention to have votes on these four amendments later this afternoon, but it is impossible to say when because of the impossibility of determining the amount of time. But the votes will occur as soon as the arguments are finished on those four amendments. We will then go to the Gorton amendment, where we don't have a time agreement. But the Senator from Washington says he may be able to enter into one shortly after that discussion starts. That would leave us with only two amendments outstanding on school testing, where the parties are reasonably close to an agreement on the Teamsters issue, which we will, I think, be able to resolve. But that is yet uncertain. That will be the sequence.

The PRESIDING OFFICER. The question is on agreeing to the Durbin amendment, as amended.

Mr. DURBIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the Durbin amendment, as amended. The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. I announce that the Senator from Utah [Mr. BENNETT] is necessarily absent.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 3, as follows:

[Rollcall Vote No. 227 Leg.]

YEAS—95

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Allard	Frist	McCain
Ashcroft	Glenn	Mikulski
Baucus	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bond	Gramm	Murkowski
Boxer	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bryan	Hagel	Reid
Bumpers	Harkin	Robb
Burns	Hatch	Roberts
Byrd	Hollings	Rockefeller
Campbell	Hutchinson	Roth
Chafee	Hutchison	Santorum
Cleland	Inhofe	Sarbanes
Coats	Inouye	Sessions
Cochran	Jeffords	Shelby
Collins	Johnson	Smith (NH)
Conrad	Kempthorne	Smith (OR)
Coverdell	Kennedy	Snowe
Craig	Kerrey	Specter
D'Amato	Kerry	Stevens
Daschle	Kohl	Thomas
DeWine	Kyl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Warner
Durbin	Levin	Wellstone
Enzi	Lieberman	Wyden
Feingold	Lott	

NAYS—3

Faircloth	Helms	McConnell

NOT VOTING—2

Bennett	Bingaman

So the amendment (No. 1078), as amended, was agreed to.

Mr. DURBIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. President.

AMENDMENT NO. 1118

Mrs. MURRAY. Mr. President, I ask unanimous consent to call up my amendment No. 1118.

The PRESIDING OFFICER. Without objection, it is so ordered. Amendment No. 1118 is the pending business.

Mrs. MURRAY. Mr. President, I ask unanimous consent that no second-degree amendments be in order.

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that Senator LANDRIEU be added as a cosponsor to this amendment.

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

Mrs. MURRAY. Thank you, Mr. President.

Mr. President, this amendment that is being offered today by myself, Senator WELLSTONE, and Senator LANDRIEU is not unfamiliar to this body. In fact, the U.S. Senate has voted three times on the amendment that is now before us. Three times we have passed this amendment unanimously—once in the welfare bill, once in the budget bill, and once in the budget reconciliation bill. All three times when this amendment was brought before this body, not one Senator spoke against it. It was voted on and passed and sent to conference committee. Without one single voice of opposition and without one single vote of opposition, this amendment was stripped in the conference. Perhaps it is no surprise when you hear the subject of this amendment. It is regarding domestic violence.

Too often women in our country when it is in the light of day have everyone behind them and support them when it comes to domestic abuse. But these women know where abuse occurs. It occurs behind closed doors when no one is watching.

This Senate should not approve of that kind of action. This amendment is one that is absolutely vital to the health and welfare of women, their families, and the communities that surround them. The policemen are too often called to situations where a domestic violence incident is occurring, and their lives are then put on the line.

The amendment that we are offering today does a simple thing. It allows a temporary waiver of the work requirement for a victim of domestic violence in order for them to take care of their medical needs, to change their Social Security number, to take care to make sure that their children are in a safe place and that their family is secure before they are required to be at work. We know that, if a woman is being abused and she is required to be at work, her abuser will often go there to find her or put up barriers so she can't be there. She knows that her life is insecure if her abuser can find her at a workplace where she has to give her Social Security number, where she has to let them know where she is going to be. Where her children are in day care, she can't take care of them to make sure they are safe and secure.

That is why this humane and compassionate Senate three times has passed this amendment. It is a temporary waiver. We are not asking for a permanent waiver of the work requirements. In fact, we want women who are victims of domestic violence to be at work. Being economically able to take care of themselves is the security they need in order to leave a domestic violence situation. But we want to make sure that they aren't at work with bruises and don't show up at work and are afraid to show up at work with bruises. We want to be sure that their children are in a safe place, if they are victims of domestic violence, before we require them to be at work. We want them to be able to change their Social Security number so they can't be followed before we require them to be at work. Too often these things take months. Changing your Social Security number can often take months.

We in this Congress don't want to put these women in abusive situations inadvertently. This amendment simply is going to remove a barrier for women so that they can get out of the domestic violence situation. When a woman decides to get out of a situation, she has to know, ''Can I have the money? Can I have the ability to take care of my children, to take care of myself?''

Welfare allows her the ability to get out of that situation, to get herself back on her feet, and to get into the work force, which is exactly what she wants to do so she can be economically secure.

The way the welfare bill is written today, it does not allow her to do that.

When we passed this temporary waiver, we said to these women that we would give to States the ability to screen for domestic violence so that they will be allowed to help these women get on their feet and get back into the work force. We did that intelligently here in the Senate. In fact, it passed unanimously in the House as well. But when this amendment got behind closed doors, women were once again abused, and it was stripped from the bill.

It is absolutely essential that we put this law into the books so that the States across the Nation who are waiting to see what our action is can make sure that women who are abused are taken care of.

Today, the Children's Defense Fund has come out in support of this amendment, and I ask unanimous consent to have this printed in the RECORD.

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

CHILDREN'S DEFENSE FUND,
September 9, 1997.

CDF SUPPORTS ANTI-FAMILY VIOLENCE AMENDMENT

WASHINGTON, DC.—The Children's Defense Fund (CDF) announced its support today for the Victims of Family Violence provision proposed by Senators Patty Murray (D-Wash.) and Paul Wellstone (D-Minn.) as an amendment to the Senate Labor, Health & Human Services, and Education Appropriations bill for Fiscal Year 1998.

The amendment allows states to temporarily waive certain requirements of the 1996 welfare law for families that are victims of domestic violence, even if their number exceeds the law's 20 percent cap on exemptions to the time limit.

''Mothers who have been threatened or battered need a safe place for themselves and their children, and need support to reenter the work force. The Victims of Family Violence amendment makes it possible for states to offer that protection and help to mothers and children,'' said Grace Reef, Director of Intergovernmental Relations of the Children's Defense Fund. ''Twenty-eight states have opted under the 1996 welfare law to screen for family violence and offer services to families affected. These and other states need the clarification that this amendment provides to ensure that families receive the help they need to escape immediate danger and plan for their return to work.''

