NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

AMENDMENT NO. 2434

Mr. KERREY. Mr. President, there are an awful lot of us who are now, as we head through the deliberation of this bill and the various amendments being offered—and, to be clear, I voted, on the budget resolution, in favor of the amendment being offered now by the Senator from New Hampshire. I will disclose, though, that I do not know how I am going to vote on the same amendment because I want to get a bill. I want the fine work that Senator MCCAIN and the Commerce Committee have done to yield a piece of legislation that the President can sign. I think it is terribly important. There are parts of this bill, on the other hand, that give me a considerable amount of concern.

First of all, I hope that at some point I can have this discussion in the presence of the chairman of the Judiciary Committee, who understands these issues very, very well.

First of all, I would like to talk about how we got to where we are today. The whole thing began back in 1996. There were a lot of discussions between the attorneys general, led by Michael Moore from the State of Mississippi. A settlement ensued as a result of one company, Liggett, disclosing information. This accelerated rapidly, and on the June 20, 1997, an agreement was reached. An agreement was reached between the tobacco companies and 40 States' attorneys general, and the settlement reached is very important for this debate because a number of things were in that settlement.

First of all, there was a stipulation. The tobacco industry has said that nicotine is addictive. I know a bit about addiction. I was a University of Nebraska graduate of the College of Pharmacy. I practiced pharmacy for a while. I remember in 1965 waiting in a Lincoln pharmacy for the opportunity to have my character molded by the U.S. Navy, having passed a physical examination provided by my Government. I was practicing pharmacy.

Remember, there was a great debate going on at that time in this country not just about Medicare but the regulation of drugs. At that time, in 1965, the most rapidly moving pharmaceutical in our store was a drug called Dexadrine, among other amphetamines. It is a very highly potent stimulant. At the time, the industry was saying it was habit forming, not addictive.

In 1965, prior to the enactment of changes in the law that increased the power of the FDA—and I point out to colleagues that I believe perhaps the most important section of this bill is title I, which gives the FDA increased authority to regulate tobacco and tobacco products. The tobacco industry stipulated and agreed that nicotine is addictive on June 27, 1997. That should not be in dispute today.

In 1965, Dexadrine was moving very rapidly with a powerful capacity to addict, and it was addicting a lot of people. We had to fill prescriptions for Seconal and phenobarbital just so people could get to sleep at night after taking this stuff. After this regulation went into effect, we saw a dramatic change in the accessibility to this particular drug. It went from being a very highly used medication to where, today, you would be lucky to see, even in a high-volume store, 100 Dexadrine a year. Today, it is only allowed to be used for narcolepsy.

Mr. President, a couple of weeks ago I had a meeting with some high school students at Burke High. I talked as well to other young people who are smoking. About 7 to 12 of these young people were smoking. What is quite apparent to me, Mr. President—and my suspicions are, though I have not polled it and I don't have accurate information—my guess is that most people in Nebraska, or a large percentage of people, don't understand that the landscape changed last June 20 with the tobacco industry saying yes, nicotine is addictive. They don't understand what being addicted means. They don't understand that there is a physical need and withdrawal symptoms associated with individuals who try to stop. Certainly, these young people did not understand what it means to be addicted. Indeed, when I asked them if they expected to be smoking when they reached adulthood, the majority of them said no, they did not expect to be—even though we now know that 90 percent of the people who smoke today started smoking when they were young.

The fact that we now know that nicotine is addictive and the tobacco industry is stipulating in their settlement that it is, it is an important and relevant fact, because what happens now is that we are transformed from dealing with an issue that has to do with personal freedom; we are now dealing with an issue that has to do with this question: Are we going to make an effort to save lives? In addition to being addicted, they are addicted to a substance that contains toxins, including carbon monoxide and other chemicals, which, if taken as directed, will result in the premature death of 1 out 36 people who start smoking, as well as all kinds of other health problems associated with tobacco.

So I want to begin, as I evaluate—and all colleagues should—whether to vote for the McCain bill, to understand that the industry agreed to the FDA regulation on June 27, 1997, as a consequence of the effort of Michael Moore and 39 other State attorneys general, and a settlement was reached. What the Commerce Committee has done is report out almost everything that was in that settlement. The tobacco industry agreed to pay $15 billion a year. Indeed, they agreed to pay $50 billion in punitive damages.

At the time, I remember in the aftermath of the settlement—and it seems like a hundred years ago, but it was less than a year ago—the big debate was: Would that $50 billion be tax deductible? Would the companies be able to deduct it from their income? Or would it have to be a post-tax payment? But it is $50 billion in punitive damages. They agreed to pay $15 billion more. What Senator MCCAIN and the Commerce Committee have done is say, since that time, a number of things have happened. We had a settlement in Texas, a settlement in Florida, and, most important, a settlement in Minnesota, which has the tobacco industry not only stipulating everything they did before, but releasing some 36,000 documents, most of which are still unread, my guess is, by most Members of Congress—certainly me. But just reinforcing for our citizens the idea, yes, I knew it was addictive; and, yes, I've been targeting your kids; and, yes, I've been doing some other things to try to increase sales, even though I understand that it is a terribly big public health problem.

The Commerce Committee has said we now have them agreeing to a 10-percent increase in Minnesota, and, instead of $15 billion, we are going to ramp it up to $23 billion a year. When we talk to citizens at home, please don't leave a citizen in your State with the illusion that somehow Congress or the Commerce Committee on their own came up with this number. This was agreed to by the tobacco industry on June 20, 1997. And, after the settlement in Minnesota, it seems to me the Commerce Committee is well within reason to say that instead of $15 billion it ought to be $23 billion. That is where we are.

Mr. President, the next thing I have to ask is, What are we going to do with it? What is the purpose? Where are we going? What is the idea that is most important with this legislation? For me, the most important idea—it may be different for others—is I want to save lives. I think that is what we are talking about. One out of three who start smoking dies prematurely. In Nebraska, $250 million is spent just on cigarettes; 100 million packs of cigarettes are sold every single year in Nebraska. I want to decrease the number of people who are buying cigarettes. If I can get 50,000 of the 350,000 Nebraskans who smoke, if I can help them stop smoking, not only do I save the lives, I save the money.

All of this conversation about a tax increase and being concerned about low-income Americans and the taxes they are going to be paying, if they would do this bill right, we would help people stop smoking and reduce their out-of-pocket spending for tobacco, not to mention the out-of-pocket spending for health care, the out-of-pocket spending that occurs as a result of not

being able to go to work, and the out-of-pocket spending for some other things.

I ask Members: Have you ever talked to anybody who has been able, after a long period of time, to quit smoking how they feel? Are they happy? Are they glad? The answer is always yes. They can do more. They and their kids are enjoying life better. They feel healthier. They have more money in their pocket as a consequence of not having the addiction as a part of their life. They do not say, ''Gee, I am mad at you because you helped me stop smoking.'' They are glad.

This piece of legislation, as far as I see it, that we are debating right now is an opportunity for me to go home and say, ''We are going to try to save lives, not just to try to prevent young people from smoking''—we have about 30,000 people in Nebraska who are underage who are smoking cigarettes—but also to go to the adults, the 350,000 adults who are buying 100 million packs of cigarettes a year, and help them stop smoking, to save their lives, to decrease their out-of-pocket spending for tobacco, and to give them a shot at the American dream—at least connected with tobacco—and able to say, ''I am healthier and, as a consequence of being healthier, happier as well.''

There are two provisions of this bill—I don't know if the Senator from Arizona wants to respond to any of them or not—that concern me. The first is the provision for the tobacco farmers. I will wait until my friend from Kentucky comes down to the floor. I will have a chance. The Senator from Indiana has an amendment down there.

First of all, I want to say that without the Senator from Kentucky and the Senator from South Carolina, there would be no provisions in here for tobacco farmers. I agree with them; there need to be some provisions for tobacco farmers to help them as we move from the old era, when we were neutral as to the health impact of this naturally grown product, to a point where we now say we want to help people stop smoking because it is killing them, it is ruining their lives and ruining their health. As we go from that point, it seems to me reasonable that we ought to have some transition payments for Americans who earn their living by growing tobacco.

There are about 740,000 acres of tobacco acreage nationwide. To put that in perspective, one of the reasons I am concerned about it is, in Nebraska we have about 22.5 million acres for other crops, and 1.5 billion nationwide; 740,000 acres of tobacco quota against about 1.5 billion acres for all other agricultural products. Freedom to Farm, which I think we ought to pattern the tobacco language after, Freedom to Farm was about $36 billion total for 1.5 billion acres.

