the semicolon the following: ''; or to a qualified HUBZone small business concern, as that term is defined in section 3(p) of the Small Business Act''.

(e) TITLE 31, UNITED STATES CODE.—

(1) CONTRACTS FOR COLLECTION SERVICES.—Section 3718(b) of title 31, United States Code, is amended—

(A) in paragraph (1)(B), by inserting ''and law firms that are qualified HUBZone small business concerns (as that term is defined in section 3(p) of the Small Business Act)'' after ''disadvantaged individuals''; and

(B) in paragraph (3)—

(i) in the first sentence, by inserting before the period ''and law firms that are qualified HUBZone small business concerns'';

(ii) in subparagraph (A), by striking ''and'' at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(C) the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act.''.

(2) PAYMENTS TO LOCAL GOVERNMENTS.—Section 6701(f) of title 31, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) qualified HUBZone small business concerns.''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(C) the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o)).''.

(3) REGULATIONS.—Section 7505(c) of title 31, United States Code, is amended by striking ''small business concerns and'' and inserting ''small business concerns, qualified HUBZone small business concerns, and''.

(f) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—

(1) ENUMERATION OF INCLUDED FUNCTIONS.—Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)) is amended—

(A) in paragraph (11), by inserting ''qualified HUBZone small business concerns (as that term is defined in section 3(p) of the Small Business Act),'' after ''small businesses,''; and

(B) in paragraph (12), by inserting ''qualified HUBZone small business concerns (as that term is defined in section 3(p) of the Small Business Act (15 U.S.C. 632(o)),'' after ''small businesses,''.

(2) PROCUREMENT DATA.—Section 502 of the Women's Business Ownership Act of 1988 (41 U.S.C. 417a) is amended—

(A) in subsection (a)—

(i) in the first sentence, by inserting ''the number of qualified HUBZone small business concerns,'' after ''Procurement Policy''; and

(ii) by inserting a comma after ''women''; and

(B) in subsection (b), by inserting after ''section 204 of this Act'' the following: '', and the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o)).''.

(g) ENERGY POLICY ACT OF 1992.—Section 3021 of the Energy Policy Act of 1992 (42 U.S.C. 13556) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking ''or'';

(B) in paragraph (3), by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(4) qualified HUBZone small business concerns.''; and

(2) in subsection (b), by adding at the end the following:

''(3) The term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o)).''.

(h) TITLE 49, UNITED STATES CODE.—

(1) PROJECT GRANT APPLICATION APPROVAL CONDITIONED ON ASSURANCES ABOUT AIRPORT OPERATION.—Section 47107(e) of title 49, United States Code, is amended—

(A) in paragraph (1), by inserting before the period ''or qualified HUBZone small business concerns (as that term is defined in section 3(p) of the Small Business Act)'';

(B) in paragraph (4)(B), by inserting before the period ''or as a qualified HUBZone small business concern (as that term is defined in section 3(p) of the Small Business Act)''; and

(C) in paragraph (6), by inserting ''or a qualified HUBZone small business concern (as that term is defined in section 3(p) of the Small Business Act)'' after ''disadvantaged individual''.

(2) MINORITY AND DISADVANTAGED BUSINESS PARTICIPATION.—Section 47113 of title 49, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking the period at the end and inserting a semicolon;

(ii) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(3) the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o)).''; and

(B) in subsection (b), by inserting before the period ''or qualified HUBZone small business concerns''.

SEC. 605. REGULATIONS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall publish in the Federal Register such final regulations as may be necessary to carry out this title and the amendments made by this title.

(b) FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date on which final regulations are published under subsection (a), the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation in order to ensure consistency between the Federal Acquisition Regulation, this title and the amendments made by this title, and the final regulations published under subsection (a).

SEC. 606. REPORT.

Not later than March 1, 2000, the Administrator of the Small Business Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on the implementation of the HUBZone program established under section 31 of the Small Business Act (as amended by this title) and the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones (as that term is defined in section 3(p) of the Small Business Act, as added by this title).

SEC. 607. AUTHORIZATION OF APPROPRIATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) (as amended by section 101 of this Act) is amended—

(1) in subsection (c), by adding at the end the following:

''(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 1998.'';

(2) in subsection (d), by adding at the end the following:

''(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 1999.''; and

(3) in subsection (e), by adding at the end the following:

''(3) HUBZONE PROGRAM.—There are authorized to be appropriated to the Administration to carry out the program under section 31, $5,000,000 for fiscal year 2000.''.

Mr. BOND. I thank the Chair, and I express my gratitude to the distinguished Senator from Washington. 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. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

The Senate continued with the consideration of the bill.

Mr. GORTON. Mr. President, what is the order of business?

The PRESIDING OFFICER. The agreement was reached with respect to amendment No. 1122.

Mr. GORTON. Mr. President, that agreement was in error. It was a mistake on the part of Senator SPECTER. I ask unanimous consent that the agreement be switched to amendment 1076.

The PRESIDING OFFICER. Is there objection?

Mr. GORTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GORTON. Mr. President, I withdraw my previous request for unanimous consent, and I now ask unanimous consent that the debate limitation with respect to amendment No. 1122 be vitiated, and that there now be 60 minutes for debate prior to a motion to table amendment No. 1076. I further ask unanimous consent that following the expiration or yielding back of time, the amendment be temporarily laid aside, the Senate then proceed to vote on the McCain motion to waive with respect to amendment No. 1091, to be immediately followed by a vote on a motion to table the Gorton amendment No. 1076.

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

Mr. GORTON. Speaking on behalf of the majority leader, I now give notice

that it looks as though there will be two stacked votes after the debate on this amendment; therefore, in proximately 1 hour.

AMENDMENT NO. 1076, AS MODIFIED

Mr. GORTON. Mr. President, what is the subject matter before the Senate?

The PRESIDING OFFICER. Amendment No. 1076 is the pending question.

Mr. GORTON. Mr. President, just a few short weeks ago, Congress and the President of the United States agreed to provide $48 billion over the course of the next 10 years as an incentive to States to provide health care coverage to uninsured, low-income children. To receive this incentive, States must expand eligibility levels to children living in families whose incomes are up to 200 percent of the Federal poverty level.

Mr. President, this provided a real anomaly, a true injustice, with respect to the State of Washington, and to varying extents to the States of Hawaii, Minnesota, Rhode Island, Tennessee, and Vermont as well. In the case of each of these States, though I must speak most specifically to my own, State legislatures had already expanded the eligibility for Medicare to children in families with incomes up to roughly 200 percent of the poverty level.

Most of the other States, the States that were designed to be incentivized, have mandatory levels of 100 to 133 percent of the poverty level in incomes and, therefore, in many cases would get these incentives for a very significant expansion of Medicare eligible children for these Kidcare programs.

The net result, however, was that for States like the State of Washington, the fact that they had been more generous, more progressive, more liberal, whatever one wishes to call it on their own, resulted in a dramatic penalty. Our taxpayers, of course, will contribute to this expansion. We will, of course, be providing Kidcare to exactly the same group of children that all other States will be providing under the Kidcare amendment, but we will not be eligible for the incentive.

Mr. President, if that were allowed to stand, it would be a dramatic lesson to every 1 of the 50 States of the United States in dealing with every program for which there is Federal assistance—every program—the expansion of which is debated here, to make absolutely certain that they did not expand those programs themselves, because if they just waited, they would get more money from the Federal Government to do so; and if they went ahead on their own, they would be penalized.

That is exactly what has happened to us here. Our argument for more equitable treatment met with the approval of Members of the Senate when we were debating this issue, and our States were at least in part compensated for the work that they had already done. With the exception I think of a single State in the group of five that I have named, that benefit disappeared in the ultimate conference committee report.

Justice would require, it seems to me, Mr. President, that each of these States be made whole, receive the same Federal subsidy for all of its children who live in families between the previous Federal requirement at 100 to 133 percent and the 200 percent. Because of opposition, however, we do not ask that in this amendment.

All this amendment does is to say that the allocation that is made to all States, on the basis of the number of eligible children, be available for the State of Washington and for these other States to use to the extent that we have children living in families at less than 200 percent of the poverty level who are of course eligible under our law but did not avail themselves of the opportunity to become insured.

In other words, like the other States, we will get the incentive only for children who are not eligible now and who take advantage of the availability of such insurance in the future. Because allocations are made by the Federal Government on the basis of eligibility and not this precise use, and you just drawdown on the use, this amendment will not affect—I want to make this absolutely clear to every Member of the Senate—will not affect the allocations and the ability to use this program by any other State in the United States.

We are not raiding anyone else's money. The eligibility is created by what amounts to at least the State entitlement will only be using the allocation that we already get in theory but cannot use in practice. No one else will lose anything as a result.

Just to make certain that Members do not say this is simply a statement by the Senator from Washington without any basis, I ask unanimous consent a memorandum addressed to me from the Congressional Research Service dated yesterday expressing exactly the same view be printed in the RECORD at this point.

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

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, September 8, 1997.

MEMORANDUM

To: Honorable Slade Gorton Attention: Kristen Michel.

From: Jean P. Hearne, Consultant, Education and Public Welfare Division.

Subject: S. 1061—Amendment to Allow Title XXI Funding for Certain Children.

As you requested, I have reviewed your amendment to Title XXI, the State Child Health Insurance Program. The amendment would allow states to use Title XXI funding for the costs of covering under Medicaid certain waivered low-income children whose income is below the Medicaid applicable income level in the state but above the mandatory Medicaid income level for children. These waivered low-income children are defined as those living in states who have incomes at or above 200% of poverty and who had previously not been covered by Medicaid as of April 15, 1997. The provision would allow such children to qualify for enhanced federal matching funds for the cost of their Medicaid services.

The amendment would not change or otherwise affect the allocation of Title XXI funds to states but changes the way such funds may be used. The amendment would allow for certain states' allotments to be spent on children who are currently eligible for Medicaid coverage in such states but are not participating in the program.

Mr. GORTON. I will read the end of that memorandum: ''The amendment would not change or otherwise affect the allocation of Title XXI funds to states but changes the way in which state funds may be used.''

Will not change the allocation. It will change the way in which they can be used in my State and I believe to a greater or lesser extent, three other States.

I simply want to repeat for the purposes of this argument, these are States that did what the policy behind Kidcare in effect requires of other States before it was required by this Congress and by the Federal Government. These are States that went out of their way to try to see to it that health insurance was available to these relatively low-income families for their children. It is unconscionable, I believe, Mr. President, that we should say because you did the job we came to somewhat later, earlier, you are just out of luck. You can continue to pay for it yourself. You will not get the incentive that Kidcare provided, so on behalf of my own State and on behalf of a few others, without penalizing any other State in the Union, I am asking for the reasonable treatment, the fair treatment, that this amendment provides.

I suggest the absence of a quorum, and I ask unanimous consent it be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. 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. ROCKEFELLER. Mr. President, it is very unusual for me to come to the floor to oppose an amendment by my two very distinguished colleagues from the State of Washington, Senator GORTON and Senator MURRAY. I respect them both immensely. I have worked with them both closely. In offering this amendment, I understand what it is they are trying to do. There are many who look at States like Oregon and the State of Washington and Wisconsin and Minnesota and say these are truly progressive States, their governments are doing things which other State governments ought to be doing. Philosophically, therefore, it would be natural for them to come to the floor to ask for some kind of exemption with respect to the children's health care bill.

I come to the floor as somebody who has worked for a very long time on

health care, and who has worked virtually full time on this children's health insurance bill. This legislation is a huge accomplishment in terms of this Congress and the President. The children's health initiative is the biggest thing to happen in health care since the mid-1960's. Because of my experience in working on health care, and the children's initiative in particular, I am extremely leery about opening up the children's health legislation for amendment. I know that the chairman of the Senate Finance Committee, Senator ROTH, has said exactly that, and I know Senator MOYNIHAN has said exactly that. I am not sure there are many people who have talked against this amendment, which worries me because, on the face of it, it sounds like a reasonable request, a progressive State asking for an exemption because they are doing things at 200 percent of poverty, which most of the rest of the States are not.

Mr. President, I can tell you that this was a very difficult agreement to reach, the children's health insurance bill. There was the whole issue of whether funding should be made available for health care services as opposed to health care insurance? There was the whole issue of whether the Federal Government should have a say, since it is Federal dollars, in terms of how the money should be spent. The benefit package, which is something I care enormously about, in the children's health care bill is not as good as Medicaid, which is already currently available to millions of children in this country. And there was the question that I fought for, as did others, and didn't succeed, on whether vision and hearing should be included. You can make an enormously powerful case that if you don't provide hearing services, then you won't catch the problems children are experiencing in hearing, who then will stop learning. And, if you don't offer vision care, all kinds of other things happen. It was a very controversial bill. It was reached with great difficulty; the culmination and the consensus was reached with very great difficulty.

I firmly believe it would be very unwise for us to agree to the Gorton-Murray amendment simply because there will be a lot of other people following their lead, and leaders of other States will be following them through the door saying they do 200 percent of poverty, but we do 185 percent or 190 percent of poverty, or we are going to be doing it next year. There will be this and that, and all of a sudden the $24 billion will be quickly eroded.

Now, am I saying that as a knee-jerk response against what is a very good-faith effort on the part of the Senators from the State of Washington to improve their situation? No. I am opposing the amendment out of a genuine concern, accompanied by some degree of terror that, if this amendment passes, there will be many others that follow. One can almost say that, for example, had there not been votes this evening, I was meant to go to West Virginia to discuss with the Governor, Cecil Underwood, a Republican, how he and I were going to work together to help implement—to make sure that the children's health insurance bill works successfully in West Virginia. We don't do things as generously as the State of Washington because we cannot, we don't have the money. My point is that the children's health program is just being implemented. The ink is barely dry. The implementation date has not even arrived yet.

There is a very genuine concern on the part of those of us who care about health care that if we start modifying the agreement on children's health that was reached by the Congress and the White House that we will be in trouble. There are still 10 million children in this country that do not have health insurance. I remember there was common wisdom on the floor of the Senate that if we got the $16 billion for children's health insurance in the budget we could insure 5 million uninsured children. And if we got extra money—$8 billion or more from the tobacco tax—then we could insure all of the 10 million children. That was the hope for a period of time on this floor. As it turns out, it is much harder. It is much more difficult. And even with the full $24 billion we may only be able to reach 3.6 million American children who do not now have health insurance. In fact, the Congressional Budget Office, I think in responding to the submission of this amendment to them by Senators GORTON and MURRAY, indicated that, if this amendment is passed, it will result in 30,000 fewer children receiving health insurance coverage—not health services but health insurance coverage. Health insurance coverage is all that matters. That is the wraparound. That is the safety net. That is what guarantees your situation for the future. If we adopt this amendment, others will want special treatment and it would not be long before the $24 billion was eroded away.

So, again I emphasize the respect that I have for the two Senators from Washington. I emphasize that they have every right, just on the basis of the progressiveness of their State, to request this kind of an amendment. But, if they do, there are going to be many States—in the South, the Midwest, the Northeast, and the West—that are going to be losing as a result of it because others will come in with other requests, and gradually the $24 billion in new funding disappears.

So as somebody who cares passionately about health insurance being available to all 10 million children, and who a few years ago fought for health insurance to be available to 37 million Americans—now 40 million—who don't have it, I am rejoicing in the 3.6 million children who will get health insurance under the children's health insurance bill. But I do not want to see any fewer get it.

Therefore, I reluctantly, but energetically, oppose this amendment. I hope that my colleagues will understand that there are a lot of children across America that need to be protected and can best be protected by defeating this amendment.

I thank the Presiding Officer.

I yield the floor.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, it is difficult for me to express my disappointment in the position taken by my friend from West Virginia, although across party lines we have become so close personally to one another in a longtime, longstanding debate of great importance, that it always seems to me emotionally at least that we are likely to agree on other issues as well. I am greatly disappointed that we don't on this one.

He tells me that he had hoped to go and visit with the Governor of West Virginia on this subject today. Yet, the position he takes here is that while West Virginia should be—and I agree with him should be—entitled to an incentive for all of the new children who become eligible for Kidcare because their families' incomes are not more than 200 percent of the poverty line, that not only should the State of Washington be deprived of that incentive for children in exactly the same position who receive Kidcare through the State at the present time but that we shouldn't even be able to get the incentive for those who do not yet receive it who are in precisely the position of the children in West Virginia for whose circumstances he so eloquently speaks. I find it is hard to see that anyone could justify a situation such as that. But that is the situation in the bill as it was passed, not the situation as it was written here in the Senate.

We had the Senate version—Senator MURRAY and I. With this amendment it would have been unnecessary. The Senator expresses apprehension that if this amendment passes there will be many more States with requests.

But I simply say to the Senator that we already have an agreement on the amendments that are going to be considered on this bill. Someone may do it someday in the future in some other set of circumstances but not on the bill that deals with Medicaid and Medicare for the whole next year.

In any event, the idea that you can't do something that is right because it might create a precedent in the future to do something that is wrong is not a form of argument that seems to me to be especially persuasive. Since it is impossible for that to happen in connection with this bill, it perhaps has even less weight.

Obviously, there are differences with respect to this amendment. I regret that I have fought, and we worked diligently to see whether or not we couldn't come up with something that simply could be agreed to, as many other amendments on this bill have—we have not obviously been able to do that. I greatly regret it. But I greatly regret the position on the part of other Senators that, we have ours, it is tough on you, you don't need it.

With that, Mr. President, I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, will the Senator from Washington yield? I am not asking him to yield, but I simply would like to reply to what it was that he said.

The last thing in the world that I want the Senator from Washington, or anybody else, to think is we have ours, let others take care of their own.

First, I think the Senator from the State of Washington knows that is not the kind of legislator I am, in the first place. And, second, this is not about we have ours, and let others take care of their own.

This is a question of trying to keep stitched together an extremely fragile program about which there was enormous controversy. Enormous heat was generated. I was actually almost surprised when it passed not only in the Congress but was signed by the President. I would simply say that I understand that the UC agreement on this bill prevents Senators from offering similar amendments on this bill. But as a Senator who is on the Senate Finance Committee, the Governors were always asking for more ways to do things, new ways to get money, more flexibility. The list of demands kept growing.

Yes, I will fight for the children of West Virginia. But what I am thinking about here really is holding this program together, giving it a chance to work, not precluding the idea of the Senators from the State of Washington being able to introduce this kind of amendment a year or so from now, but simply let us get the children's health program implemented. Let us have a chance to see how it is going before we start exempting this situation and then that situation.

I hope that will be cleared by the parties.

Mr. KENNEDY. Mr. President, will the Senator be good enough to yield?

Mr. ROCKEFELLER. Of course.