Studies by the Better Homes Fund and the University of Massachusetts Medical Center and by the Taylor Institute in Chicago have documented the prevalence of domestic violence in the lives of women and children receiving public assistance. Another study found that 55 percent of battered women surveyed had been prevented from working by their batterer (Shepard and Pence, 1988). More than half of battered women responding to a survey said that they stayed with their batterer because they did not feel they could support themselves and their children (Sullivan, 1992).

''The Victims of Family Violence amendment means safety for children and their mothers while they take the steps necessary to move on with their lives,'' said Reef.

Mrs. MURRAY. Mr. President, they know what far too often happens to children who are in abusive situations if there are barriers to that woman getting to work. We want to make sure that there are no barriers. The CDF explicitly outlines this in their statement today, and I thank them for their support.

Mr. President, I have worked on this issue for a number of months—in fact, for a number of years. It has become more critical to me in the last few weeks because of events that happened in my home State.

About a week ago a young officer in Takoma, WA, was called to a home where a domestic violence situation had occurred. Unfortunately, he was shot and killed. He has a 1-year-old child. He is gone. I heard from many police officers who tell me how risky it is for them to go to homes where domestic violence calls have been placed. We need to make sure that we allow these women to get out of those situations so we don't have the increased numbers that we today have of domestic violence calls. I am amazed at the increased number. In fact, in the Seattle Times just a few days ago was an

article, that I will submit in a minute, which says that in Seattle in 1995—which is the latest year for which any data are available—there were over 16,000 calls to 911 related to domestic violence.

It was just reported that there is an epidemic, an increase in the violence in Spokane County with more than 6,400 cases reported last year, which is a big increase over prior years.

In Tacoma, where a young police officer was just killed, it is reported that during the past 15 years 11 police officers in the Puget Sound area have been killed in the line of duty. Four of those officers were slain while responding to calls to help settle domestic disputes, a huge portion of them.

We need to make sure that as a body we do everything we can to help women get out of domestic violence situations in a safe and responsible manner, to get them back to work in a way that economically works, that their health care is taken care of, that their children are taken care of so that they get out of these situations. If the work requirement remains in place, women will be forced to stay at home with their abuser. They will not be able to go out and get themselves economically independent in a responsible way.

Mr. President, 27 States have asked for a waiver on family violence. Until we clarify the language here in the Senate and approve it in conference, these States will not be able to move forward without being penalized under the work requirements of the welfare bill.

I urge my colleagues to support this amendment with a recorded vote this time so that we can send it to conference and do the responsible thing that is required of all of us when we care in a humane way about women who are in a situation in which none of us ever wants to be.

I see my colleague, Senator LANDRIEU, a cosponsor of the amendment, is here, and I yield her time to speak.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Louisiana.

Ms. LANDRIEU. I thank the Chair.

I rise to thank my colleague from Washington State for her admirable work in this area and for her persistence in year after year presenting this amendment that so clearly is deserving on its merits, and coming back again for the third time to this body, which has already expressed strong support for this clarification of this waiver because this body, on both sides of the aisle, Mr. President, I think, understands the great trauma and pain of families experiencing violence, both to the woman primarily and also to the children.

I rise because I supported the welfare reform effort. I was not here as a new Senator, so I was not able to vote. But I want to say for the record that I support our efforts to change the welfare system in America, as long as those changes allow for job training and day care opportunities and transition. We do need to do a better job in this country of moving people from welfare to work. We need to do a better job of honoring work, particularly for those working at the minimum wage. So I support the changes.

My colleague from Washington has expressed beautifully that there are some modifications and clarifications that are essential. This one is essential.

With the suffering that is incurred by millions of children —and I say millions of children—who are in homes where this violence is occurring, the screams in the night, the begging for someone to help, the years of torture and abuse that many children suffer and many spouses suffer, we have to do more. Let us not add to their pain and suffering by letting this remain unclear in the law, when it is so clear that we want to say that the States simply have the right to design temporary relief for them so that they do not have to give certain information that would put them in jeopardy and put their children's lives at risk.

I can only say how hopeful I am that when we pass this amendment, which looks as if it will pass by a large margin, it will this time stay in this bill for the children of the Nation, who literally—and I wish I could play a tape that I heard just this week by a chief of police who stood up before a group of us and said, ''This is a tape that I use for training my officers.'' It was horrifying to listen to this child scream in the night for a dispatcher, an operator to send help quickly to the home where a male—I do not know if it was the father or a friend—was beating this child's mother. To close your eyes and listen to this tape and this child's screams was almost more than I and others in the room could stand.

So let us not add to the suffering. Let us be clear. Let us give the States a chance to do the humane thing.

I thank the Senator from Washington and I urge our colleagues to support this amendment.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleague, Senator LANDRIEU, for her excellent statement and for all of her support and her help on this very important piece of legislation.

I know that Senator WELLSTONE also wants to speak on behalf of our amendment today, and I believe he is on his way to the floor. While we are waiting for him, let me read a paragraph or two from a press release put out by the Children's Defense Fund today, who, as I spoke about before, know firsthand what happens to children in violent situations. I quote:

> Mothers who have been threatened or battered need a safe place for themselves and their children and they need support to reenter the work force. Passage of the family violence amendment makes it possible for States to offer that protection and to help mothers with children.
>
> There are studies by the Better Homes Fund and the University of Massachusetts Medical Center and by the Taylor Institute in Chicago that have documented the prevalence of domestic violence in the lives of women and children receiving public assistance. It is important that we pass this amendment today so that we can make sure these women and these children are taken care of in this country and live in safe environments.

Mr. President, I am going to yield time now to Senator WELLSTONE, who has been instrumental in this battle. I thank him for all of his work on behalf of the many women and children across this country who will be able to feel much safer when we finally get this passed and put into the law.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank Senator MURRAY. This has been a labor of love, working with her on this, from the very beginning. I do think it is very, very important. We have had voice votes on this, but we now need to get the Senate on record, and this is an extremely important amendment.

It is interesting; this amendment essentially says—and I know Senator MURRAY and I are so pleased that Senator LANDRIEU has also joined us—to States, look, Arkansas, Minnesota, if you decide what you want to do is request a good-faith waiver, not a total exemption, so that you can as a State such as Minnesota in dealing with a family, a woman who has been battered, has been beaten up over and over again and also dealing with her children, say, look, from the point of view of our work force participation requirements of the welfare bill or ultimately from the point of view of how many people there are going to be in terms of what percentage of people have to be off the rolls, we may need a little more time to give support to these families. We may need a little bit more time. One size does not fit all.

I would like to thank my wife, Sheila. I said to Senator MURRAY, she has worked so hard on this. I would like to thank her and also the community in Minnesota that has provided us with a lot of support. The fact is when you meet with families, you realize that all too often a woman has been battered over and over again, her children have seen it, and it just may be that she is not able right away to move into a job.

I just want to thank Jody Raphael at the Taylor Institute in Chicago, who does rather magnificent work. I would also like to thank Pat Reuss, of the NOW Legal Defense and Education Fund, who has been great.