It seems to me we ought to be looking for some way to pattern the tobacco farmer portion on what we have done for other farmers in this country as we transition into an era where we say, ''You are going to have the freedom to make your own decisions, plus the market will allow you to decide how you are going to plant and what you are going to plant.'' I have a very difficult time voting for something that has $28 billion for tobacco farmers when I did $36 billion for all farmers, including mine in Nebraska. We paid out at that time about 10 percent of the value of the crop. Ten percent of the value of the crop was one of the bases to come up to use for the payment.

I hope again I am able to work with the Senator from Kentucky, because I applaud his work, the work of the Senator from South Carolina, and the work of the Senators from Virginia and North Carolina. Lots of people have had input into this to make certain we do something to help the tobacco farmer. The question is, How much are we going to help?

I am troubled by that provision, I say to my friend, the chairman of the committee, who is trying to figure out how to manage this across the line. I hope to be constructive in getting that done. I voted against putting another 40 cents on. I will probably vote against the amendment of the Senator from New Hampshire, even though I voted for it before when it was on the budget resolution, because it seems to me that you have increased the cap on liability. I think it was 6.5 in the first bill. It is now $8 billion a year. That is a lot of money. We are not giving the tobacco companies—I think people said we don't want to give tobacco companies special treatment. They will be required under this legislation to pay $23 billion a year into a tobacco trust fund. That is not my idea of giving somebody in the private sector special treatment. It seems to me that it is a reasonable tradeoff in order to be able to fight this battle.

To me, the most exciting thing about this legislation, now that we have the full truth about what tobacco can do, is I will be able to go home and say this legislation will enable us to organize community-based efforts to help not just our children keep from starting to smoke but also help in my State 350,000 adults who currently smoke whose lives, in all likelihood, are going to be shorter and they will be less healthy as a consequence.

That leads me to the second concern I have. Again, I have an amendment on the tobacco farmer portion, depending on the disposition of the Lugar amendment, that will place a greater emphasis on prevention and smoking cessation. I really have come to a point now where I say what makes it work for me is to be able to go home to Nebraska and say this bill helps save lives. That is what we are doing. If I can get that done, if it enables me to save lives, it seems to me I have something that I can make work at home.

To that end, the amendment that I have prepared—and I am not going to lay it down right now because we have one that we are debating—would take the money and, instead of ramping up from I think $15 billion initially up to $23 billion a year, the breakdown is, 40 percent of that money goes to the States, 22 percent of that money goes to NIH, 22 percent of that money goes for smoking cessation, education, and international trafficking—to stop international trafficking—and, as I understand it, 16 percent I think is left that goes for tobacco farmers. As I said, I think that 16 percent is too high. We have prepared an amendment, depending upon the disposition of the Lugar amendment and depending upon my ability to be able to negotiate about the Senators who worked hard on this provision.

But I believe what would also increase the likelihood of being able to save lives at home, being able to make this thing not just a situation where, as a result of increased Federal regulation through FDA, as a result of the tobacco industry raising the price because of the fees they will be paying into this national trust fund, another way to do it would be to take that 40 percent that is allocated to the States and add the 6 percent that ends up being estimated for prevention in the third area, and consolidating all that into a block grant that would go for smoking prevention and cessation, insist in the language of the law that the Governors put together a community-based organization to come up with a plan to help people stop smoking and have HHS approve that plan. I think it would allow us to have a steady stream of money that would come into each one of our States.

I am uncomfortable about having anybody but Members of Congress deciding how money is going to be spent. I love my Governor. I love all Governors. They are all great Americans. But as far as I am concerned, the Constitution gives me the authority to vote to raise taxes and vote to spend money, and I think that is what we ought to be doing.

As concerned as I am about getting more money into Medicaid, the thing that I have to do in order to make this successful is I have to have those people out there who are smoking stop smoking.

So I would at some point come to the floor and offer an amendment. I hope to have some conversations with the chairman and the ranking member on this, because I think we could improve the bill substantially if our goal is to save lives and reduce the number of people who are smoking, not just stopping young people from becoming smokers but helping those who are already smoking stop in order to be able to save their lives. It seems to me we ought to consider that the funding language in here needs to be altered and a much greater emphasis placed—indeed, it ought to be the most important emphasis—on smoking cessation programs.

Let the Governors write a community-based plan. Make them engage the community. It is much more likely at the local level that real answers are going to be found for this problem. It is not as easy as it sounds not just because of addiction but because of other reasons to stop smoking. I think it is much more likely they will come up with plans that work.

Let us, as a consequence of our concern for public health, work with those community groups to make certain that the money is going in that direction.

I discussed as well with the managers creating a tobacco scholar through NIH funding for every State. I don't know about other Senators, but I need a lot of help with numbers, with what the research is saying. Not only do we put more money into research, but it is likely that all of us are going to see State-based efforts to reduce smoking, and if we have to scramble around and try to figure out what the data is, to try to figure out what the facts are, it gets difficult to do it.

So I am here. I say to my friend from Arizona, I like what you have done. You have a good bill, it seems to me, in the Chamber, one that if we can get it passed, get beyond all the problems of price increases and concern for the poor, and so forth, I say to my friend from Arizona, will enable you to say you have saved millions of lives as a consequence of this law.

That will be my hope. And, indeed, I believe it is reasonable to assume, as I look at the language of this law, that we will as a result of helping people not smoke to begin with and stop smoking if they have made that decision and became addicted to nicotine, their lives will be happier and longer and healthier as a consequence of this legislation. Thus, there is an urgency to do it, an urgency to make sure we don't make the perfect the enemy of the good. There are lots of good amendments coming up. I have some ideas. All of them are not going to be incorporated. We still have the House to get through and the conference to get through. So I praise very highly the fine work the chairman has done on this thing, and I hope the wishes of the majority leader will be heard and that we are able to get this thing done before we get out of here for the Memorial Day recess.

Mr. President, I yield the floor.

Mr. MCCAIN. Mr. President, I thank the Senator from Nebraska for his thoughtful and measured remarks, and I appreciate his willingness to compromise, which has been a trademark of the Senator from Nebraska for a long time.

I would not ask him if he felt the same way about our relations, congressional relations with Governors when he was Governor of the State of Nebraska. I will leave that question unanswered at this time. But I do again thank him for his thoughtful approach. Obviously, he has studied this very complex issue and a number of his recommendations, I believe, are important and may be adopted either by agreement or in amendment form. I thank the Senator from Nebraska.

Mr. President, because of the schedules of Senators, it is now my intention to move to table the amendment sometime around 2 o'clock. A number of Senators are off the Hill and will not be back until that time. Also, I understand the distinguished Democratic leader would like to make some remarks before the vote.

Mr. President, I know that the Senator from California and the Senator from Illinois and my friend from Texas all want to make remarks. But I will just take about 2 or 3 minutes to say I paid attention to the remarks of the Senator from Oklahoma. I appreciate them. Many of them were constructive. Many of them I profoundly disagree with and cannot and will not at this time respond to over an hour of comments and an in-depth discussion of the bill.

But the criticisms of the Senator from Oklahoma basically boil down to four fundamentals: One is a tax increase; second is big spending; the third is big government; and the fourth is the argument that it will not stop kids from smoking.

I will briefly address that in general terms and at a later time I will give more specific responses to the Senator's very strong and, by the way, well-meaning criticisms of the Senator from Oklahoma.

The argument that this is nothing but a tax increase would have some validity if it were not for the fact that there will be an increase in the price of cigarettes even if this body and the Congress of the United States do nothing.

Two weeks ago, there was another settlement, the fourth made between the industry and a State. It was between the industry and the State of Minnesota. What was the agreement? It was a $6.5 billion agreement, the largest yet on a per capita basis. And guess what is the result of that agreement? An increase in the price of a pack of cigarettes in Minnesota in order to pay for the settlement.

I might point out that settlement was double the settlement that was achieved by the attorneys general with the tobacco industry last June 20. As we see settlement after settlement after settlement, we will see an increase and an increase and an increase in the price of a pack of cigarettes. So we will either enact an increase in the price of the pack of cigarettes, earmark it to the worthy causes, the four that we have laid out, the States, public health, research, and the farmers, or we will watch as State after State goes to court, achieves a settlement or a jury verdict, and we see the same result.

What is the problem with that? The only problem with that is 3,000 teens start smoking every day and 1,000 will die early as a result of health-related illness. So, Mr. President, if you want to call this a price increase, that is fine. But if anybody in America believes there is not going to be a dramatic increase in the price of a pack of cigarettes as a result of negotiations or litigation, they simply have not observed what has happened in the case of the four previous States in the past several months. And 36 more States, at least, are lined up to go to court.