Mr. KENNEDY. I have listened to the Senator from West Virginia. I agree with his position. I heard earlier today Chairman ROTH's opposition to this effort. And I understand other members of the Republican leadership also intend to speak on their concerns and opposition to this amendment.

Even under the proposal as it was recently passed, we will only reach about half of the currently uninsured children. As the Senator remembers, we had a more expansive and robust program that might have provided the kind of extensive coverage that the Senator from Washington was talking about. And with the work of the Senator from West Virginia and the Senator from Rhode Island, we explored options to expand coverage among working families in a manner that would have also helped states that have already acted to expand Medicaid eligibility guidelines. However, that proposal failed, and the program signed into law was designed instead to fit on top of what each state is currently doing. The new $24 billion investment in children's health is supposed to provide assistance to the 10 million children in working families whose parents are unable to afford health insurance and are not currently eligible for Medicaid.

So, with all due respect, it is difficult to argue in the abstract that we are pitting one type of uninsured child against another. The point of this new program is to build upon current state efforts to work up the income scale from what is currently being done in a state to ensure that the sons and daughters of working parents receive coverage. We are talking about teachers, nurses aides, janitors, and other professionals whose salaries are too low to enable them to purchase health insurance but too high to qualify for Medicaid. These are hard-working Americans who put in 40 hours a week, 52 weeks of the year.

I would join with the Senator from Washington and the Senator from West Virginia to see an expansion of this program.

Through the work of the Senator from West Virginia, Senator ROTH, Senator MOYNIHAN and others in that conference, we were able with the leadership of the President to get a good program enacted. But we are still probably going to need to enhance that program or strengthen it down the road.

As I understand the Senator's position, we ought to put the new program in place, find out what those needs are, and then I am sure the Senator from West Virginia will be a leader here in the Senate to make sure that we are going to help and assist families in the State of Washington, West Virginia, or Massachusetts to try to make sure that the sons and daughters of working families that are not covered are going to be able to get some coverage. Is that correct?

Mr. ROCKEFELLER. In response to the Senator, I wholly agree with what he said, by trying to make two points. One is that when we were first contemplating this children's health insurance bill and the whole key concept of maybe getting as much as $24 billion, or even perhaps more than that, it was sort of understood that first we were going to insure 5 million children of the families that had the least resources to buy health insurance, and then we would move on to those who had a little bit more resources but still would not be able to afford buying health insurance from the private market for their children. We were talking about 10 million children. There was a lot of opposition to insuring 10 million children. It wasn't 40 million Americans, but it was 10 million children. Then even with the $24 billion that was applied to the program we are now faced with the prospect of maybe only being able to cover 3.6 million children, leaving, therefore, many of the 10 million uncovered.

I think the Senator is also correct when he says this in no way precludes—I said that in my remarks earlier—the State of Washington, which has clearly moved out ahead of others, from, once the ink is dry, once we have seen a little bit more about how this works out, to be able to come back based on the ability of this particular State and others to be able to do more.

But at this point, I am very, very nervous given, frankly, the rather capacious nature of the Governors in trying to bring this money to them, having to put in fairly strict guidelines about what could be spent on health care services as opposed to health interests, which regrettably are different things. I really want to see the program work, and I think we need to give it a chance to work and then come back. And I will be the first to support the State of Washington and others that have done more than other States. But let us take this incredibly, frankly, put-together program and let it work before we open more doors.

Mr. KENNEDY. I thank the Senator.

The PRESIDING OFFICER (Mrs. SNOWE). The Senator from Massachusetts.

Mr. KENNEDY. How much time is there?

The PRESIDING OFFICER. The Senator has 2 minutes 26 seconds.

Mr. KENNEDY. What is the regular order at that time?

The PRESIDING OFFICER. The Senator from Washington has 5 minutes, and then the Senate will vote on a motion to table.

Mr. KENNEDY. I see the other Senator from Washington here who I know has an interest. I will withhold my remarks to permit her to speak.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. I thank the Chair.

I rise in support today of the pending Gorton-Murray amendment. I think, as we are all aware, President Clinton recently signed into law legislation that really calls for the largest expansion of children's health care since the creation of Medicaid in 1965. I worked very hard on this initiative with my colleagues, Senator KENNEDY and Senator ROCKEFELLER. I was really thrilled to be a part of this historic effort to provide real health care security to the most precious and vulnerable children in our Nation. I think that is an accomplishment of which we can all be

very proud, and it will not only provide health care security for our children but economic security and peace of mind for millions of hard-working parents as well.

I know the benefits of expanding health care benefits for children because my home State of Washington took a similar step back in 1994. The State took the lead because it was concerned about the future of its children and it was expecting us to enact a comprehensive national health security act for Americans at that time. The State of Washington wanted to be sure that our children were the first priority in any health care security efforts, and I applauded the action by the State and am pleased to report that all children through the age of 18 in Washington State who live in families up to 200 percent of the Federal poverty level are covered. The State did not have to take that step and expanded their Medicaid program beyond any Federal mandatory level. As a result of that action, 427,000 children are now guaranteed access to quality, affordable health care. This is a fact that I take a great deal of pride in, and I know that our public health system has benefited.

In the last Congress, when I started working to expand health care insurance for 10 million children, I was assured that any expansion would benefit all States and that those States that had expanded their programs up to 200 percent of poverty would not be treated differently. I had seen the success in my State and seen the benefits of providing comprehensive health care to uninsured children. As a result, I worked hard to fight for nationwide expansion.

During negotiations, I worked with several other Members to ensure that the amount of funding for children's health care was increased. I supported efforts in the Chamber to fund this expansion at $24 billion, providing the greatest amount of resources available that will ensure the greatest number of children are insured.

The final budget reconciliation legislation was a major victory for children and families in this country, but unfortunately my State of Washington will not benefit to the degree I had hoped. My State and others that made the commitment to their children previously and provided coverage up to 200 percent of the Federal poverty level will not be able to access the $24 billion that was provided for in this bill. The State will have to expand their current program by 50 percent in order to access any of those new funds. I am hopeful that the State will act to cover more children, if the resources are available at our State level, but in the immediate future Washington State will not be able to provide additional coverage, meaning that the intent of the legislation to cover more uninsured children will not be met in my State. We have made great strides in covering uninsured children, but we still have over 300,000 children who have no health insurance. We should be making every effort to encourage our States to expand the number of children covered, not discourage them from doing so.

The Gorton amendment would only allow States that have covered children up to 200 percent of the Federal poverty level to access the children's health block grant money to cover children from 133 percent to 200 percent of the poverty level, meaning that States could access these funds for new children that are not currently required to be covered. Again, this would apply only to new children as of October 1, 1997. Any child currently enrolled up to 200 percent would remain in the Medicaid Program. We are simply trying to treat new children in Washington State the same as they will be treated in Idaho or Montana or any other State. A new ensured child is a new ensured child regardless of which State they live in.

I have heard some of the concerns about this amendment and the impact that it could have on States that are currently at 200 percent. Let me assure my colleagues that, unfortunately, there are not many at this level. I have also heard about the substitution effect. Included in this amendment is a requirement that the State must certify that the child has not been insured in the past. We are only talking about an insured child as of October 1 of this year.

Finally, this amendment only applies to those new children that the State made the decision to cover, the optional children. Those below the 133 percent will not be included for any match purposes.

My colleagues should also keep in mind that there is already strong maintenance-of-effort requirements in the act which apply to the States as well. I listened to my colleagues, Senator KENNEDY and Senator ROCKEFELLER. I understand their concerns and I want to remind them that we all share the same goal. I hope we can continue to work on this so that the children in my State are treated as equally as other children across the Nation regarding that $24 billion. Our Governor has told us he needs this amendment to look forward to ensuring new children. I hope we can continue to work together to make sure that happens for the children of Washington State as well as the rest of this country.

I yield the remainder of my time to Senator GORTON.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 1076, AS MODIFIED, WITHDRAWN

Mr. GORTON. Madam President, my colleague from the State of Washington and I have worked diligently on behalf of what we consider to be equity to our State and to two or three other States as well. It had been our firm contention and our fond hope that we would be able to secure the passage of this amendment by unanimous consent. It is quite obvious that we cannot. Each of us disagrees with the rationale presented by the other side on the amendment. But our preference is to try to live and fight this issue another day, and for that reason I ask unanimous consent to withdraw the amendment.

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

The amendment (No. 1076), as modified, was withdrawn.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 1109

Mr. NICKLES. Madam President, earlier today the Senate adopted an amendment No. 1109, an amendment that I introduced along with Senator ROTH, Senator MOYNIHAN, Senator GRAMS from Minnesota, and Senator HAGEL, that deals with Social Security Administration personal earnings and benefit estimate statements [PEBES].

The amendment that we passed requires the Social Security Administration to include the employee contributions as well as employer contributions on the PEBES. Right now, when those statements are compiled, they show employee contributions but not employer contributions. Due to the support of the chairman of the Finance Committee and Senator MOYNIHAN, these statements in the future will show not only what the individual contributed but also what the company contributed and what their future anticipated benefits will be.

I think it is a good amendment. It is a disclosure amendment. A lot of people are not aware of the fact that not only do they contribute 7.65 percent of their payroll for Social Security and Medicare, but their employer matches it, for a total of 15.3 percent of payroll. This personal benefit statement will be sent to every eligible working American from Social Security beginning in fiscal year 2000. Americans will receive this financial disclosure every year, so people will know what they have contributed to Social Security and what their employer has contributed as well.

I thank my colleagues for supporting this amendment, especially the chairman and ranking member of the Finance Committee and Senator SPECTER.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I would like to have consent to be able to speak for 7 minutes.

The PRESIDING OFFICER. The Senator has the right to speak.

Mr. KENNEDY. I thank the Chair.

Madam President, there are items that we will be dealing with—the McCain amendment, the Durbin amendment, and also the other Gorton amendment which we will be voting on in just a few moments—and I would like to speak very briefly on each of them.

I strongly support the Durbin amendment which will repeal language in the

budget agreement that deducts the cigarette tax devoted to children's health from the amount of the settlement.

In effect, this last-minute loophole inserted in the budget bill by Big Tobacco in the dead of night behind closed doors reduced the value of the settlement by $50 billion. It was one of the most devious and reprehensible actions that I have witnessed in my years as a Senator.

The lesson is clear. When tobacco issues are debated in the public, the American people win. But when the debate moves into the backrooms of Congress, the tobacco industry's interests come first, and the public interest comes last.

It's time that Congress stood up to the tobacco industry and said ''no'' to Joe Camel and the Marlboro Man. This tobacco loophole has no place in the budget agreement, I urge my colleagues to support the Durbin-Collins amendment.

I strongly oppose the McCain amendment which would have a devastating effect on our essential efforts to address physician work force issues.

Medicare pays approximately $9 billion per year for graduate medical education. Over the years, these payments have been a strong incentive for hospitals across the country to increase the size of their residency programs. The increase has resulted in turn in widely reported concerns about an oversupply of physicians. The Institute of Medicine, the Pew Health Professions Commission, the Association of American Medical Colleges, and the Council on Graduate Medical Education have all emphasized the urgency of dealing effectively with this problem, and Congress can't ignore it.

In addition, the longstanding hospital reimbursement policies have been more generous for specialist residents than primary care residents. As a result, most of the growth in the number of residents has come in specialist positions, not in primary care, and has produced an extremely serious oversupply of specialists.

Congress addressed these issues in the balanced budget legislation enacted this summer. We expanded the New York graduate medical education demonstration project into a national program to encourage teaching hospitals across the country to adjust the numbers and types of physicians they train. The program provides incentive payments to teaching hospitals to voluntarily reduce the number of medical residents in training, and to increase the proportion of residents training in primary care.

The program pays hospitals for residents who are not being trained. But the payments are reduced over time and phased out completely after 5 years. These payments help cushion the blow for institutions heavily dependent on the Federal funds, and allow an orderly downsizing of residency training programs, with minimal disruption to the provision of health services.

The McCain amendment, however, would eliminate incentives for hospitals to downsize the overall number of resident positions and recalibrate the number going into primary care. The glut of physicians and the imbalance between general practitioners and specialists would go unaddressed.

The McCain amendment could also have a harmful effect on rural and underserved areas. The budget agreement established a hospital-specific cap on residents, based on 1996 levels. It gave the Secretary of the Department of Health and Human Services the authority to lift the cap for residency programs in rural and underserved areas if the total number of positions does not exceed the national cap. By eliminating these payment incentives under the McCain amendment, large residency programs will no longer downsize. This result will hamstring efforts to establish new residency programs to address the health care needs in rural and underserved areas due to the overall cap.

Finally, the amendment would result in over $300 million in lost savings, according to CBO estimates.

A critical part of health reform is responsible action to reduce the oversupply of physicians and correct the imbalance between primary care practitioners and specialists. The Budget Act is helping us put a more effective policy in place, and we should not reverse the progress we have made. I urge my colleagues to reject the McCain Amendment.

The second Gorton amendment hurts students and goes against the Nation's commitment to helping the poor and educationally disadvantaged students who need our strongest support.

Although meaningful education reform happens not at the Federal level, or even at the State level, but at individual schools, the State and Federal Governments are important partners in helping to improve education for all children. We all need to work together to improve the Nation's public schools.

This amendment does not support meaningful reform. Instead, it shifts Federal dollars away from the neediest communities to the wealthier ones. It guts carefully crafted and widely supported programs with specific purposes. And it undermines the State's role as a crucial partner in improving the achievement of all students.

This amendment is the wrong direction for the Nation's children and the wrong direction for the Nation's future. It is not an attempt to offer a helping hand for local schools. It is simply a thinly veiled attempt to dismantle the Federal role in education.

Currently, Federal funds help schools and school districts improve reading and math skills of disadvantaged students, help teachers get the extra skills they need to teach all children to high standards, help communities create safe and drug-free schools, and help communities modernize their schools. This amendment would strip Federal funding of these crucial, targeted purposes intended to help children who need it most.

Time and time again, research has indicated that it is in high-poverty communities that children are most likely to fall behind and drop out of school. This amendment disregards the research and the testimony that we have heard over and over about the need to help disadvantaged and low-achieving students.

This amendment would shift funds from poor school districts to wealthier ones. Currently, some States depend heavily on Federal funds. Alabama, Arkansas, and Louisiana get more than 10 percent of their schools funds from the Federal Government. Mississippi depends on the Federal Government for a full 21 percent of its education funds. We should not do anything to weaken that support.

As a Nation, we have made a commitment to help all students have the opportunity to get a good education. We have a responsibility to make sure that public tax dollars are well spent. This amendment provides no accountability mechanisms and it is not fiscally responsible. Reforming the Federal role in education is neither a casual nor quick decision, and it should not be taken lightly.

Federal education laws are more flexible and school-friendly than ever before. States and local education agencies are working in greater and more effective collaboration. Schools are helping all children meet high standards of achievement. We should not undermine these efforts when they are just getting off the ground. We should support efforts to improve education for all students, not undermine them.

I also strongly support and am a cosponsor of Senator DASCHLE's sense-of-the-Senate amendment with two key provisions—that Pell grants should be funded at a total of $7.6 billion, and that a child literacy initiative should be funded at $260 million this fiscal year.

Pell grants are an indispensable source of college aid for low- and middle-income students. But too often, the current eligibility rules shortchange too many students.

Today, single independent students at public 4-year institutions are not eligible for a Pell grant if their annual income is over $10,000. Many of these students will not benefit from the tax credits for college expenses recently enacted in the budget law. Greater Federal assistance is needed to help them meet their most basic college expenses.

A similar problem faces parents trying to pay for college for their children. Current law is actually a disincentive for college students to work part-time to help pay for the cost of their education. Yet over three-quarters of undergraduates now work part-time while enrolled in college.

It makes no sense for the current law to penalize students who are willing

and able to work their way through college. Many students work full-time during the summer and part-time during the school year. But if they do so, the response by current law is to reduce their eligibility for Pell grants. We should be encouraging students to take part-time jobs, rather than take out additional loans, as long as their jobs do not become so burdensome and time-consuming that they interfere with the students' education.

The budget agreement contained a clear commitment to allocate $700 million to reform the needs analysis formula for Pell grants. The House appropriations subcommittee provided $500 million to meet this commitment, but that is not sufficient. The Senate bill is far worse—it contains no funds at all for this needed change.

The second part of the amendment will help more children learn to read well. We know the dimensions of the current problem. Some 40 percent of the Nation's fourth grade children cannot read at the basic level.

Low achievement in reading is a national crisis, and it demands immediate attention. Children who lack good reading skills by the fourth grade are far more likely to fall farther and farther behind, and eventually drop out of school. President Clinton is right to focus on this critical problem, and Congress should respond.

This amendment will provide $260 million for a child literacy initiative—and it will provide the funds this year. As the ranking member of the Labor and Human Resources Committee, I am strongly committed to seeing that legislation authorizing the initiative is enacted as soon as possible. But it makes no sense to delay the appropriation.

I urge my colleagues to support these two important sense-of-the-Senate provisions. We all know that the final bill will be written in the conference between the Senate and the House. I hope we will have an overwhelming vote of approval to insist that the conferees find a way to pay for these two essential reforms in school and college education.

Another essential reform for elementary and secondary students is the President's proposal for a voluntary national test for fourth grade reading and eighth grade math. Schools need clear standards of achievement and realistic tests to measure their achievement. These tests are a tool they can use to measure their progress and identify areas of need to bolster student achievement.

I strongly support having the National Assessment Governing Board take responsibility for formulating policy guidelines for the voluntary reading and math tests. NAGB is in the best position to oversee this important issue. This bipartisan group has done an excellent job managing the National Assessment of Educational Progress. As we all know, NAEP has served to point out how we are doing as a nation and helped educators think about ways to improve our education system.

The voluntary national tests, however, will go further. They will help each school district, each school, each student to identify areas of need in order to make the necessary changes to improve individual student achievement.

The tests are linked to national and international standards. They will show whether individual students are meeting widely accepted standards in reading and math. No current test is available to provide this essential information to students, parents, teachers, and school administrators. For families that move from community to community or State to State, there is no current way to measure the performance of students on a comparative basis.

The President's proposal for voluntary national tests has broad support from business leaders, including the Business Roundtable, the U.S. Chamber of Commerce, the National Business Alliance, and many others.

It also has strong support from the education community, including the Council of Great City Schools, the Chief State School Officers, and the National School Boards Association.

Seven States, including Massachusetts, and 15 major cities have already agreed to use the voluntary test.

Voluntary national tests are an excellent way to support local school reform and hold schools and districts accountable for student achievement. I urge the Senate to reject any effort to deny Federal funds for these tests.

Finally, the Nickles amendment is a blatant attempt to punish the Teamsters Union for winning the UPS strike, and it does not deserve to pass. The amendment would require the Federal government to abdicate its responsibility under the court-approved consent order signed by the Justice Department under the Bush administration. If the Federal Government abdicates this responsibility, it could be subject to contempt proceedings in Federal court.

