

I won't even announce at this moment exactly which one of these two bills will come first, because we will need to see, for instance, if the ISTEA highway and infrastructure bill is ready to go. As soon as we get it, we want to take that up. But it will be the Iran sanctions issue, and then we will consider and dispose of the ISTEA conference report. So, votes will occur tomorrow, probably at least one, maybe two or three. It will depend on how these issues develop.

Some people are saying, Will the ISTEA conference be completed? I am told by the leaders that they will be able to complete it tonight. They may need a little extra time in the morning to make sure that Senators who are affected one way or the other have been briefed as to exactly what is in it, but they know that we need to complete this legislation before we go home for Memorial Day recess, and we should be committed to get that done.

With that, I yield the floor and the morning business would be in order.

Mr. FORD. Will the majority leader yield?

Mr. LOTT. I am happy to.

Mr. FORD. I approve of what you have been doing. I think you have a hard job and you have done well. One thing that bothers me—you come to Kentucky to see friends and family one of these days. There are a lot of holds here and a lot of people are caught up in holds that have nothing to do with the disagreement among Senators. Next week, the Uranium Enrichment Corporation will make a final decision on whether they go public or whether they go sell to an individual. And we have one member who needs to be on that. She has been held up 4 months now, and that vote and that expertise, for 4 years, needs to be on that board.

I hope that somewhere—it is on our side as well—but when I get our side worked out, then it comes back on that side.

Mr. LOTT. If I can say to the Senator from Kentucky, I know he is interested in this nominee. Over a week ago, I believe, we had it cleared.

Mr. FORD. We did until we got problems on this side.

Mr. LOTT. Then I thought we worked it out again, and another problem popped up.

Mr. FORD. Oh, yes.

Mr. LOTT. But I think we will take another run at it tomorrow and see if we can maybe work it out.

Mr. FORD. The only reason I am asking is, we have the budget process. The Senator from New Mexico, Senator DOMENICI, has worked hard on this. It should not be jammed up because of a hold on the Senate floor for an individual who has nothing to do with it, and it is jeopardizing the budget process, because funds are in there as it relates to the sale of this item.

So I just—I plead with you, if you can, and I will do the best on my side, and if somehow, tomorrow, we will not be back, able to do it—and I do not

want a recess appointment. It will all be over before the year expires. I don't like to do recess appointments.

Mr. LOTT. I will say to the Senator from Kentucky, I realize Margaret Greene—

Mr. FORD. Yes.

Mr. LOTT. Needs to be released. We also have worked out, I believe, an agreement that involves releasing Mr. Barry for the Department of the Interior and Mary Anne Sullivan to be counsel at the Department of Energy. We would like to move all three of those.

Mr. FORD. I agree with that, and I will try to help. My pleadings have fallen on hard times.

Mr. LOTT. We will work on it tonight and tomorrow. Keep working on it.

Mr. FORD. I appreciate it. I want you to know—I want everybody to know—we are trying to operate in an efficient manner, and other things are jeopardizing the ability to do it in an efficient manner.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I thank the Presiding Officer. I will proceed in morning business.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

Mr. MCCAIN. Mr. President, I need to respond, of course, to the Senator from Oklahoma who somehow now regrets or complains about the fact that this legislation went through the Commerce Committee. My understanding is, unless I am having some mental lapse, that the decision was made by the leadership to move the bill through the Commerce Committee.

My understanding is that was the instruction of the distinguished assistant majority leader and the other members of the leadership, to move it through the Commerce Committee, because it was clear it was not going to go through the other committees. Now the Senator from Oklahoma seems terribly distraught that it didn't go through the other committees when he was the major person to move it through the Commerce Committee.

Mr. NICKLES. May I answer to that?

Mr. MCCAIN. I will be glad to yield, if the Senator from Oklahoma has a short question, because we are operating—

Mr. NICKLES. I don't have a question. I want to respond.

Mr. MCCAIN. If you don't have a question, then I suggest you wait until the expiration of my time.

The second point is that the Finance Committee did insist, insist, insist and got this bill, and they came up with a result that the Senator from Oklahoma didn't like. There were amendments pending, that is my understanding, in the Finance Committee—I was watching on C-SPAN—that would have done even more damage to the legislation,

at least from the viewpoint of the Senator from Oklahoma, who thinks that the bill is too encompassing, too large a tax increase, et cetera, which he has spoken at length about on this floor today. I am curious about what would have happened if the Finance Committee had kept the bill even longer.

As far as the Agriculture Committee is concerned, the Agriculture Committee bill is in the bill as a result of the majority leader inserting it. The Senate will have its way on that.

But I want to come back to the fundamental issue of the look-back provision. Mr. President, I didn't invent the look-back provision. It wasn't my idea. I have very talented staff and advisers and friends. The look-back provision came from the agreement that was entered into by the attorneys general of the 40 States and the industry.