Now, this also does touch to some degree the argument my friends have about attorney's fees. The last I saw—and I don't keep close track of what happens in Florida—the plaintiff lawyers were going to get $2 billion out of the settlement. I think we need to address the issue of lawyer's fees, but if you are worried about it, I would think you would then support a comprehensive settlement as opposed to watching this go on. It isn't just the lawyer's fees that will cost the taxpayers. It is the cost of litigation, which we know is serious.

So if you want to call it a tax increase and quote the biggest in history, blah, blah, blah, then that is your right. But I think in all fairness, in all fairness, you ought to understand the consequences of failure to act, which will be larger increases in the cost of a pack of cigarettes, larger litigation and more delay and, finally, of course, the problem that we need to address and that is the issue of kids smoking.

The second argument is that it is big spending. Let me point out that 40 percent, the biggest chunk of this settlement, goes to States that have incurred costs associated with Medicaid. That is where 40 percent of the money goes. And we also know that we don't know—that we don't know—exactly what it is that causes kids to smoke. We have some pretty good ideas. And, by the way, every single expert, including—including the chief executive of Philip Morris, who, while they were negotiating with the attorneys general, said, ''We all know that price rates are more sensitive to kids smoking than adults.'' That makes sense, obviously, since kids generally don't have as much money as adults do.

But if you want to call it a big spending bill, let's look at where the money is going to, and that is for research, and it is to go to health care, and it is also to go to farmers who are going to be dislocated by this. Remember also that much of the smoking prevention and cessation is in block grants so that the States will be able to do what they think is best with it.

Big government? This may be a big government solution. This may not be the solution that I would have had envisioned nor that the Senator from Massachusetts would have envisioned. This is as a direct result of the agreement which was reached between the attorneys general, 40 of them, and the tobacco industry, which set the stage for the fact that the U.S. Congress needs to act—or at least address the

issue. We may not act. We may not act. We may decide, as my friend, the Senator from Texas, will so eloquently argue, that we can't do this. But when the stage was set with that agreement last June 20, and we were going to have to act it out, what we did in the Commerce Committee by a 19-to-1 vote was put our imprint on it, and the benefit of our wisdom, our knowledge, and, frankly, that of every public health group in America, as well as many other organizations.

Finally, and I apologize to the Senator from California for taking this much time, but the other is that it will not stop kids from smoking. You know, I challenge anyone who says this bill will not reduce teenage smoking to find a single public health organization in America, that is legitimate, that is not on the payroll of the tobacco companies, that will say that an increase in the cost of a pack of cigarettes, plus youth cessation programs, will not have a beneficial effect on this terrible problem.

There was a chart, the Senator from Massachusetts saw it the other day, of the deaths in America. The bar graph was dramatically higher, tobacco-related illnesses death, as opposed to drunk driving, as opposed to many other causes of death in America.

If it will not work, then are we satisfied with the status quo? Are we satisfied that in America today this problem is not only real but growing? We had a Centers for Disease Control study just recently, teenage smoking is on the rise. Minorities in America, those teenagers are starting to resort more and more and more to the use of cigarettes.

So maybe it will not—maybe it will not stop kids from smoking. Maybe this will not work. But to accept the status quo, in my view, and think that just by passing a tax increase on cigarettes we will address that issue, will not do it. I challenge my friend from Texas, who is waiting to speak, I think, very soon. If the Senator from Texas can find a single public health organization in America—the American Cancer Society, the American Lung Association, the Coalition for Tobacco-Free Kids, any living—any living Surgeon General of the United States of America, who will say to you and this body: OK, just pass a tax increase, fund some tobacco cessation programs and that will do the job—then I think that should be an important part of this debate.

But the reality is, not a single one of those organizations will say that anything less than a comprehensive approach to this problem will do the job.

So I just wanted to take a few minutes to respond to the very well thought out and very studied and scholarly, in many cases, objections that were raised by the Senator from Oklahoma. That is what this process is supposed to be all about. I appreciate his input, as I do that of my dearest friend, the Senator from Texas, who has promised me, and I have promised him, we will remain smiling throughout this debate.

With that, I yield the floor.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished chairman for his excellent comments. I would not say anything more substantively except to say I think both the Senator from Arizona and I, and others involved in this, believe that there are a number of good suggestions that have been made. I think we laid this down with the statement this is not perfect in the way that no piece of legislation that comes here is perfect. I am confident that in the process, if we are not seeking to kill it, we can find a way to meld some of the good suggestions that are being made into both acceptable amendments and amendments which can pass by their own weight. I hope we will do that.

Mr. President, I ask unanimous consent the Senator from California be recognized for 10 minutes. Following the Senator from California, the Senator from Texas, Senator GRAMM, will be recognized—not for a specific period of time—and following the Senator, the Senator from Illinois, Senator CAROL MOSELEY-BRAUN, would be recognized for 15 minutes.

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

Mr. KERRY. I amend that by asking if Senator HAGEL, the Senator from Nebraska, could be recognized after Senator CAROL MOSELEY-BRAUN?

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator KERRY very much for his leadership on this issue. Senator KERRY, Senator MCCAIN and many other colleagues, including Senator CONRAD and Senator DASCHLE, our Democratic leader, have put in so much time and effort on this important issue. I extend my thanks to them.

Mr. President, I have not spoken yet on the floor on the subject of tobacco legislation. I am going to be concise. Let me tell you why. I am going to be concise because this not is a difficult call for me. I am going to support the strongest possible tobacco legislation we can put together. I am going to support not the weakest, but the strongest tobacco legislation we can put together. There are two reasons for this. First, Smoking kills our people. Second, kids are the targets of the tobacco companies, which is a crime against them and against all of us. For these two critical reasons we must act now to pass the strongest tobacco legislation possible.

I have a couple of charts that I am going to share which I think tell the story. This one says, ''Tobacco Kills and Smokers Get Hooked as Teenagers.'' Approximately 90 percent of adult smokers started smoking at or before the age of 18. When they are older, 66 percent of them say, ''Oh, my God, I wish I could quit.'' We need to do something to help young people so that they are not faced with this painful, horrible addiction later in life.

How do you do that? You don't do that by siding with the tobacco companies. You do that by siding with the public health experts in this country.

This chart very clearly shows how people die from tobacco. We will start off with stroke deaths, 23,281. I am not going to round off these figures, because each one represents a real person, your father, your mother, my grandmother, my grandfather, et cetera. It is all of us represented in these numbers.

Lung cancer, 116,920 deaths from lung cancer. 134,253 deaths from heart disease. Bronchitis/emphysema deaths, 14,865.

This many deaths occur every single year. Every single year Americans have these painful, awful deaths.

Pneumonia, 19,173 deaths. Hypertension, 5,450 deaths. All of these deaths are related to smoking. Secondhand smoke cancer deaths—how is this one? These individuals don't even smoke, but they breathe it because someone they work or live with smokes and 3,000 people die every year. Absolutely proven fact, secondhand smoke kills 3,000 innocent people every year.

Other cancer deaths related, 31,402. Other cardiovascular diseases, 16,854. Other respiratory diseases, 1,455. And how about infant diseases; 1,711 infants are dying. Burn deaths, 1,362. Chronic airway obstructions, 48,982.

It adds up to 400,000 dead Americans every single year. In spite of this terrible fact, some of my colleagues are standing with the tobacco companies. I am sorry—count me out of that crowd.

Who am I going to stand with? RJR Tobacco? Philip Morris? No. I am going to stand with Dr. Everett Koop. I am going to stand with Dr. David Kessler. I am going to stand with the medical community. I am not going to stand with the tobacco companies. I am going to stand with the American Association of Public Health Physicians, the American Lung Association, the American Medical Student Association, the American Medical Women's Association, the American Patient Association, the Americans For Nonsmokers' Rights, the Association of Military Surgeons of the United States, the Association of Black Cardiologists, the Center for Women Policy Studies, the Child Welfare League of America, Chinese American Antismoking Alliance, Citizens for a Tobacco-Free Society, Interreligious Coalition on Smoking and Health, National Asian Women's Coalition—the list goes on and on and on.

I am going to stand with the public health community. If my colleagues want to stand with the tobacco companies, that is their free choice; they are free to do it, and they are also free to explain it to their constituents.

One of the things I heard yesterday from one of our colleagues, Senator ASHCROFT, is how horrible it is to increase the cost of a pack of cigarettes; isn't that terrible for poor people. The very people on this floor who are complaining that we are hurting poor people were never there when we passed the earned income tax credit that helped lift Americans out of poverty. They were never there when we raised the minimum wage. Now, suddenly, they are concerned. It is my opinion what they are really concerned about is the tobacco companies.