This is an unacceptable result. It would substitute the Senate's judgment for that of the Federal court about the meaning of the consent order. This is not how the judicial process was meant to operate, and I urge my colleagues to oppose the amendment.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I ask unanimous consent that the vote that was originally scheduled to occur immediately after the Gorton amendment occur at 6 o'clock.

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

Mr. KENNEDY. Madam 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. DURBIN. Madam 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. 1078

Mr. DURBIN. Madam President, I have an amendment that is pending, I believe, amendment No. 1078. I ask for the regular order that this amendment be considered.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Amendment No. 1078, previously proposed by the Senator from Illinois [Mr. DURBIN].

Mr. DURBIN. I ask unanimous consent to dispense with further reading of the amendment.

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

Mr. DURBIN. Thank you, Madam President.

It is my understanding that there is an agreement that in 25 minutes or so a vote will be taken which will interrupt this debate. And during this pending period, I am sure that others will be joining us to discuss the amendment which I have called up. It has not only been my intention to call up this amendment, but any amendments thereto this evening. I hope we can dispense with this matter. I have waited all day for this opportunity.

I think it is an important amendment. It is one that has received a lot of attention, but it was an amendment which people almost missed because, you see, in the tax bill that we considered just a few weeks ago, it was not until the final hours before the vote that someone discovered a provision buried deep in this tax bill, which literally gave a $50 billion tax break to tobacco companies in the United States.

The reason why amendment came as such a surprise was it was not in the House version of the tax bill, it was not in the Senate version of the tax bill. No committee hearings were heard on this issue. No debate was held on the floor of the House or the Senate on the wisdom of this issue. But in fact we have come to learn that the tobacco companies, through their lobbyists, inserted this provision in the tax bill at the last minute.

It was a provision which I have called a ''legislative orphan,'' because for weeks afterward, after it was discovered, no one would claim parentage of this poor little $50 billion amendment—no fathers, no mothers, no living relatives. People said it appeared mysteriously, that it was approved by the leadership but no one could quite tell us where it came from.

Well, finally, after weeks of investigation, the USA Today reported, through a staff member, that it was a product created expressly by the tobacco companies and slipped into this tax bill at the last minute in an effort to deal with some of the politics of raising the tobacco tax.

The tobacco companies have come before us time and again and said, ''It's a new day. We have learned our lesson. We are no longer the oppressive industry, ignoring the reality of public health. We now want to sit down and settle. We want to work with our legislative leaders in Washington.''

Well, it was a new day when it came to the speeches, but not when it came to propose this amendment to the tax bill. In fact, it was an old day, old politics, old time religion. Wait for the dark of night, and in that stealthy atmosphere come in with an amendment worth $50 billion.

Here is what it said. We were going to raise the tobacco tax, over several years, 15 cents. That money was to be raised to provide health insurance for uninsured children across America so that States could invent their own programs and create their own approaches to cover these children. And the tobacco tax revenues would help defray that cost.

Well, the tobacco companies have decided that they want the value of this tobacco tax increase to be set off against anything they would have to pay in a final settlement, the so-called universal or global settlement.

So, at the last minute, they come in with this provision, a $50 billion setoff, or break, for the tobacco companies, without a minute of hearings, without any consideration in the House or the Senate, without any deliberation. They said, ''Let's make this part of any tobacco deal. We get a $50 billion break.'' It is no wonder that cynicism grows across America when this sort of thing is done. It really raises a question about whether we are doing our job right.

Some of the tobacco companies have come back and said, ''Now, wait a minute. This is nothing unusual. A $50 billion setoff against our offer of $368.5 billion—it is a natural thing.'' Well, I am afraid it isn't. It turns out State attorneys general, including Michael Moore of Mississippi, sent a letter on behalf of this group, and they said that ''. . . [the] recent action by Congress to use revenues raised by new taxes as a credit toward our settlement is unacceptable. . .'' This comes from Michael Moore of Mississippi. ''As you know, this concept was discussed and rejected by us during our negotiations. This industry''—the tobacco industry—''has agreed to specific dollar amounts in the settlement, and we will not agree to any diminution of those amounts not specifically set forth in the agreement.''

Attorney General Moore, who led this effort of 40 different States to bring an action against the tobacco industry, has in fact said that this is not part of the agreement. It was expressly rejected.

So the tobacco companies, having lost in their negotiations with the State attorneys general, came up to find some friends on Capitol Hill. And they clearly must have found them, because now in fact we have this amendment as part of the tax bill, signed into law.

The amendment which I propose today repeals it. It says that the tobacco companies cannot sneak in here in the dark of night and put this kind of provision in the law. I tried to attack this provision in the closing hours before the tax bill was voted on. Some of my colleagues told me later they were not sure what I was doing, and it was late, and they were not certain what the point of order was setting out to do, but they want a chance to vote on it again. Well, we are going to give them that chance today, I hope, if we do not get muddled down by the efforts of the tobacco companies again to pull a fast one.

I am reminded of a story because of what we are setting out to do here. An Irishman was seen digging around the wall of his house. He was asked by his neighbor what he was doing. He said, ''Faith, I'm letting the dark out of the cellar.'' That is what we are trying to do here. We want to let the dark out of the cellar in the tax bill. That section of miscellaneous provisions which was supposed to be innocuous, not costly, noncontroversial, turned out to include this $50 billion break for these tobacco companies.

I think that what the tobacco companies are trying to do here is to start writing the tobacco liability settlement legislation even before Congress gets its chance. And they want this $50 billion break to start with.

The tobacco company provision in the tax cut bill says the increase in the tobacco excise taxes collected as a result of the balanced budget law will be credited against the total payments the tobacco companies would make as a result of Federal legislation implementing the settlement.

The tobacco tax increase in the final version of the balanced budget bill raised $5.2 billion in the first 5 years, and a total of $16.7 billion over 10 years. Projected out to the 25-year life of the proposed settlement, we can estimate that the revenues at stake amount to around $50 billion over 25 years. I do not know if there was another provision in that tax bill of this magnitude. One small section that will literally cost the taxpayers of this country $50 billion that was put in this bill without a minute of debate or hearing.

That means the new balanced budget law, as amended by the tax cut bill, would give the tobacco companies a $50 billion credit in any future settlement. Boy, that is a good day at work if you can come home as a lobbyist for the tobacco companies, and the spouse says to the lobbyist, ''How was your day at work?''

''I had a great day.''

''What did you do?''

''I just saved the tobacco companies of America $50 billion without anybody noticing. We stuck it in the bottom of the tax bill, and now no one will ever know.''

Well, that isn't what happened. It was discovered. And today it will be addressed directly.

The revenues in this bill were not intended to set off the liability of the tobacco companies. They were in there to provide health insurance for low-income kids. They should not be used to lessen the financial liability of the tobacco companies.

Moreover, if this provision is not repealed, the tobacco industry is going to argue that $50 billion should be taken out of the money the settlement envisions for public health initiatives. Keep in mind, these tobacco companies sat down with 40 State attorneys general and said, ''We are willing to reach a settlement. And we are willing to invest money in public health initiatives to reduce children's smoking, for example.''

Now they have said, ''We won't give you $368.5 billion as promised over 25 years. We want a reduction of $50 billion.''

So what will be at stake here? Enforcement of this agreement, public information campaigns, smoking cessation programs, industry liability payments. We should not give the tobacco industry this $50 billion windfall.

I am pleased that Senator COLLINS is joining me. I see she has come to the floor here. Senator COLLINS of Maine has agreed with me that we should repeal this sweetheart deal for big tobacco. American taxpayers should not be subsidizing the tobacco industry to reduce its liability for past misconduct.

The amendment is very simple. It simply says that subsection (k) of section 9302 of the Balanced Budget Act of 1997, as added by section 1604(f)(3) of the Taxpayer Relief Act of 1997, is repealed. Or, in plain English, the tobacco industry credit added to the balanced budget bill by the tax cut bill is repealed.

The groups that have joined me in support of this effort grow by the hour. I am very proud of those who are endorsing the Durbin-Collins amendment to repeal that $50 billion tobacco credit.

I will read the groups for the RECORD: Action on Smoking and Health; the American Association of Critical Care Nurses; the American Cancer Society; the American College of Preventive Medicine; the American Heart Association; the American Lung Association; the American Medical Association; the American Public Health Association; the American Society of Addiction Medicine; Children's Defense Fund; the HMO Group; the Latino Council on Alcohol and Tobacco; the National Association of City and County Health Officials; the National Center for Tobacco-Free Kids; the National Council of Churches; the National Education Association; the National PTA; the National Women's Law Center; Partnership for Prevention; Public Citizen; Taxpayers for Common Sense; U.S. Public Interest Research Group; and the Women's Legal Defense Fund.

Some have argued we should just let this provision stand and then try to adjust the settlement accordingly, by adding $50 billion to the required payments. We should not have to expend valuable energy trying to increase the settlement price just to return to where we stood before July 31.

We should repeal this provision now, clear the decks, and start from a level playing field in deciding what the settlement price would be. Many of us think the final settlement price should be higher than $368 billion.

I might add that my colleague from Kentucky, Senator FORD, is offering an amendment in the second degree to this. He suggested at one point he thinks $368.5 billion should be the total that is in the settlement. Though I will not oppose his amendment as written, I disagree with that particular aspect. But whatever the price, it should not have to be artificially adjusted to fix a provision added in the dark of night that almost no one knew about and almost no one agreed to.

Some have also argued that the settlement provision has no meaning and no effect. When I brought it up on the floor some of my colleagues said, ''Well, this is not binding. It is not a matter of law.''

I said at that point, ''Then take it out of the bill.''

''No, no, we have to keep it in the bill.''

Clearly, the people fighting for it in the bill wanted a strong bargaining position. They wanted to say when the tobacco settlement came down, we will start with a $50 billion credit for the tobacco companies. I do not think the tobacco industry would have worked so hard to put the provision in the bill if it was not important.

In fact, news reports have indicated that the provision was supposed to have been put in the Balanced Budget Act and was added to the Taxpayer Relief Act after being inadvertently left out of the budget bill. If it had no meaning or effect, no one would have bothered to write it into the tax cut bill.

But make no mistake about it, this provision is very meaningful. Although it was originally characterized as an ''orphan'' provision because no one would own up to having written it, the truth finally came out that the tobacco industry provided the language directly to the Joint Tax Committee staff which put it in the bill at the behest of certain congressional leaders. The provision is very meaningful to those who wrote it, namely, the tobacco companies. They stand to gain $50 billion for 46 words of legislative language. That is more than $1 billion a word.

When you think about the history of Washington, DC, and all that we have done on Capitol Hill, we have literally reached the point where an effective lobbyist working in the stealth of the night can come up with a provision which saves his clients more than $1 billion a word. What an effective lobbyist that must be.

Regardless of whether we support or oppose the details of the proposed settlement, we should all be able to agree that the taxpayers should not be underwriting the cost of the settlement.

Some have argued we should not adopt this amendment because it might slow down this appropriations bill, and it is a very important appropriations bill. But I believe the American people and most Members of Congress don't support this tobacco giveaway. We must not pass up this opportunity to eliminate it. It is a bad law and it needs to be changed.

Those who want to derail the Labor-HHS bill will try to do so regardless of whether this provision is in it. We must not let a threat to slow down the bill turn courage into cowardice. If we stand up to the forces behind this amendment they will shrink away. They don't really want to try to defend the indefensible.

The question also comes up as to whether, if the amendment is adopted, the Labor-HHS appropriations bill could be ''blue slipped'' by the Ways and Means Committee in the House, pursuant to the origination clause, article I, Section 7 of our Constitution.

As a practical matter, the answer is no. Of course, the House could do whatever it wishes. It is a sovereign body. But as a practical matter, it wouldn't have a good case for blue slipping this bill over this amendment because it is not a revenue measure.

We talked to the House Parliamentarian's office. They agreed. The subsection of the budget bill that would be repealed by this amendment does not amend the Internal Revenue Code. It does not impose or remove a tax. It does not even change the tobacco industry's current obligations. It addresses only a possible future credit against the payments the tobacco industry would make in a settlement. That credit is not a tax credit. It is simply a reduction of the tobacco company's payment obligations under a settlement, if there is one. Therefore, this is not a tax revenue measure subject to that objection.

Any Member of the House could try to offer a privileged resolution claiming that the provision was a revenue measure subject to the origination clause and asking the House to reject the bill and send it back to the Senate, but they would have a hard time convincing the majority in the House to reject this important appropriations bill on the grounds this amendment was supposedly a revenue matter, even though the amendment, as I said, does not affect the Tax Code nor anyone's tax liability and does not even affect the tobacco industry's obligations.

Tobacco products in the United States kill more than 400,000 Americans every year. The U.S. economy suffers a tragic and unnecessary loss of $50 billion each and every year from tobacco-related health costs and another $50 billion from tobacco-related loss of productivity.

Historically, the tobacco industry was unwilling to admit to any damage caused by its products. Even today, tobacco company executives choke on statements that their products ''might have'' caused some instances of cancer.

But the settlement currently being discussed was agreed to by the tobacco industry.

This secret credit should never have been written into the tax bill. It should be repealed immediately.

Madam President, I say to my colleagues, they may have had an excuse for not voting to strip this provision from the tax cut bill on July 31. Perhaps many of them genuinely did not know it was there. I only learned about it a few hours before the vote. But there is no excuse today. There is no excuse for the Senate to leave this provision in law.

Now my colleagues have a chance to vote straight up to rectify the situation. The American people do not want this credit to remain on the books. It is time for Congress to agree and to vote to repeal it. So, I say to my colleagues, don't let the tobacco companies take $50 billion out of taxpayers' pockets to reduce their settlement liability.

I hope they will join me in voting for the Durbin-Collins amendment. This amendment, to paraphrase an old literary quote, ''shines and stinks like rotten mackerel by moonlight.'' We are now bringing it to the attention of our colleagues to let them know that this rotten mackerel should be excised from the Federal law, that the tobacco lobbyists, as effective as they were in placing this provision in law, did the wrong thing. They played old politics under the old rules.

I am happy now to yield the floor to my cosponsor on this amendment, Senator COLLINS of Maine.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Madam President, I am pleased to be joining with my colleague from Illinois in offering this amendment to repeal the tax break that was slipped into the tax bill at the very last minute to benefit the tobacco industry. I note that the distinguished Presiding Officer, my colleague, the senior Senator from Maine, is also a strong supporter and cosponsor of our effort.

This provision, which amounts to a $50 billion giveaway to big tobacco, has generated justifiable outrage across the country and fueled the tremendous cynicism that already colors the American public's view of politics and politicians.

Now, Madam President, where did this tax break come from? It was not in the Senate tax bill. It was not in the House version of the bill. There was never any public debate. The one-sentence provision just magically appeared at the end of a 327-page conference report tucked into a section entitled ''Technical Amendments Related

to Small Business, Job Protection, and Other Legislation.''

No one claimed parentage. Like Harriet Beecher Stowe's Topsy, ''She wasn't born, she just was.''

While no one has officially spoken up to claim this orphan, it turns out, according to press reports, that the provision was written not by Members of Congress, but by the tobacco industry.

Madam President, this is outrageous. It is backroom politics at its worst, and represents the kind of abuse of the legislative process that the American public is rightfully sick and tired of—a secret agreement, negotiated behind closed doors, by powerful tobacco industry lobbyists, in the closing hours of consideration of a massive tax bill.

Congress is currently considering the proposed $368.5 billion global settlement negotiated between 40 attorneys general and the tobacco industry. As we review this settlement, one of our primary objectives is to ensure that the tobacco industry has negotiated in good faith and is held fully accountable for their past misconduct.

Many of us have harbored suspicions about the tobacco companies' supposedly good intentions during these negotiations. We have been concerned that the tobacco companies would simply raise prices and write off the settlement payments, effectively passing on the costs of the settlement to the taxpayer and the tobacco consumer.

Well, Madam President, worst suspicions confirmed. Not only can the tobacco companies write off the entire $368 billion as a business expense, which means that 30 to 40 percent of the tobacco settlement costs will be subsidized by the taxpayers, but now the Congress, in a moment of midnight madness, has carved out a brand-new tax break for these companies that effectively reduces the costs of the settlement by $50 billion.

It is outrageous that we should even consider approving this tax break and passing on these costs to the American taxpayer. Tobacco is the No. 1 preventable cause of death in the United States. It accounts for approximately 500,000 deaths a year and billions of dollars in health care costs. The tobacco companies have agreed to the settlement as a means of reducing their future liability and are providing some compensation to States and individuals for the costs they face because of the disease and addiction associated with their products.

Regardless of our position on the proposed tobacco settlement, we should all agree to reject this $50 billion special tax break for the industry.

Now, some would have us believe that the $50 billion tax credit is part of the tobacco settlement. This is simply not true. In fact, this concept was discussed and soundly rejected during the negotiations between the attorneys general and the tobacco industry. In fact, the States attorneys general strongly oppose this new tax credit.

I have a letter from the States attorneys general. I ask unanimous consent it be printed in the RECORD.

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

STATE ATTORNEYS GENERAL, (A COMMUNICATION FROM THE CHIEF LEGAL OFFICERS OF THE FOLLOWING STATES,

August 6, 1997.

Hon. PHIL CARLTON,
Carlton Law Firm,
Pinetops, NC.

DEAR MR. CARLTON: We are writing to inform you that the recent action by Congress to use revenues raised by new taxes as a credit toward our settlement is unacceptable. Apparently this action was taken with approval by or at the urging of representatives of the industry. As you know, this concept was discussed and rejected by us during our negotiations. The industry has agreed to specific dollar amounts in the settlement, and we will not agree to any diminution of those amounts not specifically set forth in the agreement.

We have continued our support for this settlement because we believe it to be in the best interest of the American public. We have always made it clear, however, that should Congress substantially alter material terms of the agreement, the States would exercise the option of rejecting the settlement and continuing the prosecution of their lawsuits. We regard this action as a substantial alteration of a material term. We ask your immediate agreement that this must be eliminated from any final resolution of this matter.

Sincerely,

MIKE MOORE,
Mississippi Attorney General.
GRANT WOODS,
Arizona Attorney General.
CHRISTINE O. GREGOIRE,
Washington Attorney General.
ROBERT A. BUTTERWORTH,
Florida Attorney General.
RICHARD BLUMENTHAL,
Connecticut Attorney General.
DENNIS C. YACCO,
New York Attorney General.

Ms. COLLINS. In that letter they state that they regard this action as ''a substantial alteration of a material term'' of the agreement and that they will ''exercise their option of rejecting the settlement and continuing the prosecution of their lawsuits'' if it is included.