Have they changed? Yes, the look-back provisions have changed. Should they be changed back? Should I support the Durbin amendment? No, because I think it makes it worse. But the look-back provision concept was generated by the belief of every public health group in America that you can't trust the tobacco companies.

Perhaps the Senator from Oklahoma and the Senator from New Mexico and others trust the tobacco companies and believe that they will really try to reduce teen smoking. They may do that, but most observers believe that after commitment after commitment and promise after promise and lying to Congress about the fact of whether they enticed kids to smoke or not, the fact is we found out they did. So the look-back provision, I inform my colleagues, does not mean you have any connection with the tobacco industry, but you ignore the fact that the tobacco industry can't be trusted, and unless there are penalties involved, then the industry will not do what they say they will do, because they have already said they would try not to entice kids to smoke, and they did. That is the reason for the look-back provision.

Philosophically, that may not be something that is acceptable to the Senator from Oklahoma, the Senator from Texas, or the Senator from New Mexico. But the reality is that is the view of every public health organization in America. Every living—every living—Surgeon General in America today has said you have to have these provisions in the legislation if you want to attack the issue of kids smoking.

That is the view—and we have the letter, I have the letter from the Surgeons General, every Surgeon General since 1973. Perhaps those who oppose this know more than they do. I don't know, I don't know more than they do.

With startling candor, Dr. Claude Teague set forth the plain facts about the addictive nature of nicotine in his chilling 1972 internal memorandum discussing the crucial role of nicotine. He said:

Happily for the tobacco industry, nicotine is both habituating and unique in its variety

of physiological actions. Realistically, if our company is to survive and prosper over the long term, we must get our share of the youth market.

"We must get our share of the youth market."

I commend this to the reading of the Senator from Texas and the Senator from Oklahoma. It is clear that the tobacco companies attempted to entice youths to smoke. So, therefore, in the agreement made by the tobacco companies, freely entered into by the tobacco companies, there were look-back provisions. Perhaps the Senator from Oklahoma doesn't like the size of them, but it is hard for me to understand how he can argue against the rationale behind it.

Another slip occurred—

Mr. NICKLES. I will be happy to answer it.

Mr. McCAIN. In 1987, just months before the national launch of the Joe Camel campaign, on October 15, 1987, a memorandum stamped "RJ secret" from a file that, incredibly, bears the name "youth target":

Project LF is a wider circumference non-menthol cigarette targeted at younger adult male smokers, primarily 14- to 24-year-old male smokers.

I can go through document after document for the Senator from Oklahoma. What I am asking him to understand is why these look-back provisions are there, because the tobacco companies tried to entice young people to smoke, and here are the documents. In the agreement of June 20, 1997, the tobacco industry admitted that they had enticed kids to smoke. Therefore, since they could not be trusted, then there should be provisions that penalize the tobacco companies if, indeed, youth smoking went up, which they are committed not to do. That is something in which they freely engaged.

I can understand if the Senator from Oklahoma has a problem with the size of those look-back provisions. I cannot understand why the Senator from Oklahoma would not understand why the look-back provisions are there. When we talk about all the adjectives that the Senator from Oklahoma has described these look-back provisions, the facts are, according to every living Surgeon General, according to every public health organization in America, according to Dr. Koop, according to Dr. Kessler, according to every health expert in America, the fact is there has to be provisions that will punish the tobacco companies, as well as incentivize them to stop and reduce teenage smoking.

Now that, I suggest, is reality. Again, I am not speaking from my knowledge and expertise. I am not speaking from my background. I have to go, when I don't know about issues, to the experts. It is rarely that I find experts who are completely in agreement on an issue, and every expert in America is unanimous in saying we have to have some provisions that punish the tobacco companies if they don't do what they say they are going to do.

When the tobacco industry entered into the agreement, they promised to do everything they could to reduce teen smoking. That was part of the agreement they entered into. So how in the world somebody would say that when you swear to defend the Constitution of the United States that you would totally disagree with every health expert in America, frankly, is something I don't understand.

These proposals have been pummeled pretty heavily for the last couple of days, including from the Senator from Texas who has been here quite awhile, and including others.

I want to say, I am coming to respond to this because this legislation is based on an agreement the tobacco industry voluntarily entered into. It seems to me the Senator from Oklahoma's and the Senator from Texas' problem is not with this legislation, it is with the original agreement. And, frankly, they have every right to disagree with it.

But the reason why many of the provisions were put in that legislation and were entered into was because the best minds in America on this issue said, "You need look-back provisions, you need to restrict advertising, you need to have programs that have to do with youth cessation, you need to have research, you need to have funding for the NIH and the Centers for Disease Control. This is what you need in order to stop kids from smoking."