I don't hear these same people saying, ''Well, America, if you really want to put money in your pocket, you can give up smoking and pocket the money from the two packs or three packs you smoke a day.'' That is what they could be saying. When they talk about the tax on cigarettes, I don't think they are really concerned about poor people. I think they are concerned about the tobacco industry.

What I am concerned about is not just the cost of cigarettes, not only in dollars but in lives. 400,000 lives every year and 80 percent of them are hooked as teenagers. I am going to show you another chart.

This chart must look very dizzying on TV. Let me tell you what it is. It is 3,000 stick figures of children. That is how many kids become new smokers every single day.

Today, 3,000 children will start to smoke. Every third one will die from a smoking-related illness. These children are shown in the darker shade. Every third one will die.

I have seen colleagues come to the floor with charts about how with tobacco legislation there is going to be bureaucracy, and it is going to be terrible. You want to take a look at this —3,000 teenagers starting to smoke every day and every third one of them will die. That is what is truly terrible. What is terrible is that children are smoking and these children will die.

That is why I am standing here today. I urge my colleagues to listen to the arguments on the floor and remember that it all comes back to two issues: One is that every day 1,000 kids put themselves at certainty of death from smoking, and in every year, 400,000 Americans die and almost 90 percent of them started just like this when they were kids.

I have to tell you, passing strong tobacco legislation isn't even a close call for me.

Under oath the tobacco companies said, ''We do not market to children.'' They said, ''Our advertising is not designed to attract young smokers.''

But when the lawsuits were filed against the tobacco industry, they came up with all these smoking guns, if you will.

We have to compliment the efforts of dedicated government attorneys who worked on this. I would like to extend a special thanks to Louise Renne, the City Attorney for the City and County of San Francisco. It was due to her tireless efforts of that we have many of the documents that show how the tobacco industry targeted our children.

From a Philip Morris memo in 1981:

> It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens . . . it is during the teenage years that initial brand choice is made.

This is from a private, internal memo. And how about this:

> . . . Because of our high share of market among the youngest smokers, Philip Morris will suffer more than the other companies from the decline in the number of teenage smokers.

Philip Morris is going to suffer? Philip Morris is going to suffer if kids stop smoking? It is in black and white. I ask them about the suffering of people who die from these diseases. Have you ever seen someone die of lung cancer? Have you ever seen someone sit near you on a plane with oxygen going up their nose because they can't breathe? Philip Morris is going to suffer? Smoking is what causes real suffering.

I am going to stand with the public health officials. I am going to stand with them, and I am going to stand with them proudly. People can come on this floor, and I welcome their debate, but when you cut to the chase, the arguments against strong tobacco legislation are same arguments Philip Morris is making, they are the same arguments RJR is making, they are the same arguments that tobacco companies and their sophisticated lawyers are making. Their arguments have nothing to do with the hard, cold facts that they are trying to hook our kids.

As Senator MCCAIN said today, we know, we can do something about it and at least we know we cannot tolerate the status quo. That is what this tobacco legislation is all about.

A draft report from RJR said:

> . . . The brands which these beginning smokers accept and use will become the dominant brands in [the] future. Evidence is now available to indicate that the 14- to 18-year-old group is an increasing segment of the smoking population. RJR [tobacco] must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term.

It is time that we expose this danger these companies pose to our children. It is time to end the horrific costs to our society of losing a wife, a mother, a grandma too soon because when they were young, they got hooked on tobacco; they got hooked by companies who swore to God in front of this Congress that they never went after kids.

Why should we stand with the tobacco companies? Why should we? We shouldn't. We should stand with C. Everett Koop. We should stand with the American Lung Association. We should stand with the people who care about our children.

Brown and Williamson in 1973, another tobacco company said:

> Kool has shown little or no growth in share of users in the 26 [plus] age group. Growth is from 16 to 25-year-olds . . . at the present rate, a smoker in the 16 to 25-year-old age group will soon be three times as important to Kool as a prospect in any other broad age category.

There it is. For anyone to think that we should stand with those companies who went after our children—for anyone who thinks that is the right thing to do—I guess I just don't understand their position.

It comes down to two things: Smoking kills and they grab our kids, and they grab 3,000 kids every single day, and every third one will die of smoking-related illness.

These cigarette companies even discussed adding honey to cigarettes so they could grab the youngsters. Here is that quote. A 1972 Brown and Williamson document states:

> It's a well-known fact that teenagers like sweet products. Honey might be considered.

We have to do something. We should pass the strongest possible tobacco bill.

One successful way to reach the children is through education, and one proven success is to make sure that in after-school programs, our kids are taught about the dangers of drugs, alcohol and smoking. It works.

I am working on an amendment to make sure that when we support tobacco cessation programs, we do not disqualify after school programs. I am excited to say that it looks like that amendment will be accepted.

Mr. President, I see that my colleague is ready to attack on his point of view, and I am going to yield. If I might have 20 seconds?

Mr. GRAMM. If the distinguished Senator from California needs a couple more minutes, I have no objection.

Mrs. BOXER. I thank the Senator. If I could finish in about 60 seconds.

Mr. GRAMM. I ask unanimous consent the Senator from California have 5 additional minutes.

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

Mrs. BOXER. Thank you very much. I will not be using that much time, I say to my friend. So I urge him to just stay on the floor.

I do not have complicated reasons for supporting the strongest possible legislation. It is simply about life and death. And it is very obvious to me that by passing comprehensive, tough legislation, we have a chance to stop kids from smoking and to stop the deaths and turn these awful statistics around. We have what may be a once-in-a-lifetime opportunity to do it. I hope we are going to do it.

Not every amendment that I vote for is going to be in the final package. I understand that. But I am going to support the toughest bill possible. I am going to offer an amendment to make sure that we support after school programs to educate our children against the problems of smoking. There are many effective after school programs

that teach kids about tobacco in a very straightforward, good way so that they resist the temptation and peer pressure to smoke.

So I am glad to stand with my friends in the Senate who look at this as an opportunity to stop deaths, to stop the targeting of our children. And I am very hopeful, Mr. President, that we will, in fact, end up with a strong piece of anti-tobacco legislation.

Thank you very much, I say to my colleague from Texas, for his generous spirit. I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, let me first say if we pass this bill I hope that we will be successful in inducing not only teenagers but other Americans to come to their senses and to stop smoking.

Once in my life I was an economist. And any economist will tell you, other things being the same, at a higher price people will consume less of a given product. The problem, of course, in the real world is generally other things are not the same.

A concern I have raised that has not been dealt with is that no country in the history of the world, so far as I am aware, has ever imposed a tax at the level we are debating here and not had a black market for cigarettes develop.

In Britain, 50 percent of cigarettes are sold on the black market. In Italy it is 20 percent. Canada raised cigarette taxes to try to induce teenagers to stop smoking, but then their country was inundated with illegal cigarettes. The effect was to actually lower the price of cigarettes bought on the black market. Canada, in an extraordinary action, actually repealed the tax increase. And the minister of health said that by repealing the tax increase, and thereby forcing teenagers to attempt to buy cigarettes through legal channels they would reduce teen smoking. By limiting the economic foundation of the black market, they might be more successful in reducing teen smoking.

I am hopeful that, if in fact we raise taxes to the degree we are talking about, something good will come from it. Obviously, inducing teenagers to smoke less would certainly be a good thing.

The issue I want to address today, and the issue that I hope we will vote on before we go home for the recess, is the issue of what we are going to do with this money. We can debate endlessly what the tax increase is going to do and what it is not going to do. I am still very much troubled by the impact of this tax increase on real people.

In listening to many of the strongest proponents of this bill, you get the idea they are taxing tobacco companies. That somehow we are getting revenues from companies that have conspired to deceive the public, that have conspired to induce teenagers to smoke. Therefore, not only are we getting the good of higher prices and the impact that might have on consumption, but in fact there is almost a retribution quality to it.

I guess I have to temper that with a cold recognition that in this bill we are not taxing tobacco companies. In fact, we have an extraordinary provision in this bill that makes it illegal for tobacco companies not to pass the cost increase through to consumers.

So except for a look-back provision, where we are actually going to poll teenagers, and if we find that teenage smoking has not declined, we will have a look-back tax on tobacco companies and target those who we find, through the poll, are the preferred brand names.

It is interesting, because article I of the Constitution gives Congress the power to impose taxes. Nowhere has it ever been contemplated we would allocate that power to a pollster. And it is clear to anyone that provision is unconstitutional. But beyond that provision every penny of taxes we impose in this bill will be paid for by people who consume cigarettes.