Jody pointed out—I am not going to quibble on statistics —in some of her work that a real high percentage, maybe 20 percent or more, of these mothers, welfare mothers who have in fact been beaten, are, in fact, if you will, victims of abuse in their homes.

This also affects the children who see it.

So the reason for this amendment is we just want to make crystal clear to our States, all of our States, that they do have clear direction and support from the Federal Government, from the Congress and the White House and Health and Human Services, that Minnesota, Washington, if you want to provide additional support services and you want to make sure that a woman gets those support services, you can ask for a good-faith waiver to make sure you can do that.

Otherwise—and colleagues need to understand this, and that is why Senator MURRAY and I come back to the floor again—we are talking about a very dangerous situation. We talk in this Chamber, the words are spoken and we mean it, but sometimes we forget the connection to people's lives.

If you do not do this, what is going to happen to all too many women is they are going to be in a situation where they are going to be forced into a work situation. They are not able to do it. They are stalked by a former boyfriend or former husband or whatever the case is. They have been beaten up and maybe they can't even come that day for job training. Maybe physically they cannot come. Maybe they are just ashamed to show up. All of a sudden, because women cannot work, given what is going on, given what is happening to them, given what their children are seeing, we are going to say to these women, ''You are off of any AFDC assistance. You do not get any assistance at all.''

Then what happens, colleagues, is they have one choice for their children. They have to go back into that very dangerous home. They have to go back and be with that batterer.

Now, Mr. President, the shame of it is—and this is why we come to the floor—the Senate has gone on record, what, three times, I ask the Senator, and then every time—I have heard Senator MURRAY speak about this eloquently so I do not need to repeat her words—and then every single time in conference this just gets knocked out. That is really outrageous. That is really outrageous.

It is time that we pass this with a strong recorded vote, and this should be a message to the Congress and a message to the White House and a message to Health and Human Services: Please, get the directive out to the States making it clear to States—right now we have, what, I ask the Senator, 26 States?

Mrs. MURRAY. Twenty-seven.

Mr. WELLSTONE. Twenty-seven States that have been able to go forward. But even Minnesota, which has gone forward, on the basis of talking to the Senator and Sheila, they have still gone ahead with clear direction. They know the amendment has been passed. They know what it is they are supposed to be doing, but they have not really seen it in writing from the White House, from Health and Human Services. We need that to happen. This is what this amendment is all about.

I conclude by thanking my colleague, Senator MURRAY. I think it is extremely important that not only women and not only their children, but there are a lot of men who care about this issue in the State of Washington, Arkansas, and all across the country—I think it is very important that people in our country realize you need a strong voice on this issue.

Senator MURRAY has been that kind of Senator. I really would like to thank her for all of her leadership and, for that matter, for just her tenaciousness in coming back over and over and over again and not letting up on this, because this is about people's lives, it is about a lot of women who have had to deal with something that we hope and pray none of our daughters and none of our sisters ever have to deal with. We ought to make sure that we provide them with the assistance they need.

I will tell you, as a Senator from Minnesota, a State which has done a lot of good work in trying to provide support for women and children, and as the husband of my wife, Sheila, who cares so much about this, I am honored to be in this struggle with Senator MURRAY, and I know we will prevail with a strong vote.

I yield back the rest of my time.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I thank my colleague from Minnesota for his strong words and his support of this amendment and all of his work on behalf of this as well as that of his wife, Sheila.

Mr. President, how much time remains on my side?

The PRESIDING OFFICER. The Senator from Washington has 10 minutes remaining.

Mrs. MURRAY. Mr. President, I am going to ask shortly for a rollcall vote on this amendment. It is imperative we have a strong rollcall vote on the underlying amendment so we can move it to conference with a very strong message from the U.S. Senate that we are going to support this with our voices, with our votes, and that we are going to watch it in the conference committee so it remains in this time.

We are going to send a strong message to the White House that this body is not just doing this as some kind of political maneuver, we are doing it because we mean it and our votes are going to back it up. We are not just going to talk about domestic violence, we are going to be there to make sure the action takes place to take care of the women who are abused and are put in this horrendous situation that each of us hopes never to be in. It is imperative we do this for the women who are being abused. It is also imperative we do it for the neighborhoods and communities they live in. And it is imperative we do it for our police officers across this country who are put in these violent situations far too often today. We need to do our part to prevent that from happening as well.

Mr. President, I am ready to yield the remainder of my time if there is no one going to speak in opposition, and to ask for the yeas and nays.

The PRESIDING OFFICER. Is the Senator seeking the yeas and nays?

Mrs. MURRAY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that we yield back all time on amendment No. 1118 and set it aside so Senator WELLSTONE can move forward.

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

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I will be ready in just a moment. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1087, AS MODIFIED

(Purpose: To increase funding for the Head Start Act)

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I modify my amendment and I send the modified amendment to the desk.

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

The amendment (No. 1087), as modified, is as follows:

On page 61, after line 25, insert the following:

SEC. . (1) The total amount appropriated under this Act to carry out the Head Start Act shall be $4,830,000,000, and such amount shall not be subject to the nondefense discretionary cap provided in section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, and shall not count toward the Committee and Subcommittee allocation pursuant to that Act; and

(2) the amount appropriated for the Department of Defense for fiscal year 1998 is hereby reduced by $525,000,000.

Mr. WELLSTONE. Mr. President, this amendment would add $525 million to the budget for Head Start. I thank my colleagues, Senator HARKIN and Senator SPECTER, for their fine work. This bill already provides Head Start with a $324 million increase in funding for 1997. The President, the Clinton administration, claims this will allow

Head Start to serve 1 million students by the year 2002.

The Head Start Association has said rather loudly and clearly that, in order for Head Start to actually serve 1 million students by the year 2002, it would need another $525 million this year and every year until 2002. Therefore, I offer this amendment to increase Head Start's funding by an additional $525 million to reach that goal of 1 million. We ought not say we will reach that goal unless we make the commitment.

In order to reach this goal, the offset that I propose would be by a rescission from this year's appropriation for the Department of Defense. I could talk about a whole lot of different waste in the defense bill, but just to give but one example, the B–2 bomber most recently has been reported to be unable to fly in the rain and the snow by the General Accounting Office. It, itself, is slated to receive $586 million from the Senate, and $928 million from the House. Though this amendment is not about the debate on the B–2, I understand the Senate has basically said no more B–2's; I think on the House side they have talked about moving forward.

The Head Start Program currently serves 740,000 students. Head Start, roughly speaking, serves 30 percent of the eligible population of 4- to 5-year-olds; and only 18 percent, if we were going to talk about right after birth until age 5. That means Head Start does not have the money to serve more than 2 million eligible 4- and 5-year-olds and roughly 4 million children from right after birth to age 5. There is no way that this amendment does enough, but it would make a difference. In my State of Minnesota, the money for Head Start covers 9,000 Minnesota children who are eligible out of a population of, roughly speaking, 25 million children.