Mr. NICKLES. Will the Senator yield?

Mr. McCAIN. Now, if you want—for a question, I would be glad to respond, which is the normal—

Mr. NICKLES. The Senator used my name about 14 times. I would like to respond, because you made a couple allegations I resent and I would like to respond. But I would like to make a statement, not a question. I would like to make a statement. It would only take me about 4 minutes. But I would like to respond since my name has personally been mentioned, I think, 14 times. I am counting.

Mr. McCAIN. Of course the Senator from Oklahoma's name has been mentioned, because I am trying to respond to the Senator's statements about the legislation. If he would prefer I not mention the Senator from Oklahoma or saying a certain Senator, but I listened very carefully as a certain Senator attacked this legislation very strongly, in all candor and sincerity.

Mr. GRAMM. Will the Senator yield?

Mr. McCAIN. I am trying to respond to those comments that were made about the legislation. I think that is the normal give-and-take of debate here on the floor. I am saying that—

The PRESIDING OFFICER (Mr. SESSIONS). The Senator's time has expired. Several Senators addressed the Chair.

Mr. NICKLES. Mr. President, I will be brief. I know my colleague from Texas has been waiting to speak on the amendment. But there were a few

things implied by my colleague's statements, the chairman of the Commerce Committee. He said, "The Senator from Oklahoma doesn't agree with the look-back assessments that were part of the attorney general's agreement. And if the tobacco companies agree to it, why would he be opposed to look-back?"

I was not part of that agreement. I think my colleague from Arizona once said, "Why don't you introduce the tobacco settlement so we can mark up from that bill?" I did not do it. The chairman of the Commerce Committee did. I did not do it because I was not comfortable with it. I did not do it because I do not want to introduce a bill that says tobacco companies will be exempt from class action suits.

I did not do it because I looked at look-back assessments and said, "That's no way to tax." I think there is a right way to tax and a wrong way to tax. This is the wrong way to tax. And so to attack me and say that if I am against look-back penalties I am also against every health professional or expert is ridiculous.

I think this is a crummy way to tax. I have told my colleagues, you want a tax? Tax. Call it a tax. Don't hide behind saying, "It's a fee. It's an assessment."

I just read the attorneys general's deal with the tobacco companies. They did not say anything about having a survey and deeming it "proper and correct" and so on. My point being, I am not part of the deal that the attorneys general negotiated. They did not ask me. I am part of the Finance Committee, which is responsible for raising taxes. This Congress has already raised tobacco taxes. And if Senators want to increase them again, they have the right.

We raised the tobacco tax last year. I did not vote for it. I do not know if my friend and colleague from Arizona did or not. But we increased tobacco taxes last year 15 cents. The increases have not gone into effect yet, but they will. They are on the books. And that is the way we should do it. That is the way the system works. This convoluted system of industry payments going up to \$1.10, plus look-back penalty is wrong. Originally the look-back was \$2 billion in the settlement, and then the Commerce Committee bill was \$3.96 billion, and then the bill that was introduced on Monday that we have before us is \$4.4 billion. And then the amendment that was offered this afternoon goes to \$7.7 billion.

I am just saying this is not a workable tax. And I did not agree to the tobacco settlement. So my colleague from Arizona, I believe insinuated that I support the tobacco companies. I do not support the tobacco companies. I just think this is a crummy way to tax, and I resent this idea that whoever opposes look-back is supportive of the tobacco industry.

Mr. McCAIN. Could I—

Mr. NICKLES. That is not true.

Mr. MCCAIN. If I could comment, I in no way intended that—

Mr. NICKLES. I appreciate it.

Mr. MCCAIN. In any way, that implication, I say to my friend from Oklahoma. I said on numerous occasions that his views on this are sincere and heartfelt. I hope the Senator understands that. And I say, I understand that my colleague from Oklahoma knows that I have been here for a number of days now, and there have been assaults not only on the bill itself but on the committee.

You made some remarks about it, et cetera, and I just felt I would defend it. But at the same time, the Senator from Oklahoma is sincere in his beliefs, and they are held with integrity. And I do not in any way imply that there is any relationship there. I wanted to clear that up.

Mr. NICKLES. I appreciate that.

I am going to make two other very quick remarks. One, the negotiated look-back with the attorney generals was not product specific. And the amendment that we have before us goes to \$5.5 billion in penalties on a product specific basis, which means we are going to do a survey on every tobacco product used by teenagers and assess penalties on every single product. Now, isn't that bureaucratic, isn't that a mess.

I hope people will understand this is a big expense. And some people think it is a move in the right direction. I think it is a move in the wrong direction.

Before my colleague from Arizona leaves, he said, "Didn't Senator LOTT ask Senator NICKLES to head this tobacco effort up and pull all the committee Chairs together," and we then assigned the responsibilities to the Commerce Committee chairman?