Madam President, this secret tax break should never have been written into law in the first place. It should be repealed immediately. I urge my colleagues to join me in supporting the Durbin-Collins amendment.

I yield the floor.

Ms. SNOWE. Mr. President, I rise today in support of the amendment offered by the junior Senator from Illinois. This amendment would repeal a provision that was inserted in the recently enacted Taxpayer Relief Act of 1997 at the last minute that could potentially reduce the cost to tobacco companies of the proposed global settlement of tobacco litigation.

Mr. President, as my colleagues are aware, a global settlement on tobacco litigation was announced on June 20. This settlement would resolve lawsuits brought by 40 States against the tobacco industry that sought to recoup State Medicaid spending for smoking related illnesses.

Under the terms of the settlement, the industry would pay an estimated $386 billion over the next 25 years to compensate State and individuals for tobacco-related health costs and to finance nationwide antismoking programs. The settlement would further restrict the advertising of tobacco products and impose new labeling requirements on cigarettes and smokeless tobacco. At the same time, the tobacco industry would gain closure to the State lawsuits, and protect the industry from all but individual lawsuits in the future.

Mr. President, in light of this proposed agreement, I was very disappointed that a provision was included in the recently enacted tax cut package that would potentially reduce the cost to the tobacco industry of their proposed settlement. Specifically, the provision—which was agreed to by the administration and congressional negotiators at the last minute—would allow the tobacco industry to treat the excise tax on tobacco products as a credit against their proposed $368 billion payment, assuming that the settlement is codified. Although the enactment of that settlement is far from certain, the value of this potential credit is estimated to be $50 billion over 25 years.

Mr. President, regardless of whether or not Congress and the President ultimately enact, modify, or reject the proposed tobacco settlement, I do not believe that the already-enacted Federal excise tax on tobacco products—which is paid by consumers and is intended to help provide health insurance for uninsured children—should potentially become a downpayment by the industry on their proposed settlement. The fact that the Clinton administration and congressional negotiators agreed to include this provision at the last minute does not mean it should remain in law indefinitely—so I have cosponsored the Durbin amendment to repeal this provision.

Mr. President, I regret that this provision was inserted in the tax agreement without providing the House and Senate with an opportunity for consideration. As my colleagues will remember all too well, the negotiated tax package was a take-it-or-leave-it proposition: Members were unable to remove this or any other specific provision without taking the risk that the entire agreement would unravel and be killed.

Fortunately, we now have the opportunity to consider this provision independent of the broader tax agreement, and I would urge that my colleagues vote to repeal this settlement-reducing provision by supporting the Durbin amendment.

Mr. FORD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

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

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

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act for the consideration of the McCain amendment 1091. 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.

The result was announced—yeas 45, nays 54, as follows:

[Rollcall Vote No. 223 Leg.]

YEAS—45

Abraham	Grams	Mack
Allard	Gregg	McCain
Ashcroft	Hagel	McConnell
Boxer	Harkin	Mikulski
Brownback	Helms	Nickles
Campbell	Hollings	Roberts
Coats	Hutchinson	Sessions
Collins	Hutchison	Shelby
Coverdell	Inhofe	Smith (NH)
Craig	Johnson	Specter
Dodd	Kempthorne	Thomas
Faircloth	Kohl	Thompson
Feinstein	Kyl	Thurmond
Gorton	Lott	Warner
Gramm	Lugar	Wellstone

NAYS—54

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Biden	Enzi	Moseley-Braun
Bingaman	Feingold	Moynihan
Bond	Ford	Murkowski
Breaux	Frist	Murray
Bryan	Glenn	Reed
Bumpers	Graham	Reid
Burns	Grassley	Robb
Byrd	Hatch	Rockefeller
Chafee	Inouye	Roth
Cleland	Jeffords	Santorum
Cochran	Kennedy	Sarbanes
Conrad	Kerrey	Smith (OR)
D'Amato	Kerry	Snowe
Daschle	Landrieu	Stevens
DeWine	Lautenberg	Torricelli
Domenici	Leahy	Wyden

NOT VOTING—1

Bennett

The PRESIDING OFFICER. On this vote, the yeas are 45, the nays 54.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, perhaps the Senate is not in order.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, perhaps the Senate is not in order.

The PRESIDING OFFICER. The Senate will please come to order.

Mr. SPECTER. Mr. President, may I request that my colleagues who have amendments on the floor and who have amendments pending stay on the floor so that we can have a sequencing and see where we are proceeding.

I would like to see, Mr. President, if we might reach a time agreement on the pending amendment by Senator DURBIN. I am advised that there may be second-degree amendments to the Durbin amendment. May we reach a unanimous consent agreement to proceed with the Durbin amendment? Senator DURBIN is prepared to accept a short time agreement. He has already argued the matter. Senator DURBIN is prepared to accept a short time agreement of 20 minutes equally divided.

Is that acceptable to the Members?

Mr. FORD. Mr. President, I have an amendment in the second degree, and I would be willing to take 10 minutes.

Mr. SPECTER. Mr. President, I ask unanimous consent then that we proceed with the Durbin amendment with 20 minutes equally divided, and 10 minutes for a second-degree amendment by Senator FORD, unless there is an objection.

Mr. SESSIONS. I object.

Mr. SPECTER. May I inquire of my distinguished colleague from Alabama if he would accept a time agreement on his second-degree amendment?

Mr. SESSIONS. How long is the time agreement?

Mr. SPECTER. I would suggest 10 minutes, which has been offered by the Senator from Kentucky. How about 10 minutes for the second-degree amendment of the Senator from Alabama?

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

The PRESIDING OFFICER. Just a minute, if the Senator would suspend.

Mr. SESSIONS. That would be appropriate.

Mr. SPECTER. I thank my colleague from Alabama.

Mr. President, I amend the unanimous-consent request to add 10 minutes for the amendment by Senator SESSIONS in the second degree?

Mr. SESSIONS. Thirty minutes.

Mr. FORD. Reserving the right to object.

The PRESIDING OFFICER. Let's please have order. Let's have one Senator speaking at a time.

Mr. FORD. I would like to object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. We have to see the amendment and then we can agree. I apologize to the Senator. But I have been asked to object since we didn't know what the amendment is, and I am objecting for my colleagues.

Mr. SPECTER. Mr. President, might I ask the Senator from Alabama to state the amendment that he proposes to offer?

Mr. SESSIONS. Yes. The amendment would deal with attorney fees, involving payment of attorney fees—payments of attorney fees.

Mr. SPECTER. Mr. President, might the Senator from Alabama give a little more specification?

[Laughter.]

Mr. SESSIONS. My amendment would limit the amount of money that could be paid for the plaintiffs attorneys that have been hired as private attorneys by the attorneys general, and would not vitiate Senator DURBIN's amendment, but, in fact, would be in addition to that, and would not undermine or kill that amendment.

Mr. SPECTER. Mr. President, I thank my colleague from Alabama.

I would inquire of the Senator from Kentucky if that would be sufficient to let us proceed with the unanimous-consent agreement with 30 minutes for that second-degree amendment.

Mr. DURBIN. Mr. President, reserving the right to object, I say to the Senator from Pennsylvania, if the Senator from Alabama would be kind enough to show us a copy of his amendment, we may be able to enter into this agreement very quickly.

I would like to see the amendment, if he wouldn't mind. I have seen Senator FORD's amendment. I believe the time allocation we have been talking about is a reasonable one. But I wonder if the Senator from Alabama is asking for 30 minutes for his amendment in the second degree. Is that my understanding?

Mr. SPECTER. That is correct.

Mr. FORD. That is 15 minutes on the side.

Mr. SPECTER. Equally divided.

Mr. DURBIN. So as I understand it, the suggestion is that we agree to 20 minutes on my amendment, and then another 10 minutes equally divided on Senator FORD's second-degree amendment, and 30 minutes on the amendment of the Senator from Alabama as a second-degree amendment. Is that correct?

Mr. SPECTER. Mr. President, that correctly states the issue.

Mr. SESSIONS. It is my understanding that there will no further votes tonight.

Mr. SPECTER. My suggestion is that we proceed to vote tonight. Perhaps we can, if we can find agreement on putting these all on the calendar with the consent of the majority leader, vote tomorrow. But I would like to see us come to terms with the complete list and at least have a disposition pattern, if we do not vote tonight.

Mr. President, I yield to my colleague.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I thank the Senator.

I hope that we can reach an agreement on this amendment in the second degree on a time limit, and if we can reach an agreement on a couple of more that we have, then I hope the majority and minority leaders would agree that we could roll those over and vote tomorrow, and not have any more votes tonight.

Mr. SPECTER. Mr. President, may we proceed? If the Senator from Alabama could give the Senator from Illinois a copy of his amendment while we are talking about the others before we move on, if we can solidify the agreement, it would be helpful. Our experience has been that once we move on

without getting the agreement, sometimes they evaporate.

May I inquire of the Senator from Washington—is Senator GORTON in the Chamber—as to a time agreement on his pending amendment?

Mr. GORTON. I am not yet prepared to enter into a time agreement on the amendment.

Mr. SPECTER. Mr. President, may I inquire of the Senator from Indiana about the testing amendment. Are we in a position to move for a time agreement on that amendment?

Mr. COATS. Mr. President, if the Senator will yield, I am just discussing that with Senator DORGAN and others. I just had a discussion with the majority leader on that. We are in the process of discussing that concept, and we are talking to numerous people on both sides of the aisle. We will not be ready to go with that this evening, I do not believe, but I believe we will be by tomorrow.

Mr. SPECTER. Mr. President, might I inquire if we could reach a time agreement whenever the matter is ready for debate?

Mr. COATS. I am not 100 percent sure it is going to need a lot of debate if we are able to work out a procedure and agreement on proper language, and so forth, in terms of how we will dispose of this. It may be that we don't need an agreement, but I can't give the Senator an answer.

Mr. SPECTER. I thank the Senator from Indiana.

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

Mr. SPECTER. I would.

Mr. FORD. I have a second-degree amendment offered, 10 minutes equally divided. I understand it is acceptable. I will not ask for a rollcall vote. That might help expedite the decision here a little bit. We could proceed with my second-degree amendment which would have to go before the Durbin amendment, and then the amendment of the distinguished Senator from Alabama which would be after that. We can go ahead and get his out of way, if that would be acceptable.

Mr. SPECTER. Mr. President, I think that would be acceptable. I first would like to explore what we can do on the other pending amendments.

If we could hear from the Senator from Oklahoma as to how much time he would need on his amendment or perhaps the distinguished Senator from Massachusetts as to whether we could reach a time agreement and vote on the issues raised on the Teamsters matter.

Mr. KENNEDY. Mr. President, as was pointed out by the Senator from Alaska and others, this is an extraneous matter. We had a good debate on it the other evening. I believe that it would probably take—we did not really complete the debate on it the other evening, so it will probably take some time to reach a resolution of it. But the majority leader has spoken to the minority leader about it and talked to me about it in terms of time, but I think it will probably take some time. I know the Senator from Maryland was very much involved in it. I don't see him in the Chamber at this particular time.

Mr. SPECTER. Mr. President, might I inquire of the Senator from Massachusetts whether he thinks it would be worthwhile to explore trying to find some outer parameter of time, 4 hours equally divided—some time limit?

Mr. DASCHLE. Mr. President, if the Senator will yield.

Mr. SPECTER. I do.

Mr. DASCHLE. This has been a matter of some discussion with the majority leader, and I think it would be prudent for us to allow the negotiations to continue without pressing for any kind of conclusive agreement tonight. I think we are making progress, but I do not think we are going to be in any position to come to any final conclusion on the amendment until we have had some additional discussions with the Senator from Oklahoma and others. So my preference would be to allow these negotiations to continue as we work on other amendments and revisit the question tomorrow afternoon, or tomorrow morning.

Mr. STEVENS. Mr. President, will the Senator yield to me?

Mr. SPECTER. I do.

Mr. STEVENS. I appreciate the statements made by the distinguished Democratic leader, but I have just counted days and we have 8 more days in this month to vote. And we have 14, 15 bills to bring across this floor from the Appropriations Committee that should all be passed by September 30. Tomorrow night is the President's picnic, and by tradition we would not be voting tomorrow night. That means we are not going to be voting Friday. Unless we get some agreement very quickly, I would say by tomorrow afternoon, we probably cannot finish this bill this week. We have the Interior bill and we have the D.C. bill yet to pass and 14 bills after that—13 conference reports, managers' statements from the conferences, and 1 continuing resolution.

I am beginning to see a problem developing as far as our ability to handle these bills if these extraneous amendments are going to weigh them down. I urge that we find some way to make up a list to see how many more amendments we have out there and then see what we can do about the time or getting some agreement to terminate this. This bill actually is a larger bill than the defense bill. We have been on this bill now for a substantial period of time. I think we have to find some way to get it to a resolution by at least Thursday afternoon and lay down the Interior bill so we can start that and get some of the debate going on Friday on that at least. I hope that we would find some way to get some resolution on some of these items that appear to be unlimitable right now.

Is there some way we could agree on getting a list and say there will be no more amendments? Could we get a list that there will be no more amendments raised?

Mr. SPECTER. We have such a list.

Mr. STEVENS. You have a dozen second-degree amendments so I do not think you can find an end to this unless you get an agreement there will be no more amendments.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I thank our distinguished colleague, Senator STEVENS, the chairman of the Appropriations Committee, for what he has just said and for his management of the overall appropriations process. He is exactly right. We had discussed this matter, and that is why I am pressing now to try to get time agreements.

We do have a list, but we have not precluded under the customary arrangement second-degree amendments. We could not incorporate that type of limitation.

May I inquire of the Senator from Minnesota, Mr. WELLSTONE, if he is in the Chamber, with respect to the amendments he has pending?

Might I inquire of the Senator from Washington, Senator MURRAY, of her willingness to enter into a time agreement on the amendment relating to family violence?

Mrs. MURRAY. Mr. President, I would be happy to enter into a time agreement after the Durbin amendment is disposed of. I would need a half-hour of time. I do not know what the opponents would need.

Mr. SPECTER. Mr. President, then I ask unanimous consent that we enter a time agreement on the amendment just referred to by the Senator from Washington, 1 hour equally divided, so she will have 30 minutes.

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

Mr. SPECTER. Mr. President, I thank my colleague from Washington.

I again inquire of the other Wellstone amendments—if the Senator from Minnesota is not in the Chamber, perhaps we can call him and ask him to come to the floor—if he would be willing to enter into time agreements.

Mr. President, might I inquire of the distinguished Democratic leader—if I might have the attention of the Senator from South Dakota, there is an amendment pending regarding Pell grants and child literacy.

I ask, if I might, the Senator from South Dakota, the distinguished Democratic leader, what his intentions are, whether he would be agreeable to a time limit?

Mr. DASCHLE. I would be happy to agree to a 20-minute time agreement, 20 minutes equally divided, if it is a contested amendment.

Mr. SPECTER. Mr. President, I ask unanimous consent that we have the agreement, 20 minutes equally divided.

Mr. DASCHLE. Reserving the right to object, I would assume there would be no second-degrees—with that timeframe assuming that there are no second-degree amendments.

Mr. LOTT. I would accept that in the unanimous-consent agreement, without second-degree amendments, and then a vote on or in relation to the Daschle amendment.

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

Mr. SPECTER. Mr. President, I inquire of the Senator from Illinois if he has had a chance to see the amendment by the Senator from Alabama.

Mr. DASCHLE. Mr. President, I might be able to enlighten my colleague, the manager of the bill. We are told by a number of our colleagues that they are not prepared to enter into a time agreement on the amendment of the distinguished Senator from Alabama at this time. So I think it will probably be some time before we are able to do that. We may want to proceed. But at least at this point I do not think we are in a position to agree to a timeframe on the amendment.

Mr. SPECTER. Mr. President, I thank the distinguished Democratic leader and would ask that they make the review as promptly as they can because we are ready to really proceed with the conclusion of the amendment by Senator FORD and Senator SESSIONS and also Senator DURBIN.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. If the Senator from Pennsylvania will yield, I suggest we return to my amendment, and Senator FORD has an amendment in the second degree and he is prepared to offer it. And at that point, if there are any other amendments in the second degree, they can be offered. But I would like some understanding as to whether or not any more votes would be taken this evening on any of these amendments.

Mr. SPECTER. Mr. President, if the Senator will yield, I think we have to be prepared to vote, on this state of the record. We are in a state of considerable flux, if not confusion, as to where this bill is headed, and our experience is that unless we stay and debate and vote we are not going to get through this bill. I say that with reluctance because I know Senators have other plans.

Mr. President, I would suggest that we proceed at this time to the debate on the amendment by the Senator from Kentucky on his second-degree amendment and perhaps in that intervening 10 minutes we could get Senator WELLSTONE to the floor to find a time limit. If we are unable to come to an agreement on the second-degree amendment by Senator SESSIONS, perhaps we would proceed with Senator MURRAY's amendment which is 1 hour equally divided.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for a period of 5 minutes.

Mr. FORD. I ask, is it necessary that I call up my amendment?

The PRESIDING OFFICER. The Senator's amendment is pending.

AMENDMENT NO. 1117

Mr. FORD. Mr. President, this amendment is cosponsored by Senator ROBB, Senator HOLLINGS, Senator MCCONNELL, Senator FAIRCLOTH, Senator HELMS, and Senator THOMPSON.

As many of my colleagues already know, I have been extremely disappointed that the national tobacco settlement includes no provisions whatsoever to help the tobacco farmer. There is no question that this proposal will affect them. Yet there is nothing in the proposal for them. They were not invited to the negotiations. They were not consulted about the negotiations. They were not even briefed about what was going on during the negotiations.

The proposed settlement contains money to compensate promoters of the NASCAR races who lose tobacco sponsorship. It contains money to compensate promoters of rodeo events who lose tobacco sponsorship. It contains money for other events, teams, or entries in such events who lose tobacco sponsorship. It contains money, big money, for a tobacco counteradvertising program. It contains money for smoking cessation programs. It contains money for individual lawsuits. It contains money for Medicaid lawsuits filed by the State.

Mr. President, the proposed tobacco settlement contains compensation for just about everything you can think of, everything except the tobacco farmer.

The negotiators found a way to compensate promoters of sporting events, but they completely ignored a 200-year tradition that is the cornerstone of many small communities in my State. In other words, the farmers got the shaft.

I intend to do everything I can to keep any legislation from passing unless there is a fair compensation for tobacco farmers included in the $368.5 billion package. We have to take into account the future of these small families. We have to take into account the future of these small farm communities.

There are about 60,000 tobacco farms in my State alone, Mr. President. Most of them grow a couple acres of tobacco, but they get about one-fourth of their farm income from tobacco. The national tobacco settlement leaves them out in the cold. It leaves the local economies of entire communities in shambles. We must do something about it.