I want to be clear about this. I know I will be up against a point of order and I do not expect to win on this amendment. This amendment says that there is still plenty of waste in the Pentagon budget—the B–2 bomber is one good example. On the House side it barely passed any increased funding, a plane that cannot fly in the snow or in the rain, but there are other examples as well. I am just saying, when we look at hundreds of billions of dollars for the Pentagon, couldn't we transfer $525 million to make sure we reach our goal of covering 1 million children?

But there are two parts to this amendment. The first part is, if we are going to say White House, or we are going to say U.S. Senate, that we are going to make sure that 1 million children are covered, let's not make it symbolic.

Let's do what the Head Start Association itself says we have to do to make sure we at least cover 1 million children. That is what this amendment says.

Mr. President, let me go on and say one more time that Head Start altogether leaves out 4 million children-plus who could receive a head start.

Just to focus on what this amendment is about, there are plenty of people who have said there is more than enough waste in the Pentagon budget—administrative waste, going forward with some weapons systems that make no sense whatsoever—but I hardly hear anybody on the floor of the U.S. Senate say that we should make a commitment to Head Start, which is just about that, giving children from families with really difficult circumstances a head start.

But we are not even going to reach our goal of 1 million children unless we provide this additional $525 million. We can do better, I say to my colleagues. We can do better for children in this country. We can do better for poor children in this country.

The scandal to all this is that we are not even coming close to covering 30 percent of the overall population that is eligible. On the one hand, we say we are committed to small children. On the one hand, we have all of this research that is coming out about the development of the brain, talking about how the early years are most critical—right after birth to age 3, actually before birth, that a woman expecting a child should get good care. But at the same time, when you look at just not the 4 and 5 year olds, but when you look at early Head Start, which is right after birth to age 3, we are covering just a small, tiny fraction of the children who could really benefit from this help. What my amendment does is try to appeal to the goodness of the Senate and try and say that we can do better.

Mr. President, I have been honored as a U.S. Senator from Minnesota to have the opportunity to travel in the country and to be in communities where people are really struggling against some pretty difficult odds, I will just tell you, whether it be in Chicago, in a heavily Latino neighborhood on the south side of Chicago and visit with the Head Start Program and you see these beautiful programs and you meet with the staff.

Mr. President, the men and women who are the Head Start teachers and teachers' assistants barely make above poverty wages, but you see the good work they are doing and you see all the ways in which children in Head Start receive some intellectual stimulation, they get referred to health care clinics so that they can get the health care that they need, so that they can get the dental care that they need. You see the way in which these programs, at their best, give children encouragement. It breaks my heart that we cover such a tiny percentage of children who could really use this help.

This really can make a huge difference in young children's lives. I have gone to east Kentucky and have spent time in Appalachia and, again, I met, first of all, mainly women who are Head Start teachers. They should be heroines. I asked a woman who has been with Head Start from the beginning, ''Why do you do this? You certainly don't make much money.''

She said, ''I do this because I know what I can do for children. I get so much satisfaction from giving these children this encouragement, from making sure I can help these children at a very young age.''

We know that. We say we are committed to early childhood development. We say we are committed to covering. We say we are committed to covering that. The administration says we have to make sure 1 million children are covered. We don't have enough funding. The Head Start Association tells us we don't have enough funding for actually 1 million students by the year 2002—1 million children—which is just a tiny percentage of the number of children who are eligible.

Mr. President, my amendment is pretty simple and straightforward. It says let's live up to our words. We have more than enough waste in the Pentagon budget. We ought to be able to transfer $525 million to make sure we live up to our word and/or contract with these children and at least 1 million children by 2002 receive this Head Start assistance.

I don't know whether or not we are or are not going to have a discussion about the testing and whether or not the Federal Government or an independent group develops tests, but I want to speak about that for a moment because I think it is directly related.

I want to say two things by way of conclusion. I say to my colleagues, I don't expect to win. I don't expect to get a huge vote because this is a transfer amendment, and I have seen what happens to transfer amendments from the Pentagon to these kinds of needs. But you can travel in this country, go to Chicago, or go to Minnesota, or go to delta Mississippi or go to Kentucky and meet with children and meet with families and see the good work that is being done by people who should be famous and then see how little they have to work with and how, if we would just invest a little more and not come to the floor and fight, more of these children would have a head start. So win or lose, I am going to speak out on this, and I am going to fight for it.

Mr. President, I also want to say to the President, to the White House and to the administration, I have been thinking long and hard, if we actually have a vote on this in the Senate, about this whole question of testing. I just want to say that I have a certain amount of sympathy, as someone who was a teacher for 20 years, with those who kind of wonder about the standardized tests. Yes, we want accountability and, yes, it is voluntary.

I will tell you, I have a real concern about the focus on tests as the way we measure accountability when I think that what it could very well lead to is standardized teaching to standardized tests, worksheets which are educationally deadening.

I will tell you, in Minnesota, every year I read very carefully the profiles of the teachers of the year. Not a one uses those worksheets. They get kids or young people to connect themselves personally to what is being discussed in the classroom.

I really worry about the direction we are heading in the name of reform. I also have quite a bit of sympathy with those who are saying to the White House and the administration, in all due respect, if you are going to talk about education and you find that people in the country are with you, if you are going to talk about each and every child should have the same opportunity to reach his or her full potential and people in the country are with you, and if you are going to talk about the need for us as a country to renew and reinvigorate our vow of equal opportunity for every child and you see that the people in the country are with you, well, then, do you know what? Make a commitment to do something about it.

In all due respect, just to have some more tests doesn't do a whole lot. If you don't change the concerns and circumstances of children's lives, starting with more of a commitment to Head Start, then we already know who is going to fail those tests. We have a huge learning gap in this country. We know the children who are going to do well, and we know the children who are not going to do well. What good is it to just fail those children again this time on a test?

If we don't make sure there is a commitment to Head Start and good child care so that children come to kindergarten ready to learn, and if we don't make a commitment to make sure these schools are inviting places for our children as opposed to being so dilapidated and dreary, investment in school infrastructure, of which we have done hardly anything, and if we don't make a commitment to making sure that these children have hope and have opportunity and that there is the necessary funding, then these tests don't do anything at l. They don't do anything at all. They amount to little more than a technical fix.

(Ms. COLLINS assumed the Chair.)

Mr. WELLSTONE. Madam President, on the other hand, I think that I will support this initiative. I have had a chance to talk with Secretary Riley. He is about as gentle a person as there is in Washington, DC. He is so committed to children, and I guess since it is voluntary and we are trying to develop good tests, it can't really hurt a lot. I guess it would represent a very small step forward and, as a college teacher for 20 years, I don't think I am prepared to just sort of say no, thumbs down.