Now, we might wish that were not the case. I wish it were not the case. But, unfortunately, that is the way the bill is written. In fact, as I said a moment ago, the bill is actually structured so that tobacco companies could not pay the tax if they wanted to. They are forced, by law, to pass it through to the consumer.

One of the things that troubles me is who this consumer is. I mentioned these numbers the other day, but they are relevant to the amendment I want to talk about today. Thirty-four percent of the new tobacco taxes in this bill will be paid for by Americans who make less than $15,000 a year. They do not own Philip Morris or any other tobacco company.

These people are, by the logic of this bill, victims. They have been induced to smoke. They have, in the logic of this bill, become addicted to nicotine. And if you had to classify them into a category, it would be the category of ''victim.'' And yet for people who make less than $15,000 a year, they are going to pay 34 percent of these taxes.

This is not a trivial amount of money. When you add up all the tax provisions in the bill, most of the estimates tend to indicate that a pack of cigarettes, which in my State sells for about $2, will rise in price to about $4.50 to $4.75 a pack. These prices are for a $1.50 per pack increase, which is substantially less than this bill will produce when you add up all its provisions.

An individual who smokes an average amount would pay $356 a year in new tobacco taxes. And for a couple making less than $15,000 a year, they will pay a whopping $712 in tobacco taxes from an effective increase in price of $1.50 per pack. To someone making less than $15,000 a year, $712 a year is a lot of money.

So what concerns me, and obviously does not concern many of my colleagues, is the impact of this tax on blue-collar workers. When I listen to the proponents of the bill, they make two things very clear. They care about driving up the price of cigarettes, and they don't care about the money. In trying to respond to the fact that 70 percent of Americans believe this bill is about taxes and not about smoking, over and over again they say, ''We want the higher tax because we want to discourage smoking, not because we want the $700 billion.''

Senator GREGG has an amendment pending which I do not believe will be tabled. I intend to vote against tabling the Gregg amendment. The Gregg amendment says that we shouldn't be granting immunity to tobacco companies for future suits. Basically the Gregg amendment strikes the provision that caps liability. I intend to vote with Senator GREGG. I don't believe his amendment will be tabled.

When his amendment is acted on, I intend to offer an amendment that addresses what to do with the money. I hope my amendment will have very broad-based support. I thought I would take the time now to explain it so that if the Gregg amendment is not tabled, and I can offer the amendment at that point, people will know what is in dispute, and those who want to come and speak on it can do so. I will offer the amendment for myself and for Senator DOMENICI. I know he will want to come over at that point and speak, and I am sure many others will want to speak for and against it.

The issue here is the following: If we pass this bill, blue-collar Americans making $15,000 a year or less will pay 34 percent of the taxes the bill will impose. Individuals making less than $22,000 a year will pay 47 percent of the taxes that will be imposed by raising the price of cigarettes. Those making less than $30,000 a year will pay a whopping 59.1 cents out of every dollar of taxes collected under this bill. In other words, this is not a tax that is randomly distributed among the general population of the country. The plain truth is, with a few exceptions, smoking in America today is a blue-collar phenomenon. The vast majority of people in America who smoke, and therefore who will pay this tax, are blue-collar workers. Almost 60 percent of this tax will be paid for by Americans who make less than $30,000 a year.

Now, this produces some extraordinary results. Were the following numbers not from our own Joint Tax Committee, they would be difficult to believe. Let me give you just two numbers. For Americans who make less than $10,000 a year, the taxes embodied in this bill will raise their Federal taxes by 41.2 percent in 1999. In the year 2003, when this bill is fully implemented and the tax is fully phased in, Americans who make less than $10,000 a year will see their burden of Federal taxes rise by 44.6 percent.

If our objective is not the money but to get people not to smoke by raising the price of cigarettes, shouldn't we

take some of the money we are taking from very moderate-income Americans and give it back to them by cutting other taxes? Couldn't we find a tax cut that would apply to moderate-income Americans so that we wouldn't be lowering the real standard of living for people who are the victims of cigarettes by having become addicted to smoking and to nicotine?

If a motion to table the Gregg amendment fails, I will offer an amendment with Senator DOMENICI. This amendment aims to take roughly $1 out of every $3 collected in these cigarette taxes and give it back to Americans with family incomes of less than $50,000 a year. We do it by repealing a provision of the Tax Code that is generally known as the marriage penalty. Let me basically explain how the marriage penalty works, what our amendment will do, and then wrap up. I see other colleagues are here to speak.

Under the existing Tax Code, we have an incredibly destructive provision that actually says when two young people meet, fall in love and get married, if they both work outside the home, they actually have to pay more taxes as a married couple than they would have to pay if they were single. Under our Tax Code, that average marriage penalty is about $1,400 a year. Now, I think I speak for many people who are married in saying that my wife is easily worth $1,400 a year. I would gladly pay that price and more for the privilege of being married, but I don't think the Federal Government should get that money. Maybe my wife should get that money. Also, I don't understand discouraging the creation of families when families are the most powerful instruments for human happiness and progress that have ever been created.

Let me remind my colleagues, if anyone has followed this debate, they know that everyone who has spoken in favor of this bill has said the money is incidental; that this is not about the money, they just want to raise the price of cigarettes. I will offer this amendment with Senator DOMENICI to help them fulfill that commitment and prove that is what they want. So our amendment is a very targeted tax cut that takes roughly $1 out of every $3 raised by this tax and gives it back to Americans with family incomes of less than $50,000 a year.

Here is how our bill will work. It will target families that make less than $50,000 a year. Right now, a married couple filing a joint return can earn $6,900 before they have to start paying Federal income taxes. If they filed separately and they weren't married, they could jointly earn $10,200 a year. If you wanted to state it dramatically, you could say that if they live in sin they can earn $10,200 without having to pay any income taxes, but if they get married they have to start paying income taxes after they earn $6,900. Now, almost everyone realizes this is a destructive tax policy, but we haven't been able to fix it.

What the amendment that I will offer for myself and for Senator DOMENICI will do is: for those who make less than $50,000 a year as a family income, we will give them an additional deduction of $3,300 a year. They will pay the same taxes whether they get married or whether they don't. The net result is a substantial tax cut for moderate-income working families. We will adjust this for inflation to assure that we preserve the real value of this deduction.

Finally, we apply it to the earned-income tax credit. As almost everybody here knows, if you work and you make modest incomes, you can get an earned-income tax credit. What we will do in our amendment is allow the marriage penalty in tax terms to apply above the line so that a working couple, a very-modest-income working couple, can deduct this correction for the marriage penalty before they calculate their eligibility for the earned-income tax credit.

Among the largest beneficiaries of the amendment that Senator DOMENICI and I will offer will be very modest income, blue-collar workers earning very low wages. What we will do is allow this deduction to apply to the earned-income tax credit.

If our amendment is adopted, roughly one-third of the tax that is collected on cigarettes would be given back to the very blue-collar families that will bear the largest burden of taxation as a result of taxing cigarettes. Some couples will pay $712 a year in new cigarette taxes under this bill.

Under our amendment, the price of cigarettes would still go up as mandated by the underlying bill. To the degree that people respond to the higher price, we will have the impact of that rise in the price of cigarettes, but we will not be making modest-income workers poorer by the amount of the tax because we will take $1 out of every $3 of the tax and give it back to the very same families by repealing the marriage penalty for middle and moderate income couples.

Now, why is that important? It is important because the very people who are going to be hurt the most by this tax are moderate income people who have been victimized by tobacco companies. I am sure my colleagues are having their offices flooded with letters and postcards, as I am, from people who are basically saying, ''I have a very modest income and I smoke, don't raise my taxes; tax the cigarette companies.''

Well, what we are doing here in our amendment is allowing the increase in the price of cigarettes therefore discouraging smoking, but we are giving at least part of the money back to middle-income and moderate-income families.

So I hope my colleagues will support this amendment. I think it is very important that we vote on a tax cut as part of this bill before we adjourn. If we don't do this, we are going to have done something extraordinary in this bill, and I can't help but be struck by the paradox of it. In this bill, we are saying that people who smoke have been victimized by the tobacco companies; yet, we are turning around and taxing the people who smoke because the bill prohibits tobacco companies from not passing the tax through to the people who smoke.