I say that when I was involved in this particular phase of it, that the linchpin of granting immunity—and I see that as a linchpin in this legislation fell to the Commerce Committee. If there was going to be a deal—and that is what the attorneys general's settlement was predicated on—the fact that if you grant tobacco companies limited immunity from class action suits, they will pay so many billions of dollars, about \$15 billion.

Now, conceivably, that could be put in the Commerce Committee. But I really believe that the Finance Committee should have jurisdiction over the tax. I have been upset about it ever since. I do think that if we are going to have a tax, we ought to call it a tax. We should not hide behind fees and we should not have look-backs assessments. I think these issues are the responsibility of the Finance Committee. And I think if we did that, we would tax tobacco just like we always taxed tobacco.

I think the Commerce Committee, with all due respect, did a crummy job. Its bill has different prices for different brands of snuff. It exempts some tobacco companies from a tax. It hits other tobacco companies hard. I find

that to be inequitable. I think the tax should be so much per product, and let us just say how much a pack it is, how much a can it is and how much a pouch, so people will know. I believe that very, very strongly. And so I communicate that to my friend and colleague.

I appreciate the fact that my friend from Texas has been so patient. I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, we have debated this thing all week. We are in morning business and we are carrying on the debate, so I guess it shows people feel strongly about it.

I want to make it very clear what the issue is on this look-back provision. The Senator from Arizona acts as if by the tobacco companies agreeing to the procedure that somehow that sanctifies this procedure. The Senator from Arizona acts as if by the public health experts believing we should have a penalty that somehow that sanctions this look-back provision.

My concern with the look-back provision is not that it is a penalty; my objection to the look-back provision is that it is clearly patently unconstitutional. And it is unconstitutional on two bases. No. 1, the Constitution, in article I, says it shall be the power of Congress to lay taxes. The most fundamental power of Congress is to tax. This bill delegates the power to tax to a public opinion poll and to the Secretary of the Treasury—clearly unconstitutional.

Secondly, this bill puts a company in a position that if they have no control over the decision of a 14-year-old, and the 14-year-old makes a decision, that company can be punished for the decision of the 14-year-old, even though there is no evidence whatsoever that they have had any impact on that decision. Clearly, that violates British common law and it violates the Constitution of the United States.

So the point I am making is not that public experts don't have a position, not that tobacco companies don't have a position, not that the Senator from Arizona doesn't have a position, but there is a Constitution. When we all stood right down there below that first step and put our hand on the Bible and swore to uphold the Constitution against all enemies, foreign and domestic, we made a commitment, one I take very seriously.

So the problem with this provision besides it being absolutely comical—who would have ever thought we would have a bill where you would do a public opinion poll, and based on what 12- and 13-year-olds say in a public opinion poll, you would have a pollster, in essence, empowered to raise taxes? Who ever heard of such a thing? Not only does this not pass the Constitution test, this doesn't pass the laugh test. This is one of the most absurd provisions I have ever seen.

Now, granted, if our only defense of it is, well, the tobacco companies supported it, I didn't know that we had turned the writing of law over to the tobacco companies or the health experts or the public choice advocates.

My point is, this provision is embarrassingly silly and unconstitutional. I would be ashamed to vote for a bill that had a provision in it where you let a pollster's finding trigger tax increases, rather than an act of Congress, where Congress, in general session, assembled, passes a tax bill that is signed by the President. That is the issue we have raised here—not who cut what deal and who signed off on what, but, basically, two very relevant tests: No. 1, the Constitution test; and, No. 2, the laugh test. I think this provision fails both of those tests.

I think the more people know about these provisions, the less support there is going to be for this bill. To the extent that we draw public attention to this, perhaps we will come to our senses, and if we want to make taxes higher, make them higher. But don't empower some pollster to take over the constitutional powers of the Congress. It won't stand constitutional muster for a minute, and it makes us potentially the laughingstock of the public. That is what the issue was about—not that all of these so-called advocates for the public interest support the provision, not that the tobacco companies have endorsed it. The question is: Is it constitutional, and is it laughable? The answer is: No, and yes.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, the Senator from Texas has indicated that the bill is unconstitutional with respect to the look-back provisions. We have an opinion from the Congressional Research Service on the look-back provisions, and this is what they say: "We conclude that the bill which may be refined further in the amendment process does not appear to pose serious constitutional concerns and would seem to satisfy a showing of rationality and legitimate government action."

So while the Senator from Texas has determined this bill unconstitutional, the Congressional Research Service says otherwise. They say this bill is constitutional. They say that it will satisfy a showing of rationality and legitimate government action.