But I would like to say to the White House, I would like to say to the President and I would like to say to my party, the Democratic Party, we are going to have to do much better. We cannot say that a million children are going to be in Head Start and then not appropriate enough money to make sure that happens.

We can't say that we are committed to equal opportunity for every child and not adequately fund Head Start and not adequately fund good developmental child care.

We can't say that we are for children doing much better in the schools and not invest hardly anything. We have invested hardly anything in rebuilding crumbling schools all across America. We cannot make that case.

If we are not willing to do what is necessary by way of changing the concerns and circumstances of children's lives before they go to school and when they go home and to make sure that these schools have the resources to work with and have the support services to work with, then these tests are just going to fail the same children who are already failing, in which case it is just absolutely outrageous.

This amendment that I have offered isn't going to win. Maybe this is what you call a message amendment. But I am telling you something, just as Fannie Lou Hamer, the great civil rights leader, said, ''I'm sick and tired of being sick and tired.'' I get a little sick and tired of our not following through the words we speak with some investment. Everybody is for the children except when it comes to digging in the pocket and making the necessary investment. It doesn't seem to me to ask too much to say an additional $525 million to go into Head Start so, as the Head Start Association says, we can at least serve 1 million children.

Madam President, I just want to make one other point, and then I will reserve the remainder of my time. Again, if I do this the wrong way, it is not going to come across well, and maybe a lot of Senators do this already. I am telling you, I have learned so much from traveling to communities around the country, just looking, learning from people who are in these struggles of trying to earn a decent living, trying to raise their children well, people struggling economically, looking at the poverty in this country and meeting women and men who should be heroines and heroes who are doing great work. It just reminds you of what being a U.S. Senator is all about.

Today on the floor of the Senate, I am hoping, even if I don't win, to at least push this debate forward. I just get a little bit indignant that the sole focus becomes testing, and we don't put the money into early childhood development. We don't make sure children come to kindergarten ready to learn. We don't do much of anything about investing in crumbling schools. We don't do much of anything about the huge disparity in resources that different schools have to work with. We don't do much by way of encouraging the teachers.

I will tell you something, some of the harshest critics of public schoolteachers couldn't last 1 hour in the classrooms they condemn. I am just asking my colleagues today to vote for a small transfer from the Pentagon budget to Head Start. There is no reason to spend a whole lot of more money on planes that can't fly in the snow or the rain. I think we can spend the money trying to provide help and support for children right here in our own country.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If neither side yield time, time will be charged equally against both sides.

Mr. WELLSTONE. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Minnesota has 10 minutes and 45 seconds remaining.

Mr. WELLSTONE. I thank the Chair.

Madam President, while I am waiting, just some facts by the National Commission on Children.

The first 3 years of a child's life are a time of unparalleled development: physical, intellectual, linguistic, social, and emotional.

I do not need to use a commission. Let me use my expertise as a grandpa. I mean, we know this as parents and grandparents. We know now what all of this scientific evidence tells us, which is, these early years are critical years. You have to get it right for children. In fact, if we don't get it right for children in our country, all these children—they are all God's children—then by age 3 many of them may never be ready for school or never ready for life.

The fact of the matter is, I am just saying, take $500 million for Head Start and at least make sure we cover 1 million children. If we were to consider not just the 4- to 5-year-olds, but the 3-year-olds and the 2-year-olds and the 1-year-olds, where it is probably even more important they get that additional help and families that additional support—we are covering maybe 15, 18, 20 percent of the overall number of children that need this help.

I find it very difficult, frankly, to explain, why don't we fully fund the Head Start program? If we are going to argue the Head Start program gives children—special children; all children—a special head start, and we are going to argue we know these are the critical years, then why in the world are we not investing the money? Why are we not matching our rhetoric with the resources?

Madam President, I will say it one more time, and then I will reserve the balance of my time. It is just on a personal note. I love the work that the

men and women and women and men in Head Start are doing.

Thank you for your work in eastern Kentucky, thank you for your work in Chicago, in Minnesota, thank you for your work in delta Mississippi; and I am sure it would apply to Maine and every other State in the country.

There is nothing more important you can do, because I just tell you that when I spend time with my 20-month-old grandson, the youngest, Joshua, I can't believe it—I have said on the floor before—every 5 or 10 seconds he is interested in something new. We are not, but these children are. They are experiencing all the unnamed magic of the world that is before them.

You can take that spark of learning, and you can ignite it. And if you ignite it in our Head Start programs—some of them do that; many of them do that—then you can take a child from any background to a life of creativity and accomplishment, or you can pour cold water on that spark of learning. And we do that to too many children.

In the State of Minnesota we could do so much more. We cover 9,000 out of 25,000 eligible children in Minnesota—9,000 out of 25,000.

Madam President, this is unacceptable. This is unacceptable. We cannot keep saying that we are for the children, we cannot keep saying we are for equal opportunity for every child, we cannot keep saying we are for education, Democrats we cannot keep saying we are for expanding opportunities and just focus on testing. We have to do much more.

Where is the investment to rebuild the crumbling schools all across the country? Where is the investment in Head Start? Where is the investment in early childhood development? Where is the investment in making sure that standards are met and that all of the children that are in our child care, whether they be centers or whether they be family child care or home-based child care, that standards are met and children are safe and children are receiving not custodial but developmental care? Where are the standards? Where are the resources? Where is the commitment?

I do not know if anybody is going to debate me today on this. My guess is it would be just to table the amendment or a point of order. But I would like to debate colleagues, whether they be Democrats or Republicans, about why it is we can't do better.

We just had this budget agreement. And everybody said that the budget agreement was so successful in dealing with the budget deficit. What about the spiritual deficit? What about the children deficit? What about the education deficit? What about the community deficit? We have not dealt with any of those deficits.

I just suggest that if we cannot put a little bit more money, at least into Head Start as a start, then we are not doing as good as we could be doing for children in this Nation.

Now, I grant you, the children who we are talking about in Head Start, these are children that are low income, these are children whose mothers and fathers do not have much by way of economic resources, and they do not have much by way of economic or political clout, but we ought to do better.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

If time is not yielded, it will be charged equally against both sides.

Mr. HARKIN. Madam President, I rise in support of the amendment offered by the Senator from Minnesota.

The Senator's amendment is simple. It would shift $525 from the Pentagon budget to Head Start, a very worthy program under the Labor, Health and Human Services, and Education appropriations bill. The amendment does not specify where in the Pentagon budget the funds would come from, we leave that for a later time and for input from our military leaders.

The first National Education Goal states that by the year 2000, all children will start school ready to learn. Earlier this year, scientific research provided irrefutable evidence that the best way to achieve this goal was in a child's first three years of life.

The release of this research was followed by a White House conference, television specials, magazine articles and a lot of talk about the need to improve activities to promote the development and education of young children.