I have been working with my farmers and with other tobacco State Senators to develop a package that will provide fair compensation to tobacco farmers and tobacco-growing communities. We intend to have such a package included in any legislation to implement the tobacco settlement. I think other Senators from tobacco States share my view that we will simply not support any future legislation which does not address the tobacco farmers' future.

So, Mr. President, all my amendment says is that farmers ought to be taken into account. We should not forget them. My amendment is a second-degree amendment which expresses the sense of the Senate that tobacco growers and tobacco-growing communities should be fairly compensated as a part of any Federal legislation for the adverse impact which will follow from enactment of a national tobacco settlement. I think this is a reasonable request, and I believe my colleagues are prepared to accept my amendment by unanimous consent. I am perfectly willing to do that without asking my colleagues to vote. I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, speaking to the second-degree amendment offered by the Senator from Kentucky, he and I have been in disagreement on this issue in the short time I have served in this body, but I stand today in support of his second-degree amendment. Though I may disagree with one or two provisions in it, I believe the central element of his amendment is a suggestion that tobacco growers should be protected in any settlement agreement, and I certainly think that is a worthy goal as part of the settlement negotiations. For that reason, though I may disagree with some other particulars, I will support his second-degree amendment.

Mr. LUGAR. Mr. President, I did not object to the Ford sense-of-the-Senate amendment to S. 1061. I agree with its sentiment that the needs of tobacco farmers should be taken into account when Congress considers the proposed tobacco settlement.

I wish to express reservations about two points in the Ford amendment's language. First, the amendment says that any compensation to tobacco growers should ''be included within the $368.5 billion in payments.'' However, we do not now know that the size of the settlement will be precisely $368.5 billion. It may be larger. Moreover, payments to growers might be additive to the settlement amount, whatever its size.

Second, the amendment expresses a desire to ensure ''the continued administration of a viable federal tobacco program which operates at no net cost to the taxpayer.'' I favor compensating tobacco farmers for the equity they have built up in the quota system over the years. Such a buyout of the quota program should lead to, at most, a minimal price-supporting role for the Government. That is what we have done for the producers of most other commodities in the 1996 FAIR Act: Transition payments, and price supports at market-clearing levels.

I believe that to continue the present tobacco program without change is not

likely to be viable, so I find the amendment's language acceptable. Because some might read it to imply an endorsement of the status quo, I simply want to register my view that such a reading is neither required by the amendment's language, nor in the long-term interest of tobacco producers.

Mr. SPECTER addressed the chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I believe that the Senator from Kentucky has offered a worthwhile amendment. There is no doubt about the dislocation to tobacco growers occasioned by a settlement which will have the effect of crippling their business for public policy reasons which may yet be worked out.

It is obviously uncertain at this point as to what will happen with the proposed global settlement on the tobacco industry, but I think this is another matter where public policy calls for certain action. There are some employees, some workers in the industry who are hurt. I think it is sensible to provide for those individual workers.

Certainly, we have seen the demise in my State of the steel industry and the glass industry and the coal industry, and we have tried to take care of dislocated workers. As the distinguished Senator from Kentucky has articulated the amendment, the sense of the Senate to do that I think is acceptable. There may be a fair distance between the sense of the Senate and how it is going to be effectuated. With some frequency we see on this floor the Senate express its sense and then back off when it comes to putting dollars up to druthers.

But in terms of the public policy behind looking out for the interests of the employees who will be injured by a global tobacco settlement, I believe the Senator from Kentucky has offered a worthwhile amendment, and we are prepared to accept it on this side.

Mr. FORD. Mr. President, if I have any time left, I will yield it back after asking unanimous consent that Senator FRIST of Tennessee be added as a cosponsor.

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

Mr. FORD. Mr. President, I thank my colleague for his support, and I do agree, once we have a sense of the Senate, they should be helped. How they are helped is another issue.

I thank my colleague from Illinois for his effort here.

I yield back whatever time I might have.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1117) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 1125 TO AMENDMENT NO. 1078

(Purpose: To provide for certain limitations on attorneys' fees under any global tobacco settlement and for increased funding for children's health research)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SESSIONS], for himself, Mr. CRAIG and Mr. FAIRCLOTH, proposes an amendment numbered 1125 to amendment No. 1078.

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

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

The amendment is as follows:

At the end of the amendment, add the following:

SEC. . (a) GENERAL LIMITATION.—Notwithstanding any other provision of law, if any attorneys' fees are paid (on behalf of attorneys for the plaintiffs) in connection with an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action, involved in the settlement agreement, such fees shall—

(1) not be paid at a rate that exceeds $250 per hour; and

(2) be limited to a total of $5,000,000.

(b) FEE ARRANGEMENTS.—Subsection (a) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

(1) court order;

(2) settlement agreement;

(3) contingency fee arrangement;

(4) arbitration procedure;

(5) alternative dispute resolution procedure (including mediation); or

(6) other arrangement providing for the payment of attorneys' fees.

(c) EXPENSES.—The limitation described in subsection (a) shall not apply to any amounts provided for the attorneys' reasonable and customary expenses.

(d) REQUIREMENTS.—No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have—

(1) provided to the Governor of the appropriate State, a detailed time accounting with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; and

(2) made public disclosure of the time accounting under paragraph (1) and any fee agreements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

(e) PROVISION OF FUNDS FOR CHILDREN'S HEALTH RESEARCH.—Any amounts provided for attorneys' fees in excess of the limitation applicable under this section shall be paid into the Treasury for use by the National Institutes of Health for research relating to children's health.

(f) EFFECTIVE DATE.—The limitation on the payment of attorneys' fees contained in this section shall become effective on the date of enactment of any Act providing for a national tobacco settlement.

Mr. SESSIONS. Mr. President, I would like to address a very important issue that has not been discussed much. It has been raised a few times but not openly discussed. I think it is consistent with Senator DURBIN's concern that a tax benefit being proposed has not had full public discussion.

One of the things that has not had public discussion regarding the tobacco settlement is attorney's fees. Many of the States have undertaken very lucrative agreements with plaintiff lawyers who States attorneys general have hired to represent their States to carry on this litigation.

Less than a year ago, I was attorney general of the State of Alabama, and I was asked and it was suggested to me to hire plaintiff attorneys to represent the State of Alabama. It was suggested that a 25-percent contingent fee would be appropriate in those cases. I rejected that. I felt like it was not necessary for the State of Alabama to undertake such a generous fee agreement. Other States have undertaken such agreements, and that is of much concern to me.

Now we have the case coming before this Senate of being asked to bless or to approve by legislation those agreements. It is important for us to consider that every dollar that is spent on attorney's fees is a dollar that does not go to children's health. So this amendment limits the amount of money that can be spent on attorney's fees and says any excess moneys that are saved in that regard will be sent to the National Institutes of Health to be used for research for children's illnesses.

I think that is the appropriate way to do this. We have a lot of attorneys who have been talking a lot about children's health, so let's talk about that seriously, and let's ask about how this has happened.

Let me just say, the way this agreement has been entered into, the attorneys general, with their attorneys who they have hired, have entered into an agreement, a global settlement agreement, with the tobacco industry. Oddly enough, it mentions nothing about attorney's fees.

What we have learned since then is that there is a side agreement between the plaintiffs' attorneys who represent the States and the tobacco industry to pay their attorney's fees directly by the tobacco industry, apart from the State that they represent, which is a very odd situation and, in fact, in my opinion, Mr. President, represents a conflict of interest, because at this point, you have the attorneys supposedly representing the State entering into an agreement, a side agreement, with the attorneys and the party on the other side of this litigation, the tobacco industry.

So that puts them in a situation in which, if they do not agree and this settlement does not go forward, they do not get their attorney's fee.

That is basic. That is a conflict, I submit, between their interests and their duty and fidelity to the State, their client, and the opposing side who

now is paying their fees. Why didn't they put it in the agreement? Why didn't they state it publicly? Because they don't want to talk about it.

Most of the estimates and many reports have been suggested as to how much these fees might be. Some have said $10 to $14 billion. That is what I have seen published in several different instances. Let me repeat that: $10 to $14 billion. That is the greatest legal fee ever paid in the history of this Nation, in the history of this world. It is the mother of all attorney's fees. We are talking about $10 to $14 billion. Outside of education, the budget of the State of Alabama is $1 billion. So we are talking about an incredible sum of money that could provide tremendous amounts of research and care for children. That is where this money ought to go.

We are talking about a secret side agreement by which the attorneys, supposedly representing the States and the children, have gone over here now and have set up a side agreement with the people they have been accusing of being so bad, the tobacco industry, the people they are suing. That is not an appropriate way to do it.

I think if this body is to approve a global settlement and enact legislation in that regard, this body ought to make clear where we stand with regard to attorney's fees. We cannot allow some secret side agreement representing billions of dollars that could be going to children to be paid under the table by the party for the other side to the attorneys to the States who are representing the children.

I think this is a very important subject, Mr. President, and I care about it very deeply.

I think Senator DURBIN's amendment deals with a tax question that has not been fully aired. This is a question that has not been fully aired, and it needs to be.

Our amendment would do something else. It would say that every fee agreement that has been entered into between the State attorneys general and the lawyers they hired, the plaintiffs' lawyers they hired to represent them has to be made public, and the statement has to be made public. We limit the amount of fees. I think this is a large fee, most people think this is huge. Mr. President, $5 million is the limit per State we think is appropriate for this kind of litigation. In addition to that, we say it should not exceed $250 per hour in billing time. So that would be the cap on the fees that this bill would set forth: that no more than either $250 per hour, which is far more than what the average working man in this country makes, I assure you, $250 per hour would be the maximum time. If it goes over that, we would cap it at $5 million.

I think that is a reasonable proposal. It would not take effect until and if this body enters into a global settlement of this litigation. I think it is quite appropriate. I think that we need to deal with this issue.

I will just say this, as to the secretiveness of it. There have been several inquiries made by members of various committees of this Senate and one made by me of an attorney general about what the fee agreement was, and he did not set forth that agreement. Right after that hearing, over a month ago, I wrote a letter to the parties involved in this litigation, and I asked them to state the agreement they had with the attorneys representing those States publicly. We have a response not from one of them. They have not responded.

This is a public contract between the attorneys general of the States and the lawyers who are representing the States. So I think something is amiss here. It is something we ought to deal with. This amendment deals with it straight up. I believe it fulfills the needs that we are here for, and that is to make sure we get the most money possible for children and children's health.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I stand to join my colleague from Arkansas this evening in offering this second-degree amendment. I must tell you, when the Senator approached me, I was hesitant. I don't get involved in what I originally think is a private-sector relationship, a client relationship that can be none of our business here. But when the States attorneys general and the trial attorneys have come together to craft a universal or a national agreement that the Senator from Illinois approaches tonight as part of his amendment, and they approach us to make this national law, to make this the law of the land, it is now the public's business, without doubt.

Clearly, the Senator from Arkansas has demonstrated that this evening. He has even clearly stated——

Mr. FORD. Alabama.

Mr. CRAIG. Excuse me. Excuse me, the Senator from Alabama.

Mr. SESSIONS. Alabama, thank you very much, I say to the Senator from Iowa.

[Laughter.]

Mr. CRAIG. Touché.

But the Senator has very clearly pointed out there could well have been side agreements made or upfront agreements that go beyond any average person's wildest imagination to the potential of tens of billions of dollars in attorney's fees.

Here tonight the Senator from Illinois—and just a month ago this Senate agreed to tax an industry for the purpose of the health of the children of this country, a tax that in 1 year would not even demonstrate this amount of money. How can it be possible that any one profession could draw or come to draw or believe to be entitled to that amount of money? And $250 an hour is a what the Senator's amendment says is a reasonable and right fee, and even that the average working person would pale to.

So I am extremely pleased that the Senator this evening has brought forward the amendment. It is something that this Senate will either face now or face in the future as we deal with the crafting of a universal agreement, if that becomes possible and ultimately gets to the floor of this Senate.

I will join with the Senator however many times it takes to make sure that what he has proposed as an amendment tonight can and must become the law of the land, because in his wisdom and in the crafting of this amendment, he says that the excess dollars go where they ought to go, to children's health because all of us are extremely concerned about the rapid increase in teenage smoking in this country. That is part of what spurred this whole effort that is now nationwide as it relates to smoking and the tobacco industry.

So I think the amendment to the pending amendment is appropriate this evening. It fits into what we are trying to do if in fact we become participants in the crafting of a global agreement as it relates to what is attempted to be resolved between the States attorneys general, the tobacco industry, and the representatives of those States attorneys general. So I join my colleague tonight. I am proud to be a cosponsor of this important second-degree amendment.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Senator from North Carolina.

Mr. FAIRCLOTH. I rise in strong support of the amendment offered by the distinguished Senator from Alabama. I cannot think of any better method of cutting to the crux of this whole tobacco settlement than the amendment that he has offered. We talk about here, on a regular basis, doing something for children, for the health care of children, for their better care, and looking after children. And I strongly support these initiatives.

Knowing the generous, caring, and giving nature of the trial attorneys, I have no doubt that they would all be in strong support of the amendment of the Senator from Alabama if they were here to vote on it. Knowing of the eleemosynary history of trial attorneys, I know if they were here, they would join us in strong support of Senator SESSIONS' bill.

So I just say that this is a wonderful opportunity to make a major contribution to the caring for children's health and their well-being in this country. I commend again the Senator from Alabama for bringing it to this body's attention. I stand in strong support of it.

I say again, knowing the nature of the trial attorneys of this country, that if they were here and knowing that they had the opportunity to make this strong contribution to the children of this country rather than it going into attorneys' fees, that they would stand in strong support of the

amendment of the Senator from Alabama also.

I thank you, Mr. President, and I thank Senator SESSIONS.

Mr. MCCONNELL addressed the Chair.

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

Mr. MCCONNELL. Mr. President, I commend my friend and colleague from Alabama for an outstanding amendment. I listened carefully to his comments, Senator FAIRCLOTH's comments, and Senator CRAIG's comments.

As I understand the amendment by the distinguished Senator from Alabama, he is in effect here giving the Senate a choice, if I understand correctly, a choice between legal fees and children's health. The Senator from Alabama pointed out that as a State attorney general he had the option to retain private counsel to engage in this litigation which is going on in 30-some odd States around the country, and that he chose not to do it, but that many State attorneys general chose to hire private counsel to pursue this litigation against the tobacco companies.

Now we understand, as the distinguished Senator from Alabama pointed out, there are fee arrangements not known to the public under which there could be billions of dollars in fees paid to these lawyers who in effect were acting on behalf of State governments——

Is that right, I say to my friend from Alabama?

Mr. SESSIONS. You are correct. The Senator is correct.

Mr. MCCONNELL. Engaged in the business of the public to recover the Medicaid costs. And we are not sure how much those fees are.

Now, it is suggested that the Federal Government, the Congress of the United States, ratify—we will have a proposal at some point this year or next year—ratify what is referred to as the global tobacco settlement. So the distinguished Senator from Alabama is simply saying that this is a matter of public concern.

It will actually, if it is passed, be a matter of Federal law. If we are going to sanction this kind of agreement, the distinguished Senator from Alabama is saying we would like to make a decision as how best to deploy the public money in this global settlement. Some of the public money, Mr. President, is obviously legal fees for those who, on behalf of State governments, brought these lawsuits.

The distinguished Senator from Alabama is not being unfair, it seems to me, to the lawyers. As I understand the amendment, he is saying, up to $5 million per State or at a rate of $250 an hour, whichever is less——

Mr. SESSIONS. Less.

Mr. MCCONNELL. Would be the capped fee arrangement for these private lawyers doing public business at the behest of the State attorneys general. And $5 million, Mr. President, is not a bad year's work, not a bad 2 years' work—for many Americans not a bad lifetime's work.

So the distinguished Senator from Alabama is not saying that these lawyers, if you have been hired by the State government, you have to do it for nothing. All he is saying in effect is you don't get to gouge us. So he has set here a reasonable limit, some would argue maybe even too generous, and saying any excess amounts that have been agreed to should be diverted to the children of America at the National Institutes of Health to fund research for children and children's diseases.

I think it is an outstanding amendment. I commend the distinguished Senator from Alabama for his amendment. I think it makes an awful lot of sense. It is clearly an amendment in the best interest of the children of America. So, Mr. President, I thank the Senator from Alabama for his leadership on this issue.

I yield the floor.

Mr. FORD addressed the Chair.

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

Mr. FORD. Mr. President, would the Senator from Alabama help me here a little bit? I want to be sure—the eloquence of his amendment has already been stated on the floor. Let us be sure, because this is a very complex piece of legislation. And I yield to everyone because I am not a lawyer and so, therefore, I have a hard time understanding side agreements, protocols, but I am learning. I am on the jury.

As I understand it, your amendment applies to the $368.5 billion settlement?

Mr. SESSIONS. That is correct.

Mr. FORD. Inside there?

Mr. SESSIONS. The Senator is correct.

Mr. FORD. All right.

Now, that is not the bill. That is not the total bill here. There is also added on to that about $24 billion more for tort liability. That is in addition to that. And then the lookback penalties, which is if the reduction of youth smoking is not sufficient to meet the criteria set, there will be another $42 billion. So we are talking about $435 billion here now, not $368.5 billion.

So I want to be sure that we all understand where we are going. We are beginning to put so much weight on this agreement that it is going to fall, and then we will lose, I think, all those goals that we have set for ourselves.

But one of the items yet to be decided is the plaintiff attorney's fees.

Your amendment does not get to that?

Mr. SESSIONS. It does, yes. Yes.

Mr. FORD. I am talking about the private litigants now.

Mr. SESSIONS. No, not the private litigants.

Mr. FORD. So private litigants, their attorneys are yet to be compensated. So you add those on to the $435 billion. Now, if you are talking about $10 to $14 billion in the other place, I wonder if we could just add a low figure $10 billion, so we are now getting to around $495 billion, almost $500 billion. So I want to be sure that we all are on the same wavelength.

Then we are talking about the new taxes. That is another $50 billion. That is another $50 billion. That is just over a few years. That is not over the term of the contract. So you add that on and you are at about $530 billion. So if there is a possible doubling of lookback penalties, we are talking about another $42 billion.

So I want to be sure everybody understands that $368.5 billion is just within a range for the States for those Medicaid payments. The Federal Government will get about 60 percent; States will get about 40 percent.

There are a lot of things here I thought we ought to be sure about.

The Senator's amendment, I wanted to be sure that it was in the $368 billion, and not in addition to.

Mr. SESSIONS. Let me clarify that as best I can.

Mr. FORD. I think we are all going to have to work at this pretty hard.