So while many people view this bill as firing a shot with a tax at the tobacco companies, in reality, the tax is hitting very moderate-income, working Americans. It is hitting the very people who have been victimized by the tobacco companies. The amendment that Senator DOMENICI and I will offer after the motion to table the Gregg amendment fails says, since the proponents of the tax pledge that this is not about the money, that it is not the money they want, it's the higher price of cigarettes, go ahead and take the tax, but, as a modest down payment, let's take $1 out of every $3 we collect in cigarette taxes and give it back to moderate- and modest-income families. Let's make it subject to the earned-income tax credit so that very low-income, working Americans will not be hurt as badly. If both members of the married couple smoke, they will be paying $712 a year in Federal taxes under this bill. Let's eliminate the marriage penalty under the Tax Code for middle- and moderate-income families so that while the price of cigarettes goes up, they don't find themselves economically crushed by it. They will have an incentive to quit smoking, but at least a third of the money would come back to them by eliminating a discriminatory provision in the Tax Code.

I would like to go further than this amendment, and we will have an opportunity to do that. But this is a first installment. I think it is very important that we vote on this amendment before we recess, since it is clear that we will not finish the bill this week. I hope that my colleagues will support this amendment when Senator DOMENICI and I offer it to the Gregg amendment, hopefully, immediately following the motion to table the Gregg amendment.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized for 15 minutes, to be followed by the Senator from Nebraska.

Mr. CHAFEE. Mr. President, may I make a unanimous consent request? I ask unanimous consent that I might follow Senator HAGEL?

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

Mr. HATCH. Mr. President, I ask unanimous consent that I be privileged to follow the distinguished Senator from Rhode Island.

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

The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, I would like to take a moment to

share some general thoughts with regard to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act.

It has been said on the floor before that the fundamental goal of the legislation is to significantly reduce smoking among the Nation's youth. That, of course, is a goal that I think everyone can support. I certainly support it.

I am going to take a slightly different tack, Mr. President, because I am a reformed cigarette smoker. I say to the Senator from Kentucky, I recently stopped smoking—successfully. And this time, for real. I developed the habit when I was a teenager, at a time when the tobacco companies were still marketing their products as being ''safe.'' In fact, I am old enough to remember television commercials portraying a ''doctor'' with the white coat on, with a stethoscope around his neck, talking about how one cigarette brand was ''healthier'' for you than another brand. Well, of course, we all know now that they were lying to us, frankly. The tobacco industry knew at the time that cigarettes are not healthy, they are not safe, and that they are all addictive. Cigarettes lead directly to a variety of cancers, emphysema, heart disease, premature death and, I point out to the ladies, wrinkles on your face. That is something tobacco companies have known for a long time; they just did not tell us, and they were not very candid about it.

I very much wish that the measures we are discussing today had been in place when I was a teenager, because those measures might well have prevented me from starting to smoke in the first place. Since they were not, I started smoking many years ago and I have struggled since to quit smoking. I am now winning the battle. I haven't smoked in months. But I can tell you firsthand just how difficult it is to quit and stay off of cigarettes. It is a fact that cigarettes are addictive.

We all know, again, that the tobacco industry knew full well that once young people started smoking, it would be very difficult for them to ever break the habit. Eighty-nine percent of all smokers begin smoking by the time they are age 18. People tend to start young. And eager to maintain its market, based on its own research—because they had a lot of money to put into research, population studies, and the like—the industry came along and specifically targeted children and young people in the hopes of creating lifelong addicts.

Its efforts have paid off handsomely. Today, more than 4 million American children and teenagers, including over 180,000 Illinois children and teens, smoke cigarettes. Seventy percent of Illinois high school students have tried cigarette smoking and about 35 per cent are current smokers. Teen smoking has risen for five years in a row. And if nothing is done, 5 million Americans who are now children, including over 260,000 Illinois children, will die prematurely from tobacco-related diseases. Illinois children and teenagers currently illegally purchase over 12.9 million packs of cigarettes each year, resulting in almost $25 million in cigarette sales.

This is a lot of money. That is one of the reasons this bill is so contentious, because there is an awful lot of money involved in this debate.

But tobacco products are responsible for enormous damage to all of our citizens, not just children. Twenty-three percent of Illinois adults are smokers. Smoking accounts for nearly one in five deaths in the United States. It is related to over 419,000 U.S. deaths each year and over 19,000 deaths in Illinois—more than alcohol, car accidents, fires, suicides, drugs, and AIDS combined. Approximately half of all continuing smokers die prematurely from smoking. Of these, 50 percent die in middle age, losing, on average, 20 to 25 years of life.

That is probably one of the reasons my teenage son, who is not a smoker, badgered me about smoking. I mean he was just relentless. He would take cigarettes and put them in the toilet so they would get wet. He would hide them. He would send me pictures of diseased lungs. He even started sending me pictures from National Geographic of spectrographic outlines of nicotine, the chemical component of nicotine. When it is put on the spectrograph, it looks like cigarette smoke. He thought this was hilarious. He was continuing to put pressure on me, and he succeeded. In addition to the fact that he would come up with all of the evidence, probably the most profound thing that he did was to say to me, ''Mom, I want you to live, because I love you.'' Of course, no dollar amount can you put on that kind of motivation. In part, I tried to stop. I have at this point stopped because of those motivations.

But, in addition to the terrible human costs, the American affair with tobacco—as some have said on this floor, our country was built with tobacco from our earliest years—has exacted an immense economic toll.

Tobacco-related illnesses cost the United States more than $144 billion a year in health care costs and lost productivity. Even though smokers die younger than the average American, over the course of their lives, current and former smokers generate an estimated $501 billion in excess health care costs.

So the smokers account for a large part of the tremendous cost of health care in this country as well.

On average, each cigarette pack sold costs Americans more than $3.90 in smoking-related expenses. Whatever the cost is of the cigarette that you buy, the taxpayers of this great country all have to chip in to try to take care of people like me who got addicted by these cigarette when they were teenagers.

We now have proof that the tobacco companies knew precisely what the impact of their products would be. According to their own internal documents, these companies hid the truth regarding both the dangers associated with smoking and the addictiveness of their products. They even went so far as to testify falsely to the Congress when questioned on these issues for years, failing to disclose and hiding at all levels of industrial espionage associated with keeping the truth from the American people. But it is out now. Everybody knows the facts pertaining to the impact of smoking and the addictive nicotine and cigarettes. It is not even a debate anymore. These are true facts. They are indisputable facts. So the question becomes, What is it that we policymakers are going to do about it?

It is time for the tobacco industry not only to be held accountable for marketing a product it knew to be unsafe but to assist in the effort to drastically cut the number of children who become addicted to cigarettes. While the bill now before us is far from perfect, on balance, I believe it offers us the only real chance we have to accomplish that goal.

The original Commerce-reported bill, in my view, offered too much liability protection for tobacco companies, and too little penalties for failing to meet the legislation's targets for reducing smoking among our children and teenagers. I am pleased, therefore, that the yearly cap on surcharges for the tobacco industry for not meeting underage user reduction targets has been raised to $4 billion. I also strongly support the new uncapped, company-specific surcharge of $1,000 per underage user in excess of the yearly reduction target.

I particularly want to commend the negotiators for removing the grant of total immunity to the parent companies and affiliates of cigarette manufacturers. Parent companies are where some of the most significant—and reprehensive—decisions have been made, and they are where the profits from the sales of cigarettes ultimately go. Those companies must be held accountable and under this new version of S. 1415, they are.

I also think the bill's treatment of the liability cap issued has improved. I remain very uncomfortable, frankly, with the provision currently in the legislation which may get amended, that caps the amount that the industry must pay out in any given year for past, present, and future damages resulting from the use of its products at $8 billion annually. I recognize that this cap was raised over the weekend from $6.5 billion, but I do not believe that the tobacco industry is entitled to any cap at all. That is why I will vote in favor of an amendment that will remove the that cap. because I just think that people who have been harmed ought to be able to sue and to be compensated. It is just that kind of basic. I don't think putting a cap on liability and a shield like this is good policy in this situation.

I am very much in favor of the decision to establish a Public Health Account within the unified trust fund. I believe that it is critical to target the money that the government will receive from this settlement, and strongly support the negotiators' decision to allocate 22 percent of the government's annual receipts to smoking education, prevention, and cessation programs as well as to counter-advertising initiatives. Nothing can beat education. I think the fact that we have true facts and we have educated so many people is one of the reasons there has been a change in the climate of opinion around the propriety and the acceptability, not to mention the dangers, of smoking.

I am also concerned, however, about the fact that this new $1.10 fee that consumers will have to pay every time they buy a pack of cigarettes will fall mostly on moderate- and low-income Americans. That argument has been raised here on the floor, and it is true. Almost half of the tax increase—whether you call it a fee or a tax it is still money on top of the price of cigarettes. Almost half of that increased burden will fall on Americans who smoke and who make less than $30,000 annually, and 70 percent of it will fall on American smokers who make less than $50,000 annually. That means that smokers making $10,000 or less —which is really poverty in this country—annually will see their Federal tax burden rise by an astonishing 44 percent.