We have heard a lot of arguments out on the floor today. We have had a number of Senators dominate the discussion, and, frankly, I had begun to wonder if they were afraid to debate and afraid to vote. That is what is going on here. We are in the "stall," because some are afraid to debate and they are afraid to vote. They won't even allow a debate to occur out here on the floor. They reject any interchange, any discussion. Instead, they just want to give speeches to stall and delay.

So, maybe it is time for us to have a debate. I don't know why they won't

come out here and debate. Let's have a debate, and let's see what the American people conclude after that.

Now, we have heard all day that this is disproportionately affecting the lowest-income people. This is a levy on them. The first thing I point out is, people choose what they do. Nobody is going to pay a penny of tax if they don't go to the store and buy the cigarettes. They don't have to do that. There is no requirement to do that. This is no levy on their income; this is their choice.

Our friends on the other side of the aisle talk about personal responsibility. This is a question of personal responsibility. It goes beyond that. Nobody is talking about the taxes imposed on all the rest of us who are expected to pick up the tab because this industry imposes costs on society that aren't being covered by them. Mr. President, the rest of us are being expected to pay taxes, to pay the Medicare bill estimated at \$22 billion a year imposed by this industry. The Medicaid Program has over \$11 billion a year of cost imposed on them because of this industry. That is not covered.

How did we get here? We got here because State attorneys general sued the tobacco companies—sued them. And the basis for the lawsuit was, the tobacco industry was imposing costs on State Medicaid Programs. Of course, part of State Medicaid Programs is financed not only by State taxpayers but by Federal taxpayers. Federal taxpayers have had costs imposed on them because of the use of tobacco products. It is only fair to the vast majority of people who don't smoke that they have some of these costs relieved from them. Three-quarters of the people in this country do not smoke, and they are being expected to pick up the tab for the industry's actions, for what this industry has done. That is not fair. It is time to redress some of this balance. The three-quarters of the people who get stuck with the bill each and every year say, "Wait just a minute now. It is time for this industry to pay a fuller share of the costs it imposes in this society."

The best estimates we have are that the use of tobacco products costs this society \$130 billion a year. Those are the costs being imposed by this industry. People smoke 24 billion packs of cigarettes a year. So the costs per pack being imposed on this society are \$5 a pack. Those are the costs being imposed by this industry on all the rest of us. Who is paying that tab? Every other taxpayer, every single one that doesn't smoke, is being stuck with that bill.

We are saying it is time for the industry to start paying a fair share of the costs that it imposes on this society and all the rest of us. That is just a matter of fairness.

Now, why do we have look-back provisions? Senator MCCAIN is precisely right: The reason there are look-back penalties imposed is because this in-

dustry has a history of going after young people. They try to addict them because they know they become lifetime smokers, and they know if they don't get them young and early, they don't get them.

If there is any question about what this industry has done, let me go back to my top 10 tobacco tall tales. No. 7 was, "Tobacco companies don't market to children." Here is their own document, a 1978 memo from a Lorillard tobacco executive. These are not words, these are the words from a tobacco company executive: "The base of our business are high school students." That is the base of their business. They know what the base of it is. That is why they have been going after kids with their marketing and advertising campaigns for years.

Tall Tale No. 8: Again, the claim, "Tobacco companies don't market to children." Their own documents, a 1976 R.J. Reynolds research department forecast: "Evidence is now available to indicate that the 14 to 18-year-old age group is an increasing segment of the smoking population. RJR must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term."

What could be more clear?

They are going after kids with advertising, with marketing, because they understand they are the base of their business.

Tall tale No. 9: Again, the claim that the tobacco companies don't market to children.

From their own documents, a 1975 report from Philip Morris researcher, Myron Johnston:

Marlboro's phenomenal growth rate in the past has been attributable in large part to our high market penetration among young smokers . . . 15 to 19 years old . . . my own data . . . shows even higher Marlboro market penetration among 15-17-year-olds.

This is why it is necessary to have a look-back provision. This is why it is necessary to say, if you do not achieve the goals for reduction of youth smoking, you are going to pay an economic penalty, because nobody knows more about marketing to kids and how to successfully hook them than the tobacco industry. They spend hundreds of millions of dollars learning how to effectively get across to them. And they are the only ones that have the best information, or I should say they are the ones who have the best information on what might work to allow youth smoking to decline. The best way to get an effect of what we are serious about here, reducing youth smoking, is to give the companies an economic incentive to achieve those goals.

Unfortunately, in the McCain bill most of the penalty is given on an industry-wide basis. The Durbin amendment is seeking to shift that so most of the penalty is on a company-specific basis. Why? First, if you punish everybody equally you punish the good with the bad. Unfortunately, that is what

the McCain bill does because they put most of the penalty industry-wide. It doesn't matter if you are a good company and you really achieve the goals for reducing youth smoking, or you are a bad company. You still pay the penalty. That is not individual responsibility. Frankly, that is socialism. That has everybody in the pot together, good or bad.