Mr. SESSIONS. To put it real simply, almost every State that entered into this litigation hired a law firm to represent the State. Some of them used their own attorneys, I believe, but most hired private plaintiff lawyers to represent them. They then entered into agreements to pay them so much money.

Now those attorneys general, now those plaintiff lawyers, now the tobacco lawyers have come to this body and asked us to approve a global settlement, ''but don't talk about attorney's fees,'' they say, ''because we're going to take care of that between the plaintiff lawyers and the tobacco lawyers. We're going to work that out between us.''

What we are saying is, that needs to be public. The public needs to know. It ought to be capped to a reasonable fee, and not be a windfall, because in many of these cases they hardly filed the lawsuits before the settlement was agreed to, so almost no legal work has been done, yet they would stand to receive perhaps billions of dollars in legal fees. It is a matter we have to deal with.

Mr. FORD. I thank the Senator. I hope you understand what I am trying to do. It is a huge, a humongous piece of legislation. The $368 billion is just the beginning. It is now, in my judgment, at about $525 to $530 billion. And we have not talked about the private litigants' attorney's fees, which are an add-on. You are not bothering that.

I think it might be well, Mr. President, if I submit these figures, have them on a per year basis and with some question marks. There are other add-ons that will be question marks. And the attorney's fees are question marks. I think I will just put this in for a matter of the RECORD just so everybody will understand.

Mr. President, I ask unanimous consent that this be printed in the RECORD.

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

NEW FEDERAL REVENUES FROM TOBACCO INDUSTRY

	Per year [1]	Over 25 years
Core Tobacco Settlement.	$15 bil.	$368.5 bil.
Additional tort liability	Up to $1 bil.	Up to $23.86 bil.
"Lookback" penalties	Up to $2 bil.	Up to $42 bil.
Attorneys fees	????	????
Subtotal	Up to $18 bil. (+?)	Up to $434.36 bil. (+?)
New Excise Taxes	$2 bil.	$50 bil.
Subtotal	Up to $20 bil.	Up to $484.36 bil.
Possible doubling of Lookback penalties.	Up to $2 bil.	Up to $42 bil.
Subtotal	Up to $22 bil.	Up to $526.36 bil.
Other add-ons?	????	????
Total	????	????

[1] Annual figures begin in 5th year of settlement, when fully implemented.

1995 Tobacco Industry Contribution to GNP: $44.7 bil.

Mr. FORD. I thank the Senator for helping me here.

Mr. SESSIONS. If the Senator will yield.

Mr. FORD. Yes.

Mr. SESSIONS. I do think that, depending on the wording of these understandings between the attorneys general and lawyers, that the fee may be a percentage of the whole $500 billion that the Senator referred to.

Mr. FORD. Because it is not $368 billion, I say to my friend from Alabama.

Mr. SESSIONS. Yes. I appreciate your correcting that.

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

Mr. SESSIONS. Yes.

Mr. HARKIN. Who has the floor?

The PRESIDING OFFICER. Senator FORD has the floor.

Mr. FORD. I yield the floor.

Mr. HARKIN. I wonder if I might inquire of the author of the amendment, the Senator from Alabama, a question.

I was reading it over, and as I read the amendment, under the first section, paragraph A of your amendment, you put a limitation on the per-hour rate of attorneys, and then there is a cap total of $5 million that applies per State?

Mr. SESSIONS. Yes.

Mr. HARKIN. The $5 million applies to per-State maximum.

Mr. SESSIONS. That would be the maximum, but if they could not justify the fee by hour, they may not get that.

Mr. HARKIN. I understand that, but it is a maximum of $5 million in any regard.

Now, this has to do with attorney's fees paid in connection with a State recovering money. This does not have to do with the so-called proposed big settlement that is going to come to us in the future. This applies to States.

I wonder how we, here, can limit attorney's fees in a State action?

Mr. SESSIONS. I am delighted to try to answer that. It is a very unusual thing that is happening to this Senate and we have been asked by the attorneys general, by the defendants, the tobacco companies, too, in fact, by legislation legislate a lawsuit. So it is unusual.

They are asking us to do that because many of the things that they want, each side wants, cannot be accomplished through private litigation. They want to, in effect, control new tobacco companies that have not been making tobacco and have not made people sick before, they want to control them and others.

So they have asked this body for a lot of reasons to ratify this through our legislation. To that degree, they have asked us to ratify.

I think we need to find out what the attorney's fees are. I think as part of our legislation our legislation ought to control legal fees and we ought not to pay any more than that mentioned in this amendment.

That is, basically, where we are.

Mr. HARKIN. I listened to the Senator make the explanation but I thought the amendment was going to go toward limiting attorney's fees if there is a global settlement, this thing we are being asked to do at some point. We do not know if it is this fall, next year, or whatever, when we will be asked to ratify a so-called global settlement.

But your amendment does not just speak to that, it speaks to ongoing cases in the States. For example, as I understand it, the State of Mississippi just settled, the State of Florida just settled, other States will maybe be settling. Your amendment seems to me to apply to those States that make those settlements. It has nothing to do with the proposed universal or global settlement that we will be asked to ratify at some point later on.

That is why I wonder, by what right or power do we have in the Federal Government of saying to a State government, a State attorney general and the State government that you can't, in your agreement, whatever your agreement is, you have to limit attorney's fees?

That seems to me to be an odd kind of a thing for us to do—the Federal Government telling the State government when you make your agreement, here is all you can do. It does not seem to me to be constitutional.

Mr. SESSIONS. I would like to respond. I think you raise a very interesting point.

First, I say it is unusual that the States would come to this body and ask the Congress of the United States to ratify a lawsuit, but they have.

Our bill does not take effect and does not apply unless this body enacts a global tobacco settlement. It is the last sentence in the amendment. In other words, we do not, and this legislation does not attempt to intervene in litigation that is ongoing unless there is a global legislation by the Congress of the United States, in which case we would then also deal with attorney's fees as we should.

Mr. HARKIN. Again, I understand and I appreciate the Senator pointing that out. Mississippi made an agreement, Florida has made an agreement, maybe there will be a couple of other States that make agreements, what if later on we make a global settlement, do they have to go back and renegotiate all the attorney's fees? That is what I wonder.

How can we tell a State what they have to do prior to our reaching this national settlement—and whether we reach it or not, I do not know. What would happen, for example, to a State like Mississippi that has already negotiated and make their deals—I guess, I assume they have.

Mr. SESSIONS. My understanding is that States that have settled have conditioned their settlement on the requirements of the congressional global settlement. If there is no congressional action, then their settlements will be in full force and effect, but if it is, they are agreed to be vitiated by the congressional action.

Mr. HARKIN. The Senator was not aware of that. I appreciate that.

I yield the floor.

Mr. DURBIN. Mr. President, I rise in opposition to this amendment. I have just seen this amendment this evening for the first time, but I know the Senator from Alabama has offered it in the regular order of business.

I have had a few minutes to read it over. I commend to my colleagues the suggestion they should read this very closely. This amendment is the dream of the tobacco companies. The Senators who have risen to speak on behalf of this amendment from the tobacco-producing States I think have given evidence of the fact that this is another one of the last gasps of this industry.

Let me tell you why what appears to be so reasonable on its face is, in fact, a loaded deck for the tobacco companies again.

My friend, the Senator from Alabama, wants to limit attorney's fees and to take any excess and put it into health research for children. Now, who in the world could oppose that?

But look closely. He does not want to limit the attorney's fees for tobacco company lawyers. No. He just wants to limit the attorney's fees for those on the plaintiffs' side, the States that have brought this action. Now that is curious. If he is afraid that the attorneys, who will ultimately all be paid by tobacco companies when this is all over, are going to charge too much money, he only wants to limit the hourly rate to $250 an hour to attorneys representing the plaintiffs in this action. So he protects these fat cat law firms that have represented the tobacco companies forever, who can charge $500 an hour, $1,000 an hour, he does not care. His interest is only the attorneys for the plaintiffs.

That does not make any sense. All of the money is coming out of the same pot. If he wants to make this a reduction in the lifestyle of attorneys, why does it not apply to defense attorneys? Why does it not apply to tobacco company attorneys? No, his only interest is

the attorneys who stepped forward and filed these lawsuits on behalf of the States.

Now, they have been characterized by their critics this evening as a pretty motley crew. Remember that 40 different States decided through their own elected attorneys general that they would bring these lawsuits under fee arrangements so that they would have the legal talent to be able to process the most complicated litigation in the history of the United States.

Mr. SPECTER. May I interrupt my distinguished colleague for a moment to say there will be no further rollcall votes tonight. I have just been able to make that determination, and I know there are many Senators on the campus waiting to find out what is going to happen.

I regret interrupting Senator DURBIN, but I think that is worth a statement. We have the list fairly well pared down. When Senator DURBIN finishes, I will announce the prospects for tomorrow.

Mr. DURBIN. I am pleased to be interrupted with that good news.

Isn't it curious that this effort to provide research funds for children's health, funded by excess attorney's fees, would only apply to attorney's fees in excess for the plaintiffs, that the law firms representing Philip Morris and RJR and all the tobacco companies can charge whatever they care to charge.

Now, I think that pierces the veil of what this is all about.

But let's read on. What else is the Senator from Alabama setting out to do here?

Mr. SESSIONS. Will the Senator yield?

Mr. DURBIN. I yield for a question.

Mr. SESSIONS. Would the Senator be agreeable to this amendment if we reworded it, in fact, make it apply to the tobacco lawyers? I will certainly feel good about that.

The reason it was done this way is because many of the plaintiffs' attorneys apparently have it on a contingency fee basis, probably have filed lawsuits, may be entitled to hundreds of millions of dollars and have done very little work. It would be an unjust enrichment, it appears to me.

I would certainly entertain that amendment. I think it is a suggestion that we ought to incorporate.

Mr. DURBIN. I think that is an improvement, but let me read on.

The reason why this amendment should not be considered, why the tobacco companies will jump for joy if it is adopted, is that it will discourage any State from bringing its lawsuit against the tobacco companies.

The Senator from Alabama, for reasons I do not understand, has decided that no State of the 40 that filed suits, no matter how deeply they are involved in this litigation, can pay outside attorney's fees beyond $5 million, which sounds like a huge sum of money until you consider States like Minnesota.

Minnesota has been preparing for trial on January 19, has now collected millions of documents from these tobacco companies, has warehouses in London and in Minneapolis. They have attorneys scouring through the documents and processing them. They are preparing to go to trial.

In my home State of Illinois, I do not think we have made nearly that progress in moving toward litigation. But the Senator from Alabama does not care that the attorneys in Minnesota have been working overtime for months and the attorneys in Illinois may not have been.

He says, we are going to pick an arbitrary figure—no State can pay their attorneys no matter how much work they have put into this, any more than $5 million, period.

Now, that is fundamentally unfair. It really does not reflect the effort that has been put in by these attorneys in these States.

Let me tell you what else he is doing, and I think this is a pretty crafty move by the tobacco companies. By putting this provision in the law to limit attorney's fees, he will have the attorneys come forward in these States and say to the attorney general, ''Well, listen, if we cannot, after all of this discovery and all of this preparation even recover the amounts that we have expended in attorney's fees, we certainly cannot take this to trial,'' so the tobacco companies will have their way. The tobacco companies do not want these cases to go to trial. They want to discourage that from happening.

In fact, representatives of those companies have told me point blank if any case goes to trial there will be no global settlement. The Senator from Alabama is offering them a great improvement here in saying that they do not have to worry about a trial now because attorney's fees are going to be strictly limited.

Well, they will be jumping for joy at RJR and Philip Morris if this Senator's amendment is adopted this evening, because by limiting the attorney's fees and saying that there will be a strict limitation of the amount that can be paid to the plaintiffs' attorneys he is, in fact, discouraging, if not stopping litigation and trials.

You will have accomplished with your amendment what the tobacco companies have been unable to accomplish to this point. You will have stopped these cases and they cannot move forward.

I do not think that is what the Senator set out to do when he explained this amendment. But I think that is the net result of it.

It is interesting to me as you look into it, what will happen to the States that have settled, Mississippi and Florida, what will happen to their attorney's fees? If I read this correctly, this may or may not apply to it. It is not clear. This amendment is not drawn in a way that can tell you it definitely applies in the case of Mississippi and Florida. The Senator offers it for prospective payment of attorney's fees. Yet, we already have two cases settled and they are not addressed.

And then this whole question of the amount to be paid attorneys, a $250 rate. I don't know what a reasonable rate is in the Senator's home State. I don't know what attorneys might charge in any State, whether it is New York, Minnesota, Illinois or Alabama. But I think the Senator has chosen a rate that is unrealistic—unrealistic in terms of what these attorneys general face.

Keep in mind that most of the attorneys general in the United States looked to these lawsuits and said right off the bat, ''We don't have the resources to sue these tobacco giants. We have to bring in the resources and services of attorneys who will, in fact, represent us.'' Of course, those attorneys coming in to file those lawsuits expected to be compensated if they won—only if they won. Contingency fees are based on that. I know from my experience with the Senator in the Judiciary Committee, he doesn't think very kindly of contingency fees, particularly in his own State. But I think, quite honestly, this is a clear illustration that if a contingency fee was not awarded to an attorney, the attorney general would not have had this army of lawyers to go forward.

When I heard comments from some of the Senators from tobacco-producing States, it is clear that they resent these lawyers, these attorneys general, for bringing these lawsuits and they want to get even with them, they want to nail them and say, ''We are going to limit your fees. You thought there was money in this, but there won't be any money in this. We will limit you as to how much you can recover.''

I don't think that is fair. It is curious to me at this time, when we are talking about whether or not the Federal Government is going to impose its will on the States, that we have an amendment from a Senator from Alabama, which suggests that we in Congress should impose on 40 different States, 40 different attorneys general, a fee arrangement that we happen to think is reasonable.

Well, let me tell you what this is all about. The tobacco companies were embarrassed when the amendment was disclosed that gave them a $50 billion windfall in the tax bill, an amendment which we hope to repeal. They had hoped to initiate the negotiations in the tobacco settlement by saying: Before we sit down at the table and reach an agreement, give the tobacco companies $50 billion.

I think the public sentiment and the votes of this Senate will see it another way. Now the tobacco companies come in with this amendment. They want to see this amendment adopted because now they come to the table and say to each of these States: There is a new arrangement. You can't pay your attorneys. You can't go to trial. We have

you where we want you. We don't care what your contingency fee agreement is going to be. You are limited to what we in Congress think attorney's fees should be and how much they should be paid.

Well, I think this amendment should be defeated. I think this amendment is one the tobacco companies will enjoy, one that the American people will regret. The States, including my own, that had the courage to step forward and file these lawsuits against the tobacco companies should not be penalized at this point in time. They have done a great service to this Nation. Each attorney general—Democrat, Republican or Independent—who decided to enter into an agreement with attorneys to represent them did it with the understanding that they will be held accountable for this. The Senator says that these are secret agreements. Well, in my home State, I can tell you that whether there was a secret agreement or not, the gentleman who entered into it, our attorney general, will be held accountable for it. Can he justify it? Did he say to the taxpayers from Illinois we have recovered enough money to justify the contingency money paid the attorneys? Of course, and he is held accountable.

The Senator suggests this is done in secret with no accountability. I think he is wrong. I hope when this is all said and done, we will defeat this amendment, and that we will not give the tobacco industry a victory this evening or tomorrow when we vote, such as they secured at the close of debate on the tax bill. These tobacco companies have to be told, whether they are trying to stop the States from bringing these actions through this amendment by the Senator from Alabama, or recouping $50 billion in the stealth of the night, that the party is over. The tobacco companies just can't have their way anymore. I think we have to stand up for the people who are best represented by these lawsuits—the consumers, the children, those who unfortunately are going to be the losers if this amendment is adopted.

At this point, I would like to move to table this amendment.

The PRESIDING OFFICER. The question is on the motion to table.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I ask if the distinguished Senator from Illinois will withhold that motion for the present time. We cannot proceed to a rollcall vote tonight under a determination made earlier by the majority leader, which I announced as soon as we had heard it. There may be other Senators who wish to speak to this amendment. The Senator from Illinois would be preserving his position, in any event, since we cannot vote tonight, to carry this matter over until first thing tomorrow morning. We are beginning at 9:30, so that we can consider at that time if there are any other Senators on the floor who wish to speak.

The PRESIDING OFFICER. Does the Senator from Illinois withdraw the motion?

Mr. DURBIN. I will withdraw it, as long as at 9:30 we will proceed to the same order of business and the amendment will be the amendment of the Senator from Alabama and we can proceed to my amendment after we have considered all amendments in the second degree.

Mr. SPECTER. Mr. President, that is agreeable to this manager of the bill. So that all Senators will be on notice that a motion to table will be pending. Of course, if it is not tabled, then we can't proceed to the underlying amendment.

Mr. DURBIN. I withdraw the motion to table, with that understanding.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. SPECTER. I thank my friend from Illinois.

Mr. President, we have made some progress in limiting the number of amendments. We have been advised by Senator WELLSTONE that he is prepared to withdraw a filed amendment on Pell grants. Senator WELLSTONE is prepared to withdraw a filed amendment on infrastructure, which leaves one pending Wellstone amendment on Head Start. I have been advised that Senator WELLSTONE is prepared to enter into a unanimous-consent agreement for 1 hour, equally divided, providing he has an opportunity to modify his amendment. I will not ask unanimous consent for the moment on that.

Senator WELLSTONE has arrived on the floor. Mr. President, since the Senator has just arrived, perhaps I can ask my colleague if the information is correct that the Senator is prepared to enter into a unanimous-consent agreement for 1 hour, equally divided, on his Head Start amendment on the understanding that it may be modified, and he is prepared to withdraw the other two amendments, one relating to Pell grants and one to education infrastructure?

Mr. WELLSTONE. Yes. I say to my colleague from Pennsylvania, that is correct. I am prepared to lay this down tomorrow and debate it for 1 hour, if there are no second-degree amendments.

Mr. SPECTER. We can enter into a unanimous-consent agreement right now that there be 1 hour, equally divided, with no second-degree amendments in order and then a motion on or in relation to the amendment to be offered at the conclusion of 1 hour of debate. I make that unanimous consent request.

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

Mr. SPECTER. Mr. President, did I understand my colleague from Minnesota to say that he preferred to offer and debate the amendment this evening?

Mr. WELLSTONE. I had been home and I followed the debate on the amendment of the Senator from Alabama, and I had wanted to come over here and respond to that.

Mr. SPECTER. Mr. President, I renew my question. Did my colleague say he was prepared, after he discusses the amendment by Senator SESSIONS, to debate the issue today so we can vote tomorrow morning?

Mr. WELLSTONE. No. Mr. President, I would be prepared to lay the amendment down tomorrow morning as early as he wants.