The pending legislation made some very modest efforts to seize the momentum created by these activities, but were limited by the constraints of the budget agreement. The bill does make some improvements, such as:

Head Start is increased by $324 million with 10 percent dedicated to the Early Head Start program. This action doubles the set-aside for the programs which serve children up to the age of three.

The early intervention program for infants and toddlers with disabilities is increased by 11 percent to $351 million.

The National Institute of Child Health and Human Development is directed to examine the quality of child care funded by federal resources to determine to what extent recent research on the brain development of young children is being applied by recipients.

In addition, the bill provides more resources for other programs to enhance the education and development of young children such as the Parents as Teachers Program, child care block grant and the Healthy Start Program.

While I am pleased with these investments in the education of young children and appreciate Senator SPECTER's support, however, we need to do more—much more.

That's why I am pleased to support Senator WELLSTONE's amendment to provide additional funding for Head Start. At the present time, Head Start is serving only a fraction of the number of children eligible for these services. The additional funding would expand the number of children receiving the education and health services that will enable them to start school ready to learn.

The key to our economic security requires a well-educated, highly skilled and healthy work force and the strong foundation for this skilled work force is formed during the first years of a child's life. To achieve this goal however, it is critical that children start school ready to learn so that they will leave school able to earn.

The amendment would reduce funds for the Department of Defense so I would like to take a few moments talking about the Pentagon spending.

A perfect example of unnecessary spending is the plan by the other body to spend $331 million for additional B–2 bombers. The Department of Defense has spent $44.4 billion to develop and purchase 21 planes. Now B–2 bomber advocates want to purchase an additional 20 planes at a cost of $35.9 billion for procurement and operations. This works out to more than $1.7 billion per plane. In fact, this means that the B–2 bomber costs more than three times its weight in gold. Both the House Defense authorization and Defense appropriations bills include $331 million as a down payment for an additional nine planes, with the hopes of building even more later on.

The list of folks who oppose additional B–2 bombers has become noteworthy. The Air Force doesn't want more B–2 bombers. This has been well know for quite some time. Now, other parts of the defense establishment oppose additional planes. In August, Defense News—hardly a bastion of the liberal press—published an editorial entitled, ''Time to Pause on B–2.'' To quote the editorial, ''the U.S. House of Representatives should pause for reflection before it takes one more step to resuscitate the B–2 bomber program and buy nine more planes.''

I ask unanimous consent that the full text of the Defense News editorial be printed in the RECORD.

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

[From Defense News, Aug. 11–17, 1997]

TIME TO PAUSE ON B–2

The U.S. House of Representatives should pause for reflection before it takes one more step to resuscitate the B–2 bomber program and buy nine more planes. The extraordinary cost will far exceed the sticker price, estimated at $1.4 billion per plane.

The level of funding for defense during the next five to 10 years means that money for the planes would be taken from other weapon systems, such as the V–22 tiltrotor aircraft, the Comanche helicopter and various warships. It probably would adversely affect theater missile defense projects, a top national security priority, and even the purchase of basic munitions for operational units.

That is a lot to pay for a bomber the Air Force says is not a top priority.

In addition, serious questions recently have been raised about the viability of the

airplane itself. In a preliminary report, the Pentagon's director of operational testing concludes that only 22 percent of the fleet is available to meet wartime requirements when the B–2's low-observable systems are in use.

In addition, the amount of time spent on repair of the airplane's radar-evading devices was found to be excessive.

Though tentative, these are substantial criticisms because the low-observable, or stealth, characteristics are central to the value of the airplane.

The Air Force paid a premium price for the B–2 because it is supposed to be able to evade most radar systems.

These and other conclusions in the report should prompt a full-scale assessment of the B–2 fleet's readiness.

The testing director's findings are preliminary. But they are reason enough for the House to delay even initial funding for an expensive airplane that may not work very well.

Mr. HARKIN. Madam President, the latest bad news for the B–2 bomber program is a GAO report that describes some serious shortfalls with the planes stealth features. Specifically, the aircraft is more sensitive to climate and exposure than expected. The B–2 requires special shelters to maintain its stealthiness or prolonged exposure to the rain and other common weather problems can negate the planes' ability to avoid radar.

This is not the first time that the B–2 bomber has faced problems with rain. Two years ago, we heard how the bomber's radar had trouble telling the difference between a rain cloud and a mountain.

In fact, the Air Force hinted at the stealth problems back in 1990, when they sought approval for a series of special hangars for the B–2 bomber at a cost of $4.7 million each. I am sure the cost has gone up in the past 7 years, but even then, the problem of maintaining the sensitive stealth skin of the B–2 bomber was talked about. And now the GAO has shed more light on the B–2 bomber stealth problems. According to the GAO, the B–2 bomber must be kept in shelters because of their sensitivity to moisture, water or other severe climatic conditions. Unless flown in only the most benign environments—low humidity, no precipitation, moderate temperature—the plane requires extensive maintenance or it will not be ready for use. I think modern warfare will included conditions that aren't exactly the most benign environment.

Here is how some newspapers are now describing the bomber.

The New York Times has said: ''The $2 billion Stealth Bomber Can't Go out in the Rain.''

The St. Peterburg Times used the headline: ''Not so stealthy when wet.''

And Robert Scheer of the Los Angeles Times said ''Let's hope it rains on the B–2's parade.''

No one disputes that the Cold War is now over, but some in this body would like to continue funding the Department of Defense as if it had never ended. The B–2 bomber is the perfect example of that view.

The world today is not the world of 1985. True, there are dangers to the United States, but they are not the kind of dangers which justify a military budget that swallows discretionary spending and harms the very citizens it seeks to protect. They are not the kind of dangers that require more B–2 bombers at a price we cannot afford.

Even with the elimination of the Soviet Union, our defense spending is still over 80 percent of United States cold war spending levels.

The United States will spend nearly three times what any other country on the face of the Earth will spend on defense. In fact, if you added up the military expenses of all of Europe and South America combined, that is to say every country in Europe and South America together, you would find that the United States still out spends them on defense.

I ask you Madam President, what is all of this money for? What enemy are we going to fight? Cuba, who spends less then 1 percent of our military budget? Or Lybia or Iraq or Iran or North Korea or Syria? Or are we spending $266 billion a year simply to have a large military.

Let's look at some more figures. United States military spending is three times more than China, India, Pakistan, Russia, and Vietnam combined. It is more than double all of our NATO allies combined and it is larger than the next eight largest military budgets combined.

As it stands now, such a large portion of our discretionary budget goes toward defense spending, that the security of our citizens is threatened. Yes, Madam President, you heard me correctly, they are threatened by increased defense spending. Why? Because every extra dollar we spend on defense is a dollar less for education, for putting police on the streets, for stopping the drug epidemic and feeding our children.