Second, having a penalty that is largely based, industry-wide, creates a perverse incentive. With an industry-wide penalty, if a company does the right thing and reduces youth smoking, it still pays the penalty. In fact, it pays twice. It pays the penalty, and it suffers the loss of market share from not addicting young kids. What a perverse incentive that is.

Mr. President, the third point that needs to be made is that because all the companies will pay the same surcharge, they can just treat this as a cost of doing business and pass that surcharge along to the customers.

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

Mr. CONRAD. Mr. President, I ask for 1 additional minute.

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

Mr. CONRAD. Mr. President, it all boils down to the question at the bottom, which is, What are we going to do to reduce smoking in this country? Why is that the goal? Because we have 400,000 of our fellow citizens dying every year from smoking-related diseases. It is the No. 1 health challenge in the country that is avoidable. It is No. 1. There is nothing else that kills this number of our fellow citizens. The estimate is for every three that are smoking, one will die of smoking-related diseases.

I have held hearings now all across America. Everywhere we have gone people have come forward and described the agony and the tragedy caused in American families by the use of this product. This is the only legal product in America when used as intended by the manufacturers that addicts and kills its customers. There is no other product that fits that bill. The only one, the only legal product, when used as intended by the manufacturer that addicts and kills its customers.

People in this country are asking us to stand up and do something to help them—to help them keep their kids from using this drug, and a drug it is—to help them avoid the disability and death that attends the use of tobacco products. We are not going to prohibit the use of tobacco because we have 45 million people in this country that smoke. We don't have a very good history with prohibition.

We can do something to help American families deal with the agony caused by the use of these products. We should not avoid the opportunity to act.

I thank the Chair. I yield the floor.
Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in morning business with Senators to speak for up to 10 minutes each.

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

(The remarks of Mr. BIDEN pertaining to the introduction of S. 2110 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BIDEN. I thank the Chair.

Mr. DEWINE. Mr. President, I ask unanimous consent to proceed for 20 minutes.

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

Mr. DEWINE. Mr. President, we are ready to close down the Senate tonight, and we are about ready to end, really, the debate on the tobacco bill for this week. This bill will be back in the Chamber. We will be debating it in the future. I think we got off to a very good start. No one ever said that this was going to be an easy bill. This is a very complicated bill. Congress is doing something we have never done before. It is very complex. So we knew going in it was not going to be easy.

Nothing important ever is easy. It is important that we continue to push on because there is a lot at stake. I would submit what is at stake, really, is the future of tens of thousands of our young people. We all know the statistics. We all know what the facts are. We all know how important it is to stop young people from starting to smoke. We know the reality that if the child does not start tobacco use at 19 or 20, hasn't smoked, the odds are the child isn't going to smoke. We also know most people start when they are young, start when they are way underage and it is illegal to smoke, cannot smoke if they do, and we know that is when they get started.

We have heard the statistics. We know the statistics about the 3,000 children starting to smoke every day. We know the statistics that roughly a third of them will die premature deaths, some horrible deaths, because of smoking. So I think we all know what is at stake.

I think it is important as we complete this week to remind ourselves that, yes, it is tough. This is a tough bill. This is a tough world. This is contentious. But that is what we get paid to do. That is why people send us here—to make tough decisions. I think we need to remind ourselves that this really is a historic opportunity. It is a historic opportunity that has been presented the country, and has been presented this Senate, and has been literally put in our laps. We can either take up this opportunity and do what is right and do something very constructive, or we can pass it by. This is a historic opportunity. It was really given to us because of the settlement that was announced last June by to-

bacco companies and by the attorneys general, an unprecedented settlement, a settlement that cannot go into effect without a comprehensive bill passing the Senate, passing the House, and ultimately being signed into law by the President.

Let me commend Chairman JOHN MCCAIN for the work he has done in bringing this bill to the floor. Let me commend him for the work he has done this week, keeping this process moving forward. It is clear that, if we are going to reduce teenage smoking, there has to be a comprehensive approach. It is like most things in life, there are no simple answers. If there were simple answers, we would have found them a long, long time ago.

Raising the price of cigarettes, raising the price of tobacco, is an important element to reduce teenage smoking. There is an inverse relationship, clearly, between the cost and the use. But we also know, based on every study that we have seen, everything that we have looked at, I think most of us have come to the conclusion that raising the price of cigarettes alone will not do it, that we have to do other things. We have to stop the advertising for cigarettes that appeal directly to children—get rid of the Joe Camels, or those who will follow Joe Camel; get rid of the Marlboro Man; get rid of the cartoon figures; get rid of the advertising that any parent looks at for 1 second and knows this is clearly targeted at children or, if it is not targeted at children, at least has a tremendous appeal for children. That has to be stopped.