Mr. SPECTER. I thank the Senator.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 1125, AS MODIFIED

Mr. SESSIONS. Mr. President, I would like to modify the amendment to reflect the change, which I send to the desk.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 1125), as modified, is as follows:

Strike the last word in amendment.

No. 1078. As amended, and insert the following: ''repealed''.

''SEC. . (a) GENERAL LIMITATION.—Notwithstanding any other provision of law, if any attorneys' fees are paid (on behalf of attorneys for the plaintiffs or defendants) in connection with an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action, involved in the settlement agreement, such fees shall—

''(1) not be paid at a rate that exceeds $250 per hour; and

''(2) be limited to a total of $5,000,000.

''(b) FEE ARRANGEMENTS.—Subsection (a) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

''(1) court order;

''(2) settlement agreement;

''(3) contingency fee arrangement;

''(4) arbitration procedure;

''(5) alternative dispute resolution procedure (including medication); or

''(6) other arrangement providing for the payment of attorneys' fees.

''(c) EXPENSES.—The limitation described in subsection (a) shall not apply to any amounts provided for the attorneys' reasonable and customary expenses.

''(d) REQUIREMENTS.—No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have—

''(1) provided to the Governor of the appropriate State, a detailed time accounting with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself, and

''(2) make public disclosure of the time accounting under paragraph (1) and any fee agreements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

''(e) PROVISION OF FUNDS FOR CHILDREN'S HEALTH RESEARCH.—Any amounts provided for attorneys' fees in excess of the limitation applicable under this section shall be paid into the Treasury for use by the National Institutes of Health for research relating to children's health.

''(f) EFFECTIVE DATE.—The limitation on the payment of attorneys' fees contained in

this section shall become effective on the date of enactment of any Act providing for a national tobacco settlement.''

Mr. SESSIONS. Mr. President, this is in the nature of a technical change. It doesn't change the basic import of the amendment.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I respect the motivation of my colleagues who are offering amendments on the proposed global tobacco settlement tonight. As we all know, the issues surrounding this settlement prove easy to frame, but difficult to resolve.

I have been listening carefully to this debate, and the timing is very interesting to me.

Here we are now in September. Everybody would like to see this session end sometime near the end of October, or early in November, at the latest.

But as far as the proposed global tobacco settlement goes, people around here seem to be assuming it is going to happen when, really, basically, nothing is being done.

Yet, tonight we are making arguments and amendments on the assumption that something is going to get enacted.

I would suggest to my colleagues, though, that this discussion is premature. We do not have all the details of the agreement. No one, that is no one, does, not even any of the parties to the agreement has final legislative language.

We have not even reached a discussion in this body of the most general question we have to answer before we decide if the Senate will consider the global tobacco settlement: do we want to further regulate the use and sale of tobacco products in order to protect the public health and bring a degree of accountability and finality to the surge in tobacco-related litigation.

More precisely, the question we face during the remaining weeks of this session is whether the global tobacco settlement proposal should be implemented and, after we make that decision, then amendments would be in order.

Mr. President, I don't think anybody in this body despises the use of tobacco more than I. Frankly, I think tobacco use is wrong, it is deleterious to health, and it basically can ruin people's lives.

There is no question that—in the eyes of almost every research scientists—tobacco use causes cancer.

There is no question that it causes cardiovascular, respiratory, and other similar diseases, and still we treat it as though it is a substance that has every right to exist.

As long as it does have the right to exist as a legitimate business in this country—and I believe that it will continue to be available—then it seems to me that we have to resolve these problems in an amicable, decent manner that is in the best interests of this country.

As I see it, there is not much happening on the proposed tobacco settlement.

There is no use kidding ourselves, the $368 billion settlement proposed by the attorneys general and most of the tobacco industry—all except Liggett & Myers—as I understand it, is an interesting proposal.

There is no question, that offers a substantial sum of money. It is to be paid over a 25-year period and, if my calculations are correct, the tobacco companies will be able to write off about a third of the cost of that settlement at the expense of the taxpayers.

There are many, many issues that have to be resolved on the tobacco settlement if we are going to have one at all. Let me name just a few of them, in no particular order of importance.

No. 1 would be an evaluation of the totality of the settlement. That is, as I have said, whether this Congress should seize the window of opportunity presented by the tobacco proposal which offers the possibility of significant advances in public health and liability reform. Are the public health gains it offers something we wish to pursue? Are the legal reforms it contains sound public policy? Are the two in appropriate balance?

No. 2 would be whether the costs associated with implementation of this agreement should be treated for tax purposes as ordinary business expenses?

Third would be the appropriate role of the Food and Drug Administration in the regulation of tobacco products. This is an extremely complicated issue. It involves an evaluation of the FDA's current legal authority, the regulations FDA has promulgated on youth tobacco use and the Greensboro court decision, and the future authority called for in the agreement.

The fourth issue is an examination of the constitutional limitations posed by an agreement which some believe abrogates their first amendment, free speech rights.

The fifth issue is what I call the ''show me the money'' issue. I challenge anyone to undertake an exhaustive review of the 68-page proposed settlement and then delineate clearly how the $368 billion in funds will be allocated. For example, many participants in the agreement have said there are funds for children's health. On what page? It simply isn't there.

And even for the amounts stipulated in the agreement, there is no definition of how the funds will be divided among states or parties to the agreement.

The sixth issue is a consideration of civil justice concerns, such as changing traditional plaintiffs' rights to seek redress through the courts.

The seventh issue is how those who were not parties to the original agreement will be treated. One company, for example, Liggett & Myers, has now signed agreements with about 25 States and all of the Castano class members. How should those agreements be factored into the settlement?

The eighth issue is related. Should there be an accommodation for those who manufacture, sell, or use vending machines or for others who have been engaged in legal businesses and have made a livelihood with products or services that might not be continued after a settlement is finalized?

Here's another important issue. The ninth issue we need to address is that of documents disclosure. Some in this body have called for full disclosure of all tobacco-related documents before any settlement is considered. Others believe we will never get to a settlement if we become enmeshed in an investigation of abuses extending back over 30 years.

One of the greatest advantages of having a tobacco settlement is the public benefits that may derive from it for our children and indeed our society as a whole.

As we all know, 3,000 kids start smoking a day—teenagers, that is—1,000 of whom will become addicted over their lifetimes. These numbers are only going up, and it is no secret that part of the reason is that the tobacco industry has basically enticed these kids into smoking.

Without a tobacco agreement, we will not be able to put meaningful resources into solving these teen tobacco use problems. It is questionable whether we could ever provide the same nationwide incentives or resources to not only slow down teenage smoking, but perhaps end it forever.

And since we are debating the National Institutes of Health funding bill, I might mention that without the tobacco settlement, we won't be able to have as many funds as we would otherwise have for biomedical research.

It is also apparent that if we break the cigarette companies, we are not going to be able to have 25 years of continual multibillions of dollars paid into a settlement agreement system for the benefit of our society as a whole.

There are so many other issues that I hesitate to even begin. But the fact is the proposed settlement is complex, it is difficult, and Congress basically has done nothing about it since it arrived here on June 20.

It is true we have held three hearings in the Judiciary Committee. They have been interesting hearings. They have enlightened us to a degree. We think we now know the issues involved. We have listened to the attorneys general. We have listened to people representing the tobacco industry. We have listened to constitutional experts. We have listened to health care specialists.

And, frankly, we are going to hold some more hearings on this. But it seems to me that we need to address the proposed tobacco settlement with a timetable and a process that will literally cause it to be done. We aren't there yet, and piecemeal amendments

on an appropriations bill won't get us to that point.

If the tobacco settlement is not completed by the end of this particular session, I fear we may never have a tobacco settlement. If that is so, we will lose this one-time opportunity to help our children and perhaps to help keep millions of kids from ever starting to smoke or chew tobacco.

If we lose that opportunity, it will be pathetic.

It is no secret that the tobacco industry has virtually won every case but one in the history of litigation in this matter. In that one particular case it was a $750,000 verdict. If I understand it correctly, that is on appeal. And that will be dragged out for another 10 years by very, very good lawyers who are very, very capable of doing exactly that.

So, if we do not move ahead and we don't solve these problems, we are going to find ourselves in a morass where we are right back to business as usual, and the tobacco companies will be making billions of dollars at the expense of the society at large with no help to our young people in this society and not much money for research other than what we can generate through congressional appropriations. In the end, we lose all of the advantages that we could achieve.

In fact, there are several things which must occur if we are even going to try to move forward to an agreement, or move an agreement forward.

First, the President of the United States has to get off the dime and start leading on this issue.

In July, we heard the President would speak out a few days before his planned August 15 vacation. It didn't happen.

Earlier this week, we heard the President was supposed to speak out about the settlement this Thursday.

Let's speak the plain truth here. Without the President's leadership, the tobacco agreement can't happen.

The proposed settlement was announced on June 20. At that time President Clinton called the concessions attained by negotiators from the tobacco industry ''unimaginable.'' He also tasked top executive branch officials with the job of reviewing the settlement, consulting with the public health community, and advising him on whether or not this agreement adequately protects the Nation's public health interests.

Eleven weeks have passed with no final word at all from the White House on what, if any, changes the President wishes to see. Almost daily we hear, or so it seems, rumors that the President will speak—only to find out that he does not.

The President's silence in this area speaks volumes.

It has been speculated in the press that the President will say that the level of funding needs to be increased, that the FDA's regulatory authority needs to be strengthened, and that there needs to be greater accountability on the part of the tobacco companies if the reduction targets are not met, especially among the Nation's teenagers. But this is only speculation at best.

Should President Clinton support the idea of moving forward, he needs to tell our American people, and he needs to reveal what changes, if any, he deems to be necessary.

We need the President to speak out and tell us precisely where he stands and whether he believes there should be an agreement, and an agreement this year.

We need him to help us to understand where we are going on this issue. We need to know how much political capital he is willing to expend on this issue, and we need to know whether he is really serious about solving these problems.

With 3,000 children starting to smoke each and every day, I don't believe the Clinton administration can afford to delay this any longer.

Second, I call on parties to the agreement to resolve ambiguities and to help produce legislative language agreed upon by all parties so that Congress can be crystal clear about the details of the proposal and therefore can plan and judge it accordingly.

If the President chooses to take advantage of this one-time opportunity, the parties to the agreement have a responsibility to settle ambiguous points within the settlement agreement and provide the Congress with their version of the settlement in legislative form.

Today, I am challenging the parties to the agreement to do so, to provide us with the details of the agreement beyond the 68-page prospectus.

I, for one, am willing to look at it. I think the other committee chairmen who are involved are willing to look at it as well. We are willing to see if we can mold together an agreement that literally will be in the best interests of the public at large.

Let me add that several weeks ago I sent the proposed agreement to legislative counsel and asked them to try to draft a bill based on the language of the settlement. We found that these expert draftsmen were presented with more questions than answers. So the parties need to get together and help us to formulate the legislative language. I am calling upon them to do that. If there are problems or ambiguities that have to be resolved, we will help them with that.

Third, the parties who negotiated this settlement presented it to Congress must also produce others willing to champion this unprecedented public health opportunity. Beyond the several attorneys general, the plaintiffs bar, and public health groups, few have seized on the settlement as a viable option. Major legislation such as the settlement envisions has never been approved absent widespread support. And we aren't there yet, which is another reason why these amendments we are considering tonight are premature.

The fact is we will not be there without the President and without an awful lot of hard work on the part of all of us here.

Fourth and finally, we must consider how we resolve this issue of document production. The proposed agreement provides that previously undisclosed documents be publicly disclosed through a national tobacco document depository open to the public and located centrally here in Washington, DC. These documents would include documents from the files of the tobacco companies, including those relating to internal health research, documents that we have not been able to get up until now.

Any documents already produced in the attorney general actions would be immediately deposited, and additional existing documents would be placed in the depository within 3 months of the enactment of the bill.

Despite this provision for open disclosure, some in Congress—those who question the settlement most—have proposed immediate disclosure of these documents. The documents in the Minnesota case alone brought by Attorney General Hubert Humphrey, who has testified before our committee, amount to 33 million documents. Such massive disclosure is neither practicable nor possible in the presettlement arena.

Naturally there are attorneys all over this country who believe that the settlement will never make it through and they are trying to look out for their clients. Internal documents which have not yet been released could be invaluable in such suits.

But the greater good demands that we look at an agreement which could bring us tremendous public health advances, and it appears that agreement could actually be hindered by an exhaustive investigation of internal tobacco documents.

I can't blame the cigarette companies for not wanting to produce the documents in advance—although I cannot in any way condone some of their past reprehensible behavior. I simply question whether it is the appropriate role of Congress to conduct discovery for private litigants.

I think we are all indebted to the negotiators for stimulating a potentially fruitful public discussion on the public health issues attendant to tobacco.

I commend the States attorneys general, especially those involved in the class action litigation. I commend the public health representatives who have been speaking out, and the representatives of the tobacco industry for advancing the ball in a meaningful direction.

The climate has been created for the Congress and the public to have opportunities to make significant strides on this whole set of tobacco issues.

It is clear that the Senate is only in the beginning stages of this process. Five congressional hearings having been held, and more are planned.

I urge my colleagues to let the process work. Let us move a proposal in the

Judiciary Committee. Many of my colleagues here tonight are members of that committee, and we will have ample opportunity for full discussion.

I just have to doubt if this is the right time and the place, on the Labor-HHS appropriations bill, to be raising these issues that could blow the settlement out of the water.

I personally believe we ought to move that settlement forward.

My study has led me to conclude it is a one-time opportunity to do something for our kids in this society.

It is a one-time opportunity to make significant advances in biomedical research, And it is surely a one-time opportunity to have the tobacco companies fully cooperate in providing all of their internal research for the benefit of the public health at large.

There are so many benefits that could derive from a decent settlement, if we can formulate one and keep the parties together.

It is time now for the President to speak out.

He was supposed to speak out this Thursday. Now they have put it off for another week, knowing that every week that it is put off it is less likely that we can pass something in this Congress.

Let me make a prediction. I believe that we are going to lose this historic opportunity if we do not seize the opportunity, bite the bullet, do the work that is necessary, get the involvement of the companies, the attorneys general and others who are interested in this process, and come up with a package, that literally, will realize all of the public health gains I have been talking about, and more.

It is no secret that the tobacco industry may not proceed with the settlement if the North Carolina case, which does indicate that FDA does have some right to regulate in the area of nicotine, is overturned on appeal. Many legal experts say that the Greensboro case is iffy at best and that it could very easily be overturned on appeal. In fact, I think there are many good arguments for overturning it on appeal based on present law and our understanding of present law.

But let me admonish my colleagues that if that case is overturned on appeal, I am not so sure that the tobacco industry is going to proceed with a settlement anyway, because they might just continue to take the risk that juries in the respective States will almost invariably find that those who smoked all of their lives assumed the risk, or were contributorily negligent in doing so. That is why they have won these cases in large measure right up to today.

I was in Pittsburgh, PA, when the first anticigarette tobacco case was brought, Pritchett versus Liggett & Myers, by the then fabled McArdle law firm. Jimmy McArdle, was one of the leaders, if not the leader in the whole country, in paving the way for tobacco litigation. He scared the daylights out of tobacco companies, but lost, one of few times that great lawyer did not prevail in court.

So I have watched this litigation for all of these years. If that case in North Carolina is lost, we will lose a major incentive for the tobacco companies to come to the table.

Or let's put it another way. If Minnesota Attorney General Hubert Humphrey wins his case, the tobacco companies may very well decide not to go forward anyway. Or, conversely, if General Humphrey loses, what is the incentive for the tobacco companies to stay in the deal?

It would be a message to every other attorney general in the country. Already they have decided to fight right to the end the case brought by the Attorney General of Texas. What is the incentive to continue?

Right now we have an opportunity for all sides to put something together. The attorneys general have put inordinate amounts of time and effort into this matter, and there is an obligation on our part to try to resolve it.

But without Presidential leadership, it is very unlikely that we can resolve it. If we have the President's endorsement, then I think we have to have leadership here in the Congress to move forward, and to do what is right.

No matter what we do, it is going to be difficult because there are those in the Senate and in the House who resent anything done to the tobacco industry. And there are those who feel that anything the tobacco industry wants should be blocked.

My feeling is that the benefits that could come from a legitimately and well put together tobacco settlement clearly outweigh the desire of some to just kill the industry, when in fact they don't have the tools to do so.

There is no doubt in my mind that the $368 billion figure has to change. We have to give serious consideration to the tax implications, as some in this body have suggested. We have got to have some clear-cut approach toward FDA authority.

We have to do a number of things that literally will make that settlement more acceptable. And we have to bring all sides and all parties together, and we have to bring the weight of the Federal Government, the weight of the administration, the weight of the legislative branch of Government, and ultimately the weight of the courts into bringing this all together so that the public at large can benefit greatly.

Personally, I am willing to devote substantial effort toward that end. I know other committee chairmen, who have various jurisdictional areas in this matter, are willing to work on it as well.

In all honesty, we are not going to resolve this by bits and pieces in amendments to legislation like this.

With regard to the amendment of the distinguished Senator from Illinois, let's face it, the language in the Balanced Budget Act was pretty ambiguous. I see any way that language could be binding; it is too ambiguous.

The language, in my opinion, is not really going to require any tobacco settlement to pay for child health insurance. Nevertheless, it would be nice to clarify that matter, and we could do that in a true tobacco settlement.

With regard to attorneys' fees, I share some of the view of the distinguished Senator from Alabama. I agree that there should be a limitation. This should not be a ripoff situation where we have a feeding frenzy on attorney's fees. On the other hand, there are attorneys who have worked long and hard and spent a lot of money and a lot of effort and time, and without whom the settlement would not have been brought to this point. They do deserve some compensation for that.

I think we were all well aware that the issue of attorneys' fees is going to have to be solved in any tobacco settlement that happens.

I do not believe we can easily solve tonight the problem that has been raised by the Sessions amendment that would retroactively limit attorney fees which have already been a matter of contract between States and private counsels.

But we can solve the problem as to how much of this money that actually has to be put up over 25 years is going to go for attorneys' fees.

That is something we are going to have to work to solve. It needs to be done fairly; it needs to be done with wisdom, as with all other aspects of this agreement, in totality.

The way to do it isn't by nit-picking or just by amendment after amendment in the Chamber. We could literally get into 100 tobacco amendments on just this appropriations bill alone.

I think the way to do it is to get the President to speak out. Let's keep holding our hearings. Let's get a final legislative draft and look at it. Let's bring the parties together and demand that the attorneys, the attorneys general, the public health groups, and the tobacco companies who originally negotiated the deal work to provide us with a draft. Let's reform and refine that draft, factor in the President's perspective, and the views of others who did not participate, such as the farmers, and let's move forward to resolution of this issue in the best interests of the American people.