The amount of discretionary funding spent on defense totals over 50 percent of the discretionary budget. That means that the portion of the total budget that Congress actually decides where it will get spent, or the discretionary budget, goes overwhelmingly toward defense. For every discretionary dollar, 50 cents goes to defense. Not education, not health care for children, but defense.

Every dollar we spend on defense has to come from somewhere. My question is, Where does the funds for defense come from? Does it mean one less school gets connected to the Internet? One more child can't read, or one more child goes hungry?

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Madam President, I assume I am recognized as being the person in opposition to the amendment.

The PRESIDING OFFICER. The Senator is so recognized.

Mr. DOMENICI. How much time do I have?

The PRESIDING OFFICER. Sixteen minutes forty two seconds.

Mr. DOMENICI. I surely will not use the entire time, and whatever time I do not use I will yield back.

In a couple minutes I will make a point of order against the pending amendment. It is a clear violation of section 306 of the Congressional Budget Act. I understand the sponsor of the amendment will move to waive the point of order, and I in no way want to infringe upon that privilege.

Let me just say this is a very simple proposition. Everybody should understand that in the budget agreement there were a lot of priority items. That meant, literally, that the Congress and the President agreed that certain programs would be funded at the President's request.

Anyway, it is pretty interesting because we indeed funded Head Start at the exact amount the President asked for in his budget. Head Start funding is increased substantially in this bill, $324 million above the 1997 level for total funding of $4.3 billion.

It just seems like enough is never enough, despite the fact that we adopted the President's request and increased funding for Head Start $324 million over last year.

My good friend, Senator WELLSTONE, wants to add an additional $525 million. Now, you understand I am not that quick with arithmetic, but $525 million versus an already existing increase of $324 does permit one to wonder what is the reason for this vote. It seems like it is a vote to vote, because we have already increased Head Start dramatically and in fact provided for this program exactly what the President requested.

Having said that, for those who are concerned about military spending, and there are many, we are struggling mightily on various defense measures that we are hoping the President will sign, and the arguments are essentially over money. What we have agreed on with the President in the bipartisan budget agreement is that we will provide a certain amount of money for all of defense. Then we say for the next 2 years you cannot spend any defense money for domestic programs. That is called a wall between defense and domestic spending.

When we did not have this wall between defense and domestic spending, defense never knew how much money they would receive because they had to wait for the completion of all the appropriations bills to see if money would be transferred from defense to domestic spending.

Again, Senator WELLSTONE did not want to confront the wall and tear it down so he went around it. He just established his amendment and then he said the amount appropriated for the Department of Defense shall be reduced by $525 million and the Head Start Act would be increased by the same

amount. However, his amendment would direct the Budget Committee not to show an increase in domestic spending so as not to bump up against the overall nondefense discretionary spending cap nor would it count against the committee and subcommittee allocations.

Therein lies the Budget Act point of order. By directing the Budget Committee not to follow the scoring rules established by the Congressional Budget Act, the Wellstone amendment is subject to a 60 vote point of order pursuant to section 306 of the Budget Act.

Madam President, the pending amendment contains matter within the jurisdiction of the Committee on the Budget in that it provides that the spending associated with this amendment will not be counted against nondefense discretionary spending caps. I therefore raise a point of order against the amendment pursuant to section 306 of the Congressional Budget Act.

Now, Madam President, I ask unanimous consent that I, prior to reading that and making that point of order, be deemed to have yielded back any time I have remaining.

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

Mr. DOMENICI. Could I be recognized for an observation, Madam President?

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

Mr. DOMENICI. I understand Senator WELLSTONE has time and clearly we would not vote until he uses his time or the leadership agrees.

The PRESIDING OFFICER. The time of Senator WELLSTONE has expired.

Mr. DOMENICI. I do not intend to move ahead until the leadership has agreed on the time, and that Senator WELLSTONE be given time to make his waiver motion prior thereto. I hope that is the game plan we are operating under.

I yield the floor.

The PRESIDING OFFICER. Without objection, the amendment will be set aside temporarily.

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

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

Mr. KENNEDY. Madam President, what is the matter before the Senate?

The PRESIDING OFFICER. There is no amendment currently pending.

AMENDMENT NO. 1116, AS MODIFIED

Mr. KENNEDY. I see. Well, I understand from the discussion of the leaders that we will be addressing the sense-of-the-Senate resolution as proposed by Senator DASCHLE and cosponsored by myself.

I send a modification to the desk on behalf of Senator DASCHLE to amendment No. 1116, a sense of the Senate regarding Pell grants and child literacy funding. The modification is technical and it has been cleared on the other side. I ask that it might be in order. If it is the desire of the Chair, I will withhold making that request for a moment or two.

The PRESIDING OFFICER. Is the Senator seeking immediate consideration of the amendment, or is he merely seeking to modify the amendment?

Mr. KENNEDY. I am merely seeking to modify it.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 1116), as modified, is as follows:

On page 61, after line 25, insert the following:

SEC. . (a) The Senate finds that—

(1) Federal Pell Grants are a crucial source of college aid for low- and middle-income students;

(2) in addition to the increase in the maximum Federal Pell Grant from $2,700 to $3,000, which will increase aid to more than 3,000,000 low- and middle-income students, our Nation should provide additional funds to help more than 250,000 independent and dependent students obtain crucial aid in order to help the students obtain the education, training, or retraining the students need to obtain good jobs;

(3) our Nation needs to help children learn to read well in fiscal year 1998, as 40 percent of the Nation's young children cannot read at the basic level; and

(4) the Bipartisan Budget Agreement includes a total funding level for fiscal year 1998 of $7,600,000,000 for Federal Pell Grants, and of $260,000,000 for a child literacy initiative.

(b) It is the sense of the Senate that prompt action should be taken by the authorizing committee to—

(1) make the change in the needs analysis for Federal Pell Grants for independent and for dependent students; and

(2) enact legislation and authorize funds needed to cover the costs of the changes for a $260,000,000 child literacy initiative.

(c) It is the sense of the Senate that the maximum level possible of fiscal year 1998 funding should be achieved in the appropriations conference committee.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Georgia.

Mr. COVERDELL. Mr. President, I ask unanimous consent that the pending business be set aside so that we might go to my amendment.

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

AMENDMENT NO. 1098

Mr. COVERDELL. Mr. President, I understand we have 10 minutes equally divided, and I would like to begin by thanking Senators ABRAHAM, LEVIN, HARKIN, and MCCONNELL for joining me in the amendment. The amendment is in response to the E. coli problems we have experienced. The amendment calls for $5 million in funds to be distributed at the discretion of the Secretary of HHS, and there is no offset. CBO reports that there are no budgetary problems with this amendment. Its score would not result in a budget point of order.

This amendment, the first section of the amendment provides funding for research on the development of improved medical treatment for patients infected with E. coli. The most vulnerable members of society susceptible to the chronic effects of E. coli infection are children and the elderly. Funding should focus on helping these individuals to recover fully.