We have to have counteradvertising. We have to take all the ingenuity of Madison Avenue and use it, instead of killing people, use that ingenuity and use that talent to save kids. It is available, and it is out there, and we can do it.

We have to worry about law enforcement. Again, it is no different than dealing with drugs in that respect. You have to have education, you have to have advertising, but you also have to have law enforcement. We risk, as we increase the price of cigarettes and tobacco, expanding the black market that already does exist in this country. We have to worry about that. We have to worry about the enforcement of the laws that every State has about underage smoking. We have to figure out better ways to enforce that law.

So, we have to do all of these things. And as we proceed in the weeks ahead on this bill, and as we talk about it and we debate it and argue this point and argue that point, let's keep our eye on the ball. Let's keep our eye on the objective. For this Senator from Ohio, at least, there is only one objective, and that is to reduce the number of our kids who start smoking. If we can do that, if we can do it in significant numbers, we will have accomplished a great deal.

That is what this bill that Senator MCCAIN has brought to the floor is all

about, and that is what we have to get accomplished. This is a historic opportunity. It is a unique opportunity.

Let me talk for a moment, if I could, about the amendment that Senator DURBIN and I have brought to the floor this evening. It is an amendment that we believe will make a difference. It is an amendment that will bring about more accountability, hold the tobacco companies responsible, make them liable for their actions, make them more accountable, and we think will make them do the right thing.

Our amendment deals with what we call look-back. I think we have to keep in mind—I have had the opportunity to listen to a portion of the debate from some of my colleagues who followed Senator DURBIN and myself, Senator WYDEN—who spoke in favor of the amendment. I have listened to what some of my colleagues who have raised some questions about the amendment have had to say.

In response, let me make a couple of comments. First of all, the people this is targeted at, the people we are targeting, are the tobacco companies. And the tobacco companies agreed to a look-back provision. They agreed to a very, very significant look-back provision. That was the provision which was included in the settlement that was announced last June. So they agreed to it. They are the ones who thought they could meet the 60-percent reduction target in 10 years, and that is a significant target. But they said, "We can do it." So this isn't something that we dreamt up here in the Senate; this is something that the parties looked at, and all of them said, "We can do it." And it is clear that they can.

It makes sense, I think, what we have done in the Durbin-DeWine amendment. That is, we have taken JOHN MCCAIN's very good look-back provision, and I think we have improved it. We have made it more company-specific. What do you mean, company-specific? The original look-back provision was an interesting provision, really, in the sense that it was socialism. I don't know any other word to describe it.

It basically said: Look, here are the targets. The tobacco companies agree on these targets. We are going to look back, after 3 years, and then after a few more, and ultimately after 10 years. And every few years, we are going to look back and see if the tobacco companies are hitting their targets in reducing teenage smoking. They said: We can get to 60 percent reduction in 10 years. And we phase that in—they phased it in, in their agreement, over that period of time.

Every so often, we are going to look to see how we are doing. And if we determine that the reduction is not taking place, or the targets are not being hit, then the tobacco companies agreed—let me emphasize again—agreed that they would pay a penalty.

The interesting thing is, when this was put together, however, how the

penalty was calculated. The agreement was that it would be calculated industry-wide. So you would look to see what the total reduction in teenage smoking was. And then, each company—you figure out what that total penalty was. It is the penalty the tobacco companies agreed to. You take that pot of money, that penalty pot, and you divide it up among the tobacco companies, based on their total market share. So if one tobacco company had 30 percent of the market, they would get 30 percent of the cost of the penalty, irrespective of whether or not they were a leader in the sale of cigarettes to young people or whether they didn't sell a cigarette to a young person; it didn't make any difference.

We looked at this and came to the conclusion that it really didn't make a lot of sense to base it entirely on that procedure. We came to the conclusion that the tobacco companies should be held accountable for what they did specifically. So we came up with this amendment with a variation of what Senator MCCAIN had done, where he blended the penalties, basically making part of the penalties being applied industry-wide—that form of socialism we talked about—part of the penalties being applied case by case, company by company.

We have kept a blend in the Durbin-DeWine amendment, but we put more emphasis on company-specific. We think it makes sense to hold the individual tobacco companies accountable for the reduction in their product that is being sold to kids. Now, some of my friends have come to the floor and said, "Well, look, that's not really fair. Tobacco companies can't control what they sell to kids."

With all due respect, that doesn't make any sense. They control it today. They control it by their advertising. They control it by whom they target. They control it by how they market the product. There is a reason that Marlboro has 62 percent of the market. There is a reason they beat everybody else out in getting the kids market, the illegal sales market, the kids-under-18 market. They have been darned good at it. So we have seen, decade after decade, these companies being very good at this and being able to figure out how they can target a niche market and how they can get into kids who are just starting to smoke.