I just wanted to make these comments because I am very upset that we keep playing around with this issue. Frankly, if we let it go beyond the end of this year, it may be very difficult, it maybe impossible, to do next year.

I ask unanimous consent that Bruce Artim be granted access to the floor for the remainder of the session.

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

Mr. HATCH. I yield the floor.

Mr. SPECTER addressed the Chair.

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

Mr. SPECTER. Mr. President, a few administrative matters here.

I ask unanimous consent that Senator DOMENICI be added as a cosponsor to amendment No. 1121.

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

AMENDMENT NO. 1095, AS MODIFIED

Mr. SPECTER. Mr. President, I ask unanimous consent that the pending amendment be set aside and that the Senate turn to the consideration of amendment No. 1095 to S. 1061 very briefly and temporarily for disposition.

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

Mr. SPECTER. On behalf of Senator LANDRIEU, I send a modification to the desk.

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

The amendment, as modified, is as follows:

On page 44, line 2, strike ''$5,606,094,000'' and insert ''5,611,094,000''.

On page 85, line 19, further increase the amount by $5,000,000.

Mr. SPECTER. This amendment, Mr. President, provides for an additional $5 million for the adoption opportunities program, bringing the total in the bill to $18 million. The amendment is offset by further reductions in administrative expenses. It has been cleared on both sides, and accordingly I urge its adoption.

The PRESIDING OFFICER. Without objection the amendment is agreed to.

The amendment (No. 1095), as modified, was agreed to.

AMENDMENT NO. 1125

Mr. SPECTER. Mr. President, very briefly on the pending amendment offered by the distinguished Senator from Alabama, I think the debate this evening has been very useful. The comments by the distinguished Senator from Utah are cogent. We have had the hearings as noted by Senator HATCH in the Judiciary Committee. It is tempting to eliminate the very substantial tax break which is presented in the reconciliation bill. Perhaps that is something that can be done now although the considerations advanced by the Senator from Utah are very weighty.

The amendment offered by the Senator from Alabama to curtail the attorney's fees is very much worth considering. I am not sure that the proper place for it is on this bill because we really do not know all the underlying facts. When you talk about $250 an hour, that is a substantial sum of money on an hourly rate. When you talk about a total of $5 million, that is a substantial sum of money. The reports are that the attorney's fees in the agreement run into the billions. It may well be that before an intelligent legislative decision can be made on this matter, we will have to know a great deal more about the arrangements made by each State with the attorneys, what their work has involved, evaluation of the contingent nature, that is, a likelihood of failure so that a contingent fee is set and some consideration on the likelihood of success because if there is no settlement, then there are no attorney's fees to be paid, and that may be a fact-specific inquiry which will take some considerable time ultimately by the Judiciary Committee.

But in any event, the stage is set. There are other Senators who want to discuss this issue. We will proceed to the conclusion of it when we resume consideration of the bill tomorrow morning at 9:30.

I yield the floor.

Mr. WELLSTONE. Mr. President, might I ask the manager a question? I had come to the floor to speak tonight, but I know it is late and people may be anxious to leave. What would be the order of business tomorrow? Is there additional time on the amendment of the Senator from Alabama?

Mr. SPECTER. Mr. President, if the Senator will yield, I will be glad to respond. The pending amendment will remain in the Chamber. The Senator from Illinois, [Mr. DURBIN], had made a motion to table and then had withdrawn it at my request so that Senators who were not here might have an opportunity to debate tomorrow morning. But that will be the amendment which we will return to at 9:30 tomorrow morning.

Mr. WELLSTONE. Mr. President, I wonder whether, with the support of my colleagues, rather than taking up more time tonight, I might ask unanimous consent to be included in the sequence of that order to be able to speak once we start for 5 minutes or 10 minutes? I will not do it tonight.

Mr. SPECTER. Mr. President, if I may respond, I don't think there is any unanimous consent order required. If the Senator is here tomorrow morning when we proceed with the bill, I am sure he will be recognized.

Mr. WELLSTONE. I thank the Chair. I will wait until tomorrow, then, to speak.

Mr. SESSIONS addressed the Chair.

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

Mr. SESSIONS. I want to express my appreciation to the distinguished chairman of the Judiciary Committee, Senator HATCH, for his remarks. I appreciate them. His committee, the Judiciary Committee, of which I am a member, has begun wrestling with these very complex issues. I think he is exactly correct. It is a matter that requires the leadership of the President. He is going to have to step up to the plate and bring his departments of the U.S. Government on board if there is to be an agreement. It has so many possibilities of going awry.

I think, personally, I have not decided whether this legislative body, the Congress, ought to get involved in this lawsuit or not. It may be the right thing for us to do. Then again it may turn out that it is not. But if we do, I think it is appropriate that we limit the amount of attorney's fees in these cases. Under the fee agreements that I understand are now in place, attorneys, private attorneys, who have been hired by the States have been involved in litigation maybe only a few weeks and could stand to receive tens of millions, even billions of dollars. In fact, most published reports indicate that fees could be as high as $10 billion to $14 billion in this litigation.

That is far too much. That money needs to go to children. That is what these lawsuits were about, to have that money go to children for children's health, and that is what this bill would be involved with. So I feel very strongly about that.

As to this being a tobacco industry bill, I am surprised the Senator from Illinois said that because I am supporting his amendment which would add another $50 billion, $60 billion to the tobacco industry, at least take away any benefit that now may come to them in that amount—a very significant issue. And I have come down on his side.

I simply say, just as that amendment that came through to change perhaps the funding for the tobacco industry to save them a large amount of money was not fully debated, likewise the attorney's fees that have been out there have not been debated. As a matter of fact, they have not been discussed. At the Judiciary Committee hearing at which I appeared with Senator HATCH, I asked about attorney's fees of several of the attorneys general, and I got only evasive answers.

So then I submitted written questions to them asking for detailed explanations of what kind of fee agreements had been entered into and asked them to respond to me in writing. Over a month has passed, and we have heard nothing from them. So I say there is a side agreement, an unhealthy, secret agreement, it appears, between the attorneys for the States and the tobacco industry, that the attorneys general and the States are saying they are not responsible for.

You cannot do that. Mr. President, as an attorney, let me say this. An attorney's fidelity must be totally to his or her client, and in this instance, these attorneys, these plaintiff attorneys who have been hired to represent most of the States involved who have contingent fee agreements with their States need to have their total loyalty to the State. But if they are over there on the side entering into a fee agreement negotiation with the tobacco industry and saying to the American people and the people of the various States involved, ''Don't worry about the fee agreement, the tobacco industry is going to pay that,'' make no mistake about it, that is money taken from the children. That is money taken from the settlement that would go to benefit the health of people who have suffered from smoking. It is a side agreement that is not healthy.

I have serious questions in my mind as a practicing attorney whether or not

that is ethical because, you see, if that private side agreement between the tobacco people and the attorneys about how much money they get falls apart, those attorneys get no money—perhaps. And maybe the tobacco company can say, well, if you will just agree to this restriction or that restriction, we will agree to pay you two or three more billion dollars in attorney's fees. That is the kind of unhealthy relationship that should never occur in serious litigation, and this is certainly serious litigation.

The Senator from Kentucky from the other party indicated that this settlement may exceed $500 billion. We cannot allow 10–20 percent of that money to go to attorneys, many of whom have filed lawsuits so recently that the ink is hardly dry on them. They have done very little litigation. Yet we are at the point of the tobacco industry coming in and agreeing to settle and pay it all and the litigation would presumably end and then they would get these huge sums in legal fees. I think it is a very important matter, and as far as this Senator is concerned I will not support any agreement, I will not support any global settlement legislation from this body that does not fully disclose every dime that is being paid, and I don't think we should.

In addition to that, I think this body ought to make clear that if any settlement does occur, we should cap the amount of legal fees. I think $250 an hour is fine pay for any good lawyer, and that is the maximum they ought to be paid. If they are not worth that—they do not normally charge that—they should not get $250. But we say no more than $250 an hour and no more than $5 million per State. So that is 50 States to perhaps pay $5 million, and we could save substantial sums of money, Mr. President, that could go to benefit children's health in this country and not be involved in windfalls to attorneys who may have done very little work at all.

I think this is a good bill. I just point out that, of course, if there is a global settlement and there needs to be some changes in the actual formula or caps involved in the payment of attorney's fees, that could be made a part of it. But I think this body right now needs to send a message to the people of this country that we are going to insist on full disclosure and we are going to put some reasonable limits on how much money can be spent on attorney's fees.

AMENDMENT NO. 1125, AS MODIFIED FURTHER

Mr. SESSIONS. Mr. President, at this point I would like to further modify my amendment to address the concerns of the Senator from Iowa with regard to the ongoing State suits versus the national tobacco settlement.

I send that to the desk at this time.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. The amendment will be so modified.

The amendment (No. 1125), as modified further, is as follows:

Strike the last word in amendment No. 1078, as amended, and insert the following: ''Repealed.

''SEC. . (a) GENERAL LIMITATION.—Notwithstanding any other provision of law, if any attorneys' fees are paid (on behalf of attorneys for the plaintiffs or defendants) in connection with an action maintained by a State against one or more tobacco companies to recover tobacco-related medicaid expenditures or for other causes of action, involved in the National Tobacco Settlement Agreement, such fees shall—

''(1) not be paid at a rate that exceeds $250 per hour; and

''(2) be limited to a total of $5,000,000.

''(b) FEE ARRANGEMENTS.—Subsection (a) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

''(1) court order;

''(2) settlement agreement;

''(3) contingency fee arrangement;

''(4) arbitration procedure;

''(5) alternative dispute resolution procedure (including mediation); or

''(6) other arrangement providing for the payment of attorneys' fees.

''(c) EXPENSES.—The limitation described in subsection (a) shall not apply to any amounts provided for the attorneys' reasonable and customary expenses.

''(d) REQUIREMENTS.—No award of attorneys' fees shall be made under any national tobacco settlement until the attorneys involved have—

''(1) provided to the Governor of the appropriate State, a detailed time accounting with respect to the work performed in relation to any legal action which is the subject of the settlement or with regard to the settlement itself; and

''(2) made public disclosure of the time accounting under paragraph (1) and any fee agreements entered into, or fee arrangements made, with respect to any legal action that is the subject of the settlement.

''(e) PROVISION OF FUNDS FOR CHILDREN'S HEALTH RESEARCH.—Any amounts provided for attorneys' fees in excess of the limitation applicable under this section shall be paid into the Treasury for use by the National Institutes of Health for research relating to children's health.

''(f) EFFECTIVE DATE.—The limitation on the payment of attorneys' fees contained in this section shall become effective on the date of enactment of any Act providing for a national tobacco settlement.''

Mr. SESSIONS. Mr. President, the effect of this amendment would be to make sure this amendment applies to tobacco attorneys, too. It would limit their fees if they were in excessive amounts.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. 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. 1122

Mr. MACK. Mr. President, my colleague Senator GORTON has introduced an amendment which would return federal funding for education programs serving grades K–12 directly to school districts. Currently, nearly one third of all the money spent on education by the federal government ends up at the Department of Education. However, of that amount, only 13.1 percent actually reaches local school districts.

Mr. President, the Federal Government currently administers so many education programs which it cannot efficiently control, nor can it determine if it is money well spent. The vast number of these programs are redundant and could be easily combined. Over the years, as new ideas and innovations in education have been enacted, we have not reviewed programs currently in place which serve similar purposes. The result has been a growing Washington bureaucracy, with more federal regulations affecting the day-to-day workings of our local schools.

Clearly, when it comes to the education of our young people, one size does not fit all. This amendment would remove Washington bureaucrats from what should be local decisions. Parents, teachers, and local school officials are far better prepared to determine how best to use scarce resources. We should express our confidence in parents, our teachers and our principals to decide how best to use limited resources to meet the needs of children—who ultimately are the ones we must serve. Washington bureaucrats, far removed from these local situations, cannot accurately make those decisions.

Mr. President, I am sure that during debate on this amendment and debate on this bill, we will hear from others in this body about the need to preserve Congress' role in providing for the education of our nation's children. Certainly, there is a role for Congress in this area, but I believe it is a more limited role.

I must point out that this amendment would not reduce by one dime the amount of funding provided by the federal government for education nationwide. Instead, it will ensure that the status quo which has sentenced our schools to mediocrity will be reformed to enable parents, teachers and local decisionmakers to enact innovative reforms to our education system.

Mr. President, I believe in this approach because I believe in parents—who have the biggest stake in their parent's success and fulfillment. I believe in teachers—who, everyday, stand before classrooms of children and challenge their minds with knowledge and ideas, who inspire them to dream and imagine, who help them open the doors to success. These are the ones we should seek to help, because their efforts will determine how America fares in the 21st Century—they will determine whether we continue to lead in the world or whether we will allow that leadership to fall on some other nation.

I'm confident that our parents, teachers, and students can build the best education system in the world, if only Washington ''experts'' will just get out of the way. Let's show them that Congress believes in their abilities

to make the right decisions for the future of our children by supporting this amendment. I thank the chair and I yield the floor.

MEDICARE COMMISSION PROVISION

Mr. FEINGOLD. Mr. President, I want to thank the Senator from Iowa [Mr. HARKIN], for his efforts to include language in this appropriations bill relating to the Bipartisan Commission on the Future of Medicare. I also want to thank his colleague, the senior Senator from Iowa [Mr. GRASSLEY], who chairs the Senate Special Committee on Aging, for joining me in advocating some additional direction to the Commission with respect to long-term care. I very much enjoy working with Senator GRASSLEY on the Aging Committee, where he has continued a long tradition of bipartisanship.

Mr. President, the language added to the bill at our request touches on one aspect of an enormously important segment of health care, namely long-term care. I have been deeply involved in long-term care issues for nearly 15 years, and have advocated significant reforms to our current system both at the State and Federal level.

Mr. President, many will recall that as part of the Balanced Budget Act of 1997, we created the so-called National Bipartisan Commission on the Future of Medicare. Established because of the need to reform and modernize the principal health care system of our Nation's seniors, that Commission will examine a host of issues relating to health care coverage and will make recommendations that we hope can lead to an improved Medicare system, one which will not only deliver better health care but also provide some relief from the growing pressure Medicare has been placing on our Federal budget.

One of the key issues to be examined by the Commission is the area of chronic disease and disability.

Mr. President, effective treatment of individuals with chronic health care needs requires a combination of acute and preventive care, disease management, health monitoring, and long-term care services and supports. However, as it is now structured, the Medicare fee-for-service program responds to specific and discrete episodes of care through separate providers, and often discourages timely, coordinated cost-effective chronic care.

Mr. President, more than 20 percent of Medicare beneficiaries today have chronic health care needs, and they are the fastest growing segment of the Medicare population. A major part of the health care for these beneficiaries with chronic needs are the long-term care services and supports which are separately financed by beneficiaries and their families, or, for those without personal resources, by Medicaid and the States.

This latter group of people with chronic care needs, those who are eligible for both Medicare and Medicaid, help make up a particularly important group of beneficiaries. The so-called dually eligible make up about one-sixth of the population of these two programs, but account for nearly one-third of program expenditures and rightly have captured the attention of policy makers as one of the critical targets for policy reforms in the two programs. As a recent hearing of the Aging Committee revealed, the lack of coordination between these two programs, and more generally between Medicare and long-term care, creates perverse incentives for cost-shifting in the health care system, and often results in excess cost, inappropriate care, or no care at all.

Mr. President, while the National Bipartisan Commission on the Future of Medicare is already directed to examine this critical population, our proposal goes further be specifically calling on the Commission to examine the potential for coordinating Medicare with cost-effective long-term care services.

Mr. President, I want to underscore the language we had included in the bill does not limit or even specify what the Commission might consider in reviewing the potential for coordinating Medicare with long-term care services. But there are a number of matters deserving the Commission's attention that I want to highlight, including the success of a number of States, such as Wisconsin, in developing effective long-term care programs built on flexible delivery systems that deliver more cost-effective, individualized care. The Commission should also take a particularly close look at efforts which build upon the existing system of informal supports, often provided by family members and friends, that currently account for the vast majority of long-term care provided in this country.

More generally, while the primary focus of the Commission will be the future of Medicare, as the Commission calculates the future cost of the current Medicare program, I urge it take into consideration the total costs of care for individuals with chronic illnesses and disabilities, including the cost of long-term care services and supports, whether those costs accrue to Medicare, Medicaid, private insurers, or beneficiaries and their families. It is neither good budgeting policy nor good health care policy to partition off health care service planning, making changes to one program while ignoring the effect those changes will have in other areas.

Mr. President, unlike the near-term focus of the budget process, the recommendations that we expect the Commission will make regarding Medicare will be based on a much longer and broader view. Some of the defects of the current Medicare program are arguably the result of short-term budget considerations that have led to unintended, sometimes expensive consequences. By taking a broader view, the Commission can avoid some of these past errors, and possibly contribute to one of the highest health care priorities we have, the need for significant long-term care reform.

AMENDMENT NO. 1074

Mr. CAMPBELL. Mr. President, I strongly support the amendment offered by my distinguished colleague from Arizona, Senator MCCAIN. The amendment would dedicate an additional $100 million to research on Parkinson's disease, an effort driven by my accomplished mentor and dear friend, Morris K. Udall.

The statistics are staggering. While over a million Americans battle Parkinson's at a cost of $26 billion annually, the Federal commitment to Parkinson's research is only $27 million. While it is not only impossible but unfair to try and determine what disease should get more funding for research while another gets less, these statistics say unequivocally that Parkinson's deserves more.

While I have many fond memories of Mo, his thirty years of unparalleled service to this country, his ever present wit and his statesmanship, one of my fondest memories is of a circumstance in which he exhibited rarely matched courage and integrity. While both in the House of Representatives, I had the honor of crusading with Mo to remove a painting from a wall in the Capitol that was both offensive and demeaning to Native Americans. That painting, that symbol of dominance, hung for years. Mo Udall took it down. He took down many such injustices during his tenure in Congress.

Parkinson's has robbed us of too many valuable people. I feel very strongly that the 64 Members of the Senate who cosponsored this bill should follow through on their initial—overwhelming—show of support and adopt the amendment.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, September 8, 1997, the Federal debt stood at $5,411,318,696,295.51. (Five trillion, four hundred eleven billion, three hundred eighteen million, six hundred ninety-six thousand, two hundred ninety-five dollars and fifty-one cents)

Ten years ago, September 8, 1987, the Federal debt stood at $2,360,222,000,000. (Two trillion, three hundred sixty billion, two hundred twenty-two million)

Fifteen years ago, September 8, 1982, the Federal debt stood at $1,107,230,000,000 (One trillion, one hundred seven billion, two hundred thirty million)