Another section provides funding to help detect and prevent colonization of E. coli in live cattle. Research should focus on determining the host-pathogen relationship between cattle and the E. coli microbe and explore which factors contribute to its incidence in cattle.

Another section provides funding for the administration's food safety initiative, more directly for the important consumer education component. This national consumer education campaign on food safety represents a partnership between Government, industry and consumer groups. This is an important link in the food safety chain and a critical initiative endorsed last year by former U.S. Surgeon General C. Everett Koop, along with the U.S. Department of Agriculture, the Department of Health and Human Services and the U.S. Department of Education as well.

Another section would implement a much needed study on the feasibility of irradiating raw red meat to eliminate the E. coli pathogen and to develop a consumer education program on the process of safety. Currently available for poultry products, irradiation is a proven method of confronting this disease, and its feasibility on red meat needs to be explored.

Finally, a section requires the Department of Health and Human Services to contract with the National Academy of Sciences to determine the effectiveness of the U.S. Department of Agriculture's zero tolerance standard for E. coli in raw ground beef products and the effectiveness of its current microbiological testing program. An updated report on this testing will be helpful to the Congress, the U.S. Department of Agriculture, consumers and the industry in their search for tools to effectively identify and irradiate E. coli in raw ground beef products.

Mr. President, this is a very good amendment. It is directed at the long-term and short-term health of every American, and I urge my colleagues to support it.

Mr. President, I yield the floor and ask how much time is remaining.

The PRESIDING OFFICER. The Senator has used about 3½ minutes.

Mr. COVERDELL. I reserve the remainder of my time.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the distinguished Senator from Arizona.

Mr. McCAIN. I heard the distinguished Senator from Georgia say that this $5 million would be spent at the discretion of the Secretary. Is that correct?

Mr. COVERDELL. That is correct.

Mr. McCAIN. Does that not mean then that the language of the amendment would be changed to say, on line 4, ''of Health and Human Services may carry out activities'' and then on line 9 would say, ''The Secretary of Health and Human Services may carry out the following''? Would that not be the change that would provide this to be done at the discretion of the Secretary, because presently the copy of the amendment I have says ''shall,'' which does not provide discretion for the Secretary. It just says ''shall.''

Mr. COVERDELL. It does not have to. She doesn't have the discretion not to spend it. They are directed to perform these activities.

Mr. McCAIN. OK. Then the fact is it is not at the discretion of the Secretary when it says ''shall.'' The reality is that when it says ''shall'' in the amendment, it means there is no discretion involved.

In fact, $1 million goes to Atlanta, GA, is exactly what this amendment means. The Senator from Georgia knows very well that I have for 11 years opposed this kind of earmarking, and I intend to oppose it now. But let us not have the Senate be deceived by what the Senator from Georgia just said. The discretion of the Secretary is not the case. There is no discretion when the amendment says ''shall.''

If the Senator from Georgia would be willing to change that word to ''may,'' then I would be more than happy not only to agree with the amendment but support it. The fact is that now it means that $1 million to fund ongoing research to detect E. coli, or prevent E. coli in live cattle only goes to one place and that happens to be, by coincidence, in Atlanta, GA, which is something I strongly object to. If this kind of practice goes on and continues, we will see the unbridled earmarking of funds for specific projects in specific places, which the American people rejected in concept. There is an authorization process and there is an appropriations process. This meets neither one of those criteria.

I understand that the Senator from Georgia will carry this amendment overwhelmingly. I also support the research for detection and prevention of E. coli and infections. It is a worthy cause. There is a system and procedure that we go through, which the Senator from Georgia is violating grossly with this amendment, and therefore I will ask for a rollcall on this amendment. I fully expect it to carry overwhelmingly in his favor, but I wanted the Senator to know that I am deeply disappointed that he will not change the language of this amendment to the proper form which is ''may'' rather than ''shall.''

So, Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia.

Mr. COVERDELL. We do have a management problem here.

The PRESIDING OFFICER. The Chair did not understand the Senator from Arizona to ask for a rollcall vote.

Mr. COVERDELL. I think the Senator from Arizona is asking for the yeas and nays, for a rollcall vote at the appropriate time later in the day. I believe that is his motion.

Mr. McCAIN. My motion is, Mr. President, that I ask for the yeas and nays now.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second at the moment.

Mr. McCAIN. Then I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. McCAIN. Mr. President, I ask further unanimous consent that the yeas and nays be set aside until such time as the managers of the bill decide the sequence of the votes that will take place later this afternoon.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Georgia.

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

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

Mr. COVERDELL. Mr. President, in response to the good Senator from Arizona, I know he has been long an advocate of nonearmarking, but we just simply disagree on the substance of the amendment. There is no discretion about whether this research will be engaged in or the consumer studies, that is correct, but it is up to the discretion of the Secretary as to how and where that is funded. And that is the difference between us.

The Senator is wrong in his assertion that $1 million of this would go to Atlanta, GA. It is possible that some of these funds would go to the University of Georgia, although it is not directed. The reason that it is possible, I would say probable, is that unbeknownst to me until very recently but long known in the industry, the University of Georgia has been among the several isolated universities that has advanced research on how to deal with E. coli in the live herds versus the contemporary process of trying to somehow spot this disease and irradiate it in the processing of the meat itself. Indeed, a discovery on this would be at the level of discovering penicillin, and it just happens that that research is highly advanced at this university at a time when this problem is such a focus of the attention of health concerns in the United States.

Mr. HARKIN. Mr. President, I am pleased to cosponsor Senator COVERDELL's amendment. Americans need to have the cleanest and safest meat and other foods. The emergency of E. coli:0157H7 is a real threat which we must quickly respond to. The Coverdell amendment provides funding to address this important issue.

There are several ways to reduce E. coli and other microbial contamination and we need to take a multifaceted approach. More research is one of those. The new hazard analysis and critical control point inspection system will start to be implemented on January 1, 1998. That will be a considerable benefit. I believe that an additional improvement that can be made is the use of electronic pasteurization. Through that means, we can kill a wide variety of pathogens that may come into accidental contact with foods with no downside to the consumer other than a very small cost.

I would expect that the Department should coordinate its research efforts with USDA in those areas where the Department of Agriculture has expertise.

I am hopeful that we will move along all of these paths in order to provide the safest and most reliable possible food supply.

Mr. COVERDELL. Mr. President, I reserve the remainder of my time, if any is left.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BIDEN. Mr. President, I ask unanimous consent that I be able to proceed for 15 minutes as if in morning business.

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

COMPREHENSIVE TEST BAN TREATY

Mr. BIDEN. Mr. President, a generation ago, President John F. Kennedy called for a Comprehensive Test Ban Treaty. President Kennedy's visionary appeal met with modest but important success: the treaty banning nuclear tests in the atmosphere, in outer space, and underwater.

One year ago today, the world community took a major step toward fulfilling President Kennedy's vision.