

the end of the year. It is amazing to see the number of huge high-rises with very little occupancy as they attempt to negotiate the rent to a level to get people in them, regardless of if it makes financial sense.

By some estimates, China has as much as \$250 billion in doubtful loans. The Government-controlled Chinese banking system has been directing funds to favored companies regardless of the economics. In China's case, 70 percent of the state-owned banking loans go to inefficient and near-bankrupt state-owned enterprises. The Government is attempting to encourage foreign ownership coming into China, but there is a great reluctance on the part of U.S. firms to come in and share the debt associated with those opportunities.

In any event, Mr. President, as a result, an estimated three out of four state commercial banks are now believed to be insolvent in China. China has announced their intention to reform their banking system, but with the Asian economy weakening and Japan in recession, China may wait too long to make the tough changes, and then those changes become that much tougher.

In the end, we could find the two largest economies in Asia in recession, and I think this is very likely. My experience in finance tells me that when you have bad financial news, if you can take the hit up front and get on with it, as opposed to bearing it and putting it off, you will be much better off. That is not what is happening in Asia in either the case of China or Japan. There is a great reluctance to face up to the realities and take the medicine to change the banking system and get them back on a functional basis. This would shore up the economy in Asia.

Finally, Mr. President, our own U.S. economy is, more than ever, linked to the world economy. So I can only hope that the Japanese Government and the Chinese Government will accept the problems in their system and make the necessary changes before the cost becomes too great, before the cost affects the U.S. economy and the U.S. taxpayer.

Mr. President, neither Japan nor China is going to survive this crisis merely by devaluing their currency and trying to export their way out of their economic problems. When we see both countries taking serious steps to address their failed financial institutions, as they are currently structured, and bringing greater transparency to their banking systems, then at last we will know that Asia is beginning to turn the corner.

Mr. President, I suggest they start now without further delay.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. The clerk will report the pending business. The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

Reed amendment No. 2702 (to amendment No. 2437), to disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent, on behalf of the leader, that at 5 p.m. today the Senate proceed to a vote on or in relation to the Reed amendment No. 2702 regarding tobacco advertising. I further ask unanimous consent that Senator MCCAIN have 5 minutes and Senator REED have 5 minutes for closing remarks just prior to the vote.

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

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, a couple of weeks ago a couple of Members of Congress came to the floor of the Congress to announce Bob Hope's death. Bob Hope was having breakfast in California at the time. This weekend, we had some legislators talking about the tobacco bill and predicting that the tobacco bill was dead. Well, the tobacco bill, or the tobacco legislation, that is being debated by the U.S. Senate is not exactly having breakfast—clearly, this has been a struggle to get a piece of legislation through the Senate dealing with the tobacco issue—but, the tobacco bill is not dead by any means. I hope that those who tell the American people that the Senate cannot pass a tobacco bill will understand that the Senate fully intends to pass legislation dealing with tobacco.

I want to describe just for a moment why I think those who predict its death are wrong, and why those who call this a bad bill are wrong, and why those who believe that Congress will eventually not act on tobacco are wrong.

Let me go back to the start of this issue. Why are we debating a tobacco bill? Why tobacco legislation? Simply put, it is because we now know things we did not know 25, 50, and 100 years ago about tobacco. We know that tobacco can kill you. The use of tobacco, we know, causes from 300,000 to 400,000 Americans a year to die from smoking and smoking-related causes.

Tobacco is a legal product and will remain a legal product. But we also know that it is illegal for kids to smoke, and we know that tobacco companies have targeted our children to addict them to nicotine.

The majority leader this weekend said, "Well, the tobacco bill is so bad that it should not be passed in its current form," and so on and so forth, and "If we can't get to a conclusion on it this week, we've got to move on." That is another way of saying, "We're going to leave this carcass in the middle of the road and just drive forward."

Fortunately, we learn a lot as we go along here in this country and in life. One of the things we ought to learn is, this piece of legislation dealing with tobacco, and especially dealing with the tobacco industry targeting America's children—we must resolve this issue; we must pass this legislation.

Let me describe for my colleagues some of the evidence that has been unearthed from depositions and from court suits, and so on, in recent months.