To say that, now, if we give them an incentive not to do it, give them a disincentive and charge them not to do it and they agree not to do it, to say they can't control what they are doing makes absolutely no sense.

My colleague from Kentucky came to the floor and asked, I think, a very legitimate question—Senator FORD. He said—I will paraphrase what he said, but, basically: Look, you are holding the tobacco companies liable. But the Government is going to be the one who is going to be doing the counteradvertising. And the Government is going to be doing other things to reduce teenage smoking.

I think the answer to what Senator FORD said is, yes, that is correct, the Government is going to be involved in countermeasures. The Government is going to be involved in trying to reduce teenage smoking. But that doesn't mean the cigarette companies will still not be players and still will not have things that they can control.

Make no mistake about it, under this bill or any of the different versions of this McCain bill, tobacco companies still are going to be able to impact how teenagers smoke, and whether or not their product is marketed to teenagers, and whether their product is sold to teenagers, and whether they target teenagers. How can they do it? Well, they can do it in many ways. They can do it by advertising. The bill has restrictions on advertising.

Yet, advertising is still going to be permitted. So how they target that advertising and what kind of advertising they place and where they place it is going to clearly impact on whether or not young kids underage buy cigarettes.

Tobacco companies will control that. They will control advertising. They will control how they market the product as they do today. They will control how they target the product as they do today. They can run, if they want to—and this is clearly within their control—their own antismoking campaigns aimed at kids. They clearly can do that.

We hope the more money they spend on that, the more emphasis they will put on that, it will reduce the consumption of their own product. Clearly, how the tobacco companies market and advertise will impact youth smoking. They have some responsibility. We have to hold them accountable.

My friends, particularly on this side of the aisle, always talk about accountability. We are in an age of accountability, whether we are talking about welfare or whatever we are talking about. We are in an age of accountability where people need to be accountable for their own actions. What the Durbin-DeWine amendment says is the tobacco companies ought to be responsible for their own actions; the tobacco companies ought to be judged not by what they say but by what they do. The tobacco companies ought to be charged and looked at and judged by what the results are. That is all we are saying.

I find that to be a pretty conservative point of view, and a point of view that most of my colleagues on this side of the aisle always talk about and, I think, support. If we look at it in this way, this is, in effect, a very conservative amendment.

Mr. President, the Durbin-DeWine amendment changes the incentives. We get rid of the profit motive. We give the incentive to prevent kids from smoking. We give that incentive to the tobacco companies.

Another issue that was raised a few moments ago in regard to the general

look-back provision which our amendment contains and the McCain bill does, of course, is whether or not these surveys are accurate. The statement was made or the assertion was made, "How in the world can you hold tobacco companies liable for surveys?"

First of all, they agreed to it. They agreed to it. They agreed to the broad survey of looking at the industry and looking at how much teenage smoking was occurring. They agreed to that.

Second, these same tobacco companies rely on surveys to do advertising. They rely on surveys to do everything in regard to marketing. Mr. President, I don't think there is one of us in this Senate who has not come to the floor when we talk about illicit drugs in this country, not a one of us has not come to this floor and cited statistics based on surveys about whether the consumption of drugs among our young people is going up or going down. We take them at face value, we rely on them, we make policy based on them and we make decisions based on them.

We have had a debate ongoing for the last 6 to 9 months in this Senate in which I have been involved on several different occasions where we have lamented the fact that among the very youngest of our children who are starting to use drugs, the consumption is going up at the same time the fear factor is going down. And we picked that up from the national surveys being done. Drug-Free Youth Group, we rely on that in our decisions.

I think it is clear that surveys scientifically done, correctly done, clearly can tell us what percentage of the youth market is smoking and what percentage of the youth market is smoking Marlboros. There is no doubt about it. We can come within a very, very close percentage, a fraction of a percentage of getting that figure.

Mr. President, let me conclude by again congratulating Senator MCCAIN for bringing this bill to the floor. It is a comprehensive approach. At the end of the day, when all the days are over and this finally made its way through the Senate, if we are going to have something worthwhile, it has to be a comprehensive approach.

We have to be concerned about driving up the cost, the price, because we know that will have an impact. We have to counter advertising. We have to have some control of the advertising and the cigarette companies ultimately need to agree to that.

As this process goes through, it is sometimes not a pretty process, it is certainly not an easy process, but it is our process, a democratic process, and I remain optimistic that we will end up with a comprehensive bill that will reduce teenage smoking significantly, that will save lives and that will be a bill of which we can all be proud.

TRIBUTE TO FORMER SENATOR
GEORGE MITCHELL

Mr. LEAHY. Mr. President, April 10, 1998 was not only Good Friday and