The sad truth is that smoking behavior, the actual cigarette smoking, is disproportionately concentrated among moderate- and low-income Americans, and they are the ones being asked, frankly, to make the greatest financial sacrifice on behalf of our children and the public health. This fact gives me real pause. Frankly, I didn't think I would ever want to support—as a matter of fact, I tend to take a position against regressive taxes of this kind. Everything that I know about hard-working Americans who are of marginal incomes tells me that this tax will be tough for them to swallow. But at the same time, the truth is that smoking is voluntary behavior. So it is a tax you can choose not to pay—a fee you can choose not to pay—and it is precisely that decision that we are trying to inspire.

It is also true that we do not have hard evidence that the reductions that are called for in the bill, the reductions in smoking behavior by our children, will be guaranteed. We do not have guarantees about that. We do not know for certain that price increases, advertising limitations, and the other provisions of this bill will ensure without any doubt that children and teenagers will not smoke. Smoking rates among the young dropped during the 1980s, and they have climbed up again during the 1990s. Frankly, there is no real explanation for these trends except that it is a matter of popular behavior and kids doing as they see their friends and their pals doing and role models in their own lives. I am hopeful that this new fee will help make smoking less glamorous, less appealing, and will encourage young people not to waste that money on something that is ultimately hurtful to them as well as the community as a whole.

I have used the word ''hope.'' It is used a lot in this debate. Those of us who support the legislation are hoping that this bill will mitigate and reduce teen smoking. We are hoping that it will improve the public health. We are hoping it will help reduce the amount spent on health care. And these hopes, I think, are well founded and well represented in this legislation.

This bill represents a huge gamble that we should and must take. Given what we know about the risks and consequences of smoking, we cannot just sit by and do nothing; we have to act. We have to do everything we possibly can to discourage our young people from taking up this habit. We have a duty to our children, to all of our Nation's children, to do everything we can to help them stay away from the addictive effects of nicotine.

Mr. President, a strong coalition of health, public interest, and governmental organizations agrees and shares those hopes. A coalition of at least 48 major organizations including the American Cancer Society, the American Academy of Pediatrics, the American Medical Association, the Campaign for Tobacco-Free Kids, the Association of American Medical Colleges, and the National Association of County and City Health Officials, all of these organizations support comprehensive, effective tobacco control legislation.

Moreover, while it is impossible to be certain that maybe price increases will achieve the kind of reductions in smoking by children this bill sets out, the best experts in this area in terms of the relationship between price and behavior, including economists from the University of Chicago in my hometown and others in the administration, tell us that a quick, dramatic increase in the price of cigarettes will likely result in major reductions in teen smoking. So I am hopeful that despite my real concerns about the inadequacies of this bill in the liability area, my real concerns about the regressive nature of the tax involved, and my real concern that this bill does not ask the tobacco companies to endure the same kind of sacrifice that it imposes on their adult customers, I do intend to support the legislation.

It seems to me there is no other choice. As someone said to me—and I don't know whether it has been mentioned in the debate—if it is a tossup between death and taxes, I will take taxes. This is a situation where the choice is pretty clear, that we have an obligation to the public health and we have an obligation to our children to at least try to do what we can to erect barriers to the kind of destructive behavior cigarette smoking represents.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Nebraska is recognized.

Mr. HAGEL. I thank the Chair.

Mr. President, I rise this afternoon to reflect on some of the dynamics of the debate on the tobacco bill. I think it is important we as a body step back and focus on some of the various dynamics and the consequences of what we may or may not do as this debate goes forward. And it should go forward. Nobody disagrees with trying to reduce teen smoking. That is not an issue. We are all here to try to do the right thing. The focus on teen smoking, after all, was the core issue that really began this debate more than just a year ago.

I do not question the motives of my colleagues on either side of this debate. My colleagues on both sides of this debate are trying to do the right thing, trying to focus on making this a better world. I should also say, in the interest of full disclosure, I do not smoke, never have smoked, don't care about smoking. I think it is an unhealthy, bad habit, but at the same time I think we owe this country a good, honest debate about the issue from many of the dynamics, and certainly the constitutional dynamic of what we are about to do or may do is important.

I also think it is important for us to look at some of the societal and cultural consequences of this debate and of what action we may bring in the Senate over the tobacco bill, because if we do do something, it will have an impact on society, and it will have an impact far beyond just raising taxes and making government bigger, with more unaccountable regulations. This will have a very significant impact on our society.

I do fear, as I believe many of my colleagues fear, the great law of unintended consequences when we do not think things through very clearly. As we frame the debate, as we frame this issue, I fear that we are not including all that needs to be framed and debated here. As I have listened to and observed a number of presentations, all using statistics, information, and numbers, we pull them from everywhere. But the fact is, we do not have good, accurate information on this issue. I look at the number that is being used by almost everyone here, that this bill would reduce teen smoking by 60 percent. But where do we get the number? Where are we pulling our assumptions from?

I have here a copy of the New York Times story yesterday headlined ''Politics of Youth Smoking Fueled by Unproven Data.'' It has some interesting points. This New York Times article says, for example:

> But with the Senate having begun debate on Monday on tobacco legislation, many experts warn that such predictions are little more than wild estimates that are raising what may be unreasonable expectations for change in rates of youth smoking.

Another point in this article I think is pretty important.

Politicians and policy makers have tossed out dozens of estimates about the impact of various strategies on youth smoking, figures that turn out to be based on projections rather than fact.

''I think this whole business of trying to prevent kids from smoking being the impetus behind legislation is great politics,'' said Richard Kluger, the author of ''Ashes to Ashes,'' a history of the United States' battle over smoking and health.

He goes on to say:

It is nonsense in terms of anything you can put numbers next to.

This certainly does not minimize the seriousness of what we are about. It does not minimize the seriousness of teenage smoking, again, if that is the focus, if that is the reason in fact we are debating this.

Other assumptions that get thrown into this as well are somewhat faulty. We know that we are today debating a massive tax and regulatory bill, and we tend to glide over that. I will give you some statistics that actually are accurate from my State, from Illinois, Hawaii, and Massachusetts, four States that have raised—raised—cigarette taxes in recent years, and they have all seen teen smoking increase. In 1993, Nebraska raised the cigarette tax to 34 cents. The number of Nebraska teenagers who smoke increased by about 20 percent over a 3-year period.

Now, some might say, well, 34 cents is not enough; you have to raise it to where it really hurts. But I think we can understand and get some sense of focus that increasing taxes at least predominantly as the great dissuader of teenage smoking is far, far from being proven. USA Today had a very interesting front-page survey a couple of weeks ago in its newspaper, and it reported such things as, ''Only 14 percent of teenage smokers said higher cigarette prices would make them quit.'' The same survey in the USA Today said only 12 percent believed requiring a photo ID to prove they are adults when buying cigarettes would make them quit.

Another dynamic of this debate, which again seems to get very little attention, is, How would this change the power of the Federal Government? Would it increase unaccountable, essential unaccountable Federal regulation through the Food and Drug administration? Yes. Considerably. It would give the Food and Drug Administration unprecedented authority to regulate as yet still a legal product. Now, if this body really is as concerned about tobacco as we are representing, why don't we have the guts to just step up and ban tobacco as an illegal drug? Why don't we do that? Why don't we be honest enough about this issue to bring it down here and debate it and say we are going to ban tobacco and say it is an illegal drug? Or let's nationalize the tobacco companies?

The point is that we are not being totally honest with what we are doing. Where will the money go? The numbers float around. Is it a $565 billion bill? Is it a $750 billion tax bill? Where is this? We do know it is in the hundreds of billions of dollars. We do know that. Where is this money going to go? Where is the money going to go? Because we also know that all that money, whether it is $500 billion, $600 billion, $800 billion, can't possibly be used for teen smoking programs. So, does that give us some impetus to tax more and to do more and, therefore, find, at the end of the rainbow, a pot of gold? More Government programs, more Government, more bureaucracy, more regulation. I think that is an important dynamic of this debate. Higher taxes, obviously. Nobody has yet denied that. Nobody has denied, yet, that we are, in fact, increasing taxes. Not just increasing taxes but we are really increasing taxes by a new dimension here.

Where does that money go? For example, we do know somewhere, in all these bills out there, there is a figure we can get pretty close to focusing on, that, over the next 8 years, at a minimum, we would be raising about $130 billion in new taxes.

There are some constitutional issues, believe it or not. Again, let's face the facts here. What we are doing here, we are expropriating a legal industry. We are expropriating a legal industry for the first time in the history of America. I said at the beginning of my remarks that I don't smoke. No one can come to the floor of the Senate and defend the tobacco companies' conduct, their behavior. It has been outrageous. That is not what this debate is about. Let's not get ensnared in the underbrush of that debate. Let's be careful here how we frame the debate.