A 1972 document by a tobacco company, Brown & Williamson. It says:

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

Talking about sweetening cigarettes because teenagers like sweeter products—does that sound like a company that is interested in addicting kids to their product?

How about Kool—the cigarette Kool? KOOL has shown little or no growth in share of users in the 26 [and up] age group.

This was written by a Brown & Williamson person. It is a memo from 1973. It says:

... at the present rate, a smoker in the 16-25 year age group will soon be three times as important to KOOL as a prospect in any other ... age category.

Talking about their 16-year-old customers for Kool cigarettes.

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 ...

This is according to a report by a Philip Morris researcher.

You say that they are not targeting kids?

1974, R.J. Reynolds. A marketing plan submitted to the board of directors of the company says:

As this 14-24 age group matures, they will account for a key share of the total cigarette volume—[in the] next 25 years.

Or if you are still unconvinced—that there is no need here; that the industry has not targeted our children—how about a Lorillard executive, a cigarette company executive, in 1978:

The base of our business is the high-school student.

A cigarette company executive saying, “The base of our business is the high-school student.”

Philip Morris, 1979, says:

Marlboro dominates in the 17 and younger category, capturing over 50 percent of this market.

It is like they should have a fiesta here. They capture over 50 percent of the 17-year-old and under market. And you say the industry isn't targeting kids?

Well, cigarette smoking is addictive. It is legal but addictive.

Here is something that was picked up this morning. It is actually a piece from Marlboro. It talks about river rafting, cookouts, fly-fishing, bonfires, mountain biking, and bands. And it is advertising, of course, cigarettes. It has the warning, as we require by law, “Surgeon General's warning: Smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.”

The question for the Congress is: Do we want an industry to try to addict our children to this product? And the answer is no. And if not, if we do not want the industry to continue to do that—and they have in the past; the evidence is quite clear—if we do not want them to continue to do that, if it is our position that it is wrong for the industry to target children—and that is our position—then the question is, What are we going to do about that? Is the Congress going to pass a piece of legislation that prohibits this industry from targeting our children? And that is the legislation that is on the floor of the Senate.

Some do not like it; and some, for their own reasons, want to kill it. But they will be on the wrong side of history if they succeed in killing this legislation.

Oh, we have done a lot of things over the years that were controversial at the time we did them. Even things like giving women the right to vote in this country was controversial, wasn't it? For more than half of this country's history, women were not allowed to vote. Or skip forward to the Civil Rights Act of the early 1960s. Who in this Chamber now would decide that the things that we provided for in the Civil Rights Act in the early 1960s they would now support? A good number of them opposed it back then.

Things like requiring labels on food—that was controversial. Requiring companies that produce our food in the grocery store to actually put something on the label that states the fat content, the sodium content, or the carbohydrates—that was big government intruding on those who manufacture the food. How could we require that someone put on the can of peas what is in that can of peas? We did it.

Now you can go down the grocery store aisle and see traffic jams of people, taking that can or package, and trying to figure out what is in it, how much fat it contains, how much sodium is in a product. It was controversial at the time.

A lot of things that were controversial at the time turned out to have been the right thing. The tobacco bill will turn out to be the right piece of legislation for this country.

How many in this Chamber who spend a lot of time on airplanes remember, going back 10 or 20 years, getting in the middle seat of a 727 and as the airplane takes off, the person in the seats on the right-hand side and the left-hand side light up their cigarettes. Because then there were no restrictions on smoking anywhere on airplanes? Eventually they put the smokers in the back of the plane. That meant everybody breathed the same smoke, although they were separated by distance. Then, finally, you shall not smoke on airplanes in this country. It was controversial at the time. I voted for that. It was the right thing to do.

This piece of legislation on the floor of the Senate talks of a range of issues, most especially the issue of teen smoking. In an industry that knows the only customers it has access to are kids—because almost no one reaches adult age in this country and tries to figure out what they have missed in life and comes up with the idea of smoking; nobody 30 or 40 years old says what will really enrich my life is if I started smoking—kids are the only source of new customers for tobacco companies. The tobacco companies say it themselves in the research material we have provided.