Nobody that I know of is on the floor of the Senate defending the tobacco companies. That is not the issue. We are defending some constitutional rights here. We are defending the honesty of how we are getting at this issue. Again, if we wish to take tobacco and criminalize it, that is certainly an option. If we go forward and do what some in this body intend to do, and want to do, essentially expropriating a legal industry, then what kind of precedent does that set? I think, first of all, constitutionally it would be out, but what kind of precedent does that set? Who is next? Caffeine? Diesel fuel? Who is next? That is another consequence, another dynamic of this debate on which we should reflect.

Just one example of a constitutional question is—I think we all understand it does raise some very serious constitutional questions. For example, the Federal district court in North Carolina ruled that the FDA cannot restrict advertising and promotion of tobacco products. We have a legal system for this. We have a legal system that works pretty well in this country. It has worked over 200 years.

Again, this is not a matter of defending the tobacco companies. That is not what this is about. This debate, parts of it, remind me of other debates we have been engaged in about the environment or religious persecution. I do not know one Senator who wants dirty air and dirty water and a dirty environment. Nor do I know one Senator who supports religious persecution. It is always a matter of how you improve it, not either/or. This is a good example of that kind of debate.

Black market—my friend from Texas talked a little bit about that an hour ago. It is a very, very real concern, a very real issue. For example, after increasing its cigarette taxes in the late 1980s, Canada saw a huge increase in the black market for cigarettes. By 1994, one-third of the Canadian cigarette market was contraband. Is that where we are headed here? We need to talk about that. It isn't just Canada. How about Sweden? Recently, Sweden lowered its cigarette tax by 27 percent to reduce smuggling from Denmark. England estimates it loses over $1 billion in tax revenue every year because of smuggled cigarettes.

My friend from Montana, Senator BURNS, tells me the biggest export in Montana is—wheat? No, it is contraband going to Canada, illegal cigarettes—another dimension of this that we need to be very seriously looking at, the consequences of a well-intentioned action.

The State of Washington estimates that 27 percent of its cigarette market is now contraband—that is now. The State legislature moved the enforcement power of the cigarette tax from the State revenue department to its liquor control board, ''whose agents carry guns and have complete police powers.'' Is that a consequence we want from this?

Personal responsibility—my goodness, my goodness. The very foundation of this Nation is rooted in personal responsibility. Where has been the debate on this issue about personal responsibility? There was a lot of debate about blaming everybody for one's actions. It is the Army's fault. It is the Army's fault that I started smoking. It is the Government's fault. It is the tobacco company's fault. It is everybody's fault, except mine.

What does that say to our young people? Why have I not heard any connecting issue or debate in all the debate that has raged on so far about personal responsibility—consequences for one's actions? Our young people need to understand that actions have consequences. They need to understand that. Yes, we need to help them. Yes, we need to protect them. But that should be part of the debate, talking about personal responsibility—not that it is everybody else's fault. That is a dynamic of this.

Mr. HARKIN. Will the Senator yield on that point?

Mr. HAGEL. I will be very happy to yield when I finish. I thank the Senator.

The Federal Government, no government, can tax or regulate young people's behavior. That is silly. That is complete folly. Come on. How many

parents do we have in this body? How many people in this body have dealt with young people? I suppose everybody in this body remembers when they were 16, 17, 18—and you believe that the Government is going to regulate behavior and change behavior? We are going to make everybody's lifestyle healthier? That is another dynamic that has not been debated in this.

Ignoring other problems—isn't it interesting that the real problems in this country for young people, far more severe and far more immediate, are with illegal drugs and underage alcohol use, but, yet, we are not talking too much about those issues today. Why aren't we? Because we are losing the illegal drug debate and war. More young people today are on illegal drugs than before. It is a tougher issue. It is everybody's concern. But we beat our breasts down here and say, aren't we doing something great because we are going to take care of underage cigarette smoking.

By the way, you can look at numbers and polls on this. I know they all have them, and I have one done by Citizens for a Sound Economy, May 13 to 15 of this year, asking 1,200 Americans, as parents, what their biggest concern for teenagers is. No. 1, illegal drug use, 39 percent; gangs, 16 percent; alcohol, 9 percent; tobacco use, 3 percent. Again, does this diminish the importance of this issue? No, of course not, but let's have some perspective in this debate. And there are other problems that young people face. We have numbers from polls and from very conclusive studies that show what I am talking about.

Let me conclude, Mr. President, with a couple of final observations.

There is an interesting thread of arrogance that has run through this debate: Government is smarter; we can tell you what to do; you really don't understand the seriousness of tobacco use; you are not smart enough to sort it out yourself; but you see, we are in the Congress, we will tell you when something is dangerous and when it isn't; you can't read; you don't understand, I am sorry.

We can have that kind of society. We can have that kind of a world. Some countries do. But if that is what you opt for, you will opt for also giving up some personal freedom, some personal responsibility, and it might be a better world that way. But that is another part of this debate we haven't heard enough about, and it should be part of it.

As I said in my earlier remarks, all my colleagues mean well. They are well motivated, they want to make the world better, they want to do the right thing. There is no question about that. But I hope they will think for a few moments about some of the issues I have raised as we step back for a moment and try to put in perspective what we are doing. Are we really making the world better and accomplishing what we want to accomplish, focusing on teenage smoking, underage smoking, which, by the way, there are now laws on the books to deal with? Are we making it better by putting hundreds of billions of dollars of new taxes on our people, building a bigger Government and more programs and more regulations, and then on top of that, having to deal with the unintended consequences of our action that will affect culture and it will affect society? Those are all part of the total debate, Mr. President, that should be brought into focus.

I will vote against this bill, because I think it is not the right way to deal with some very serious problems.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, there are two unanimous consent requests to be made. Senator HARKIN briefly has one.

Mr. HARKIN. I thank the Senator for yielding. Mr. President, parliamentary inquiry, I understand the Senator from Rhode Island is speaking next under a unanimous consent agreement, and after that is Senator HATCH?

The PRESIDING OFFICER. Senator HATCH.

Mr. HARKIN. I ask unanimous consent that after Senator HATCH, the Senator from Iowa be recognized to speak.

Mr. MCCAIN. I object. Objection.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The Senator from Rhode Island still has the floor.

Mr. CHAFEE. The Senator from New Hampshire has a unanimous consent request to make.

PROVIDING FOR CONDITIONAL ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Con. Res. 98, the adjournment resolution. I further ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (S. Con. Res. 98) was agreed to, as follows:

S. CON. RES. 98

Resolved by the Senate (the House of Representatives concurring), That when the Senate recesses or adjourns at the close of business on Thursday, May 21, 1998, Friday, May 22, 1998, Saturday, May 23, 1998, or Sunday, May 24, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Monday, June 1, 1998, or until such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on the legislative day of Friday, May 22, 1998, or Saturday, May 23, 1998, pursuant to a motion made by the Majority Leader or his designee in accordance with this concurrent resolution, it stand adjourned until 2:00 p.m. on Wednesday, June 3, 1998, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

AMENDMENT NO. 2433

Mr. CHAFEE. Mr. President, let me offer a few thoughts on why I believe the amendment authored by my good friend from New Hampshire, Senator GREGG, should be rejected.

Senators TOM HARKIN, BOB GRAHAM and I struggled with the liability issue when we were developing our own antitobacco bill, the so-called KIDS Act. We began our deliberations with a review of the global settlement that was reached by the 40 attorneys general from the various States. In summary, we concluded that we could not support some of the provisions of that legislation; namely, the prohibition on class action suits.

The attorneys general agreed that no class action suits would be permitted and there would be a ban on punitive damages against the industry. That is what the industry got out of the negotiation with the attorneys general, amongst other things.

Given the tobacco industry's behavior, how could we, the three of us working on that legislation, possibly accede to tort protections that would nullify entire categories of lawsuits, leaving injured parties high and dry?

But there were balancing factors which also had to be weighed, Mr. President. The industry's consent is terribly important to the implementation of a comprehensive national tobacco policy. It is far better to have the industry at the table and agreeing.

Certainly, endless litigation serves no one's interests but the lawyers. Thus, something had to be done to create a more certain environment, both for the plaintiffs and for the tobacco companies. Hence, we decided to include an annual liability cap in our bill of $8 billion; $8 billion would be paid out each year and that was it. If there were subsequent suits and judgments had been brought and earned previous thereto or subsequent, they would fall in line and collect in the ensuing years.