This legislation provides a range of programs, including providing smoking cessation programs, trying to help people who are now addicted to quit; prohibits advertising that targets our children; provides for counteradvertising, that actually tells our kids that smoking is not cool and that smoking can cause lung cancer, heart disease, emphysema and so on.

The resources in this bill help us invest in the National Institutes of Health to continue to develop the breathtaking achievements in medical research that we see day after day and month after month in the National Institutes of Health. It seems to me this is a remarkable bargain for the American people.

This legislation, I think viewed 10 years from now, will be seen as something that was right for the time. Ten years from now, those who vote against this legislation will say, “How on Earth did I ever come to that conclusion?” Of course it made sense for us as a country to decide cigarette companies cannot target our children. Of course it made sense for us to have counteradvertising and smoking cessation programs and more investment in the National Institutes of Health to

deal with the range of medical problems caused by smoking. Of course that made sense.

So let me conclude by saying that those who this weekend were on the talk shows and were speaking to the press about what will happen to this tobacco bill, they have prematurely announced its death. This tobacco bill is not dead. There are some who wish it were dead. There are some who this week will work against it and will try with every bit of energy they have to kill it, but they will not succeed because this is the right thing to do. We have made the case effectively that at this time in this country we ought not allow the tobacco industry to target our kids to the addiction of cigarettes. This piece of legislation moves us in that direction in a very, very significant way.

The majority leader and others who speak about this legislation need now, I think, to provide some leadership to help us pass this legislation. A bipartisan group of Senators, including Senator MCCAIN, who has spent a great deal of time on this legislation and someone for whom I have great admiration and I commend him for his work, Senator CONRAD on our side and others, a great many people have spent a lot of time crafting this in a bipartisan way. Now we need this week to finish a job and pass it through the Senate and get it to a conference with the House so that the American people can look at the job the Congress has done. And then make the judgment that they have done a good job on behalf of our children, they have stood up for our children and have told an industry that addicted our children, you can't do that anymore; we are not going to let you do that anymore. That is the right position for our country.

I know that the Senator from Rhode Island is about to talk about an amendment, I think, that he has pending in the Senate. Let me, as I conclude, also commend him for the work he has done. The Senator from Rhode Island, the Senator from Illinois, Senator DURBIN, and a number of others have worked a great deal on this legislation, including the Senator from Massachusetts, and I mentioned the Senator from Arizona, Senator MCCAIN.

This is a tough piece of legislation. The toughest thing in the world is to propose. The easiest thing in the world is to oppose. It doesn't take any skill to oppose. I think it was Mark Twain who once was asked if he would be involved in a debate and he immediately accepted, “provided I can take the opposing side.” They said, “You don't even know the subject of the debate,” and he says, “I don't have to, as long as I am on the opposing side.”

It takes no time to prepare. We are proposing a piece of legislation in the Senate dealing with smoking, tobacco and children that is right for the time. Those who stand in its way will be on the wrong side of history. Those who predict its death are dead wrong, because we fully aim, this week or next

week, to pass this legislation through the U.S. Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Rhode Island.

Mr. REED. As an initial point, I ask unanimous consent to add Senator TIM JOHNSON as a cosponsor of the Reed amendment, amendment numbered 2702.

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

Mr. REED. Mr. President, first let me commend my colleague, the Senator from North Dakota, for his fine words and also for his commendation. He has been, also, a leader in this effort to try to pass a balanced, yet very effective, tobacco legislation.

AMENDMENT NO. 2702

Mr. REED. Mr. President, before this body today is my amendment which would deny the deductibility of advertising expenses to the tobacco industry if they did not follow the FDA rules with respect to advertising.

The FDA, after very careful rule-making, promulgated a series of rules which would proscribe advertising directed at children. Among these rules are limiting tobacco billboards to a distance further than 1,000 feet from a school. It will require the publication of advertisements in youth-oriented magazines to be in black and white text only. It would dispense with some of the other staples of advertising that the industry is using.

As the Senator from North Dakota has pointed out and as I pointed out in my remarks last Friday, there is clear, convincing, overwhelming evidence that for decades the tobacco industry has deliberately, relentlessly, and ruthlessly targeted children in their advertising. It is not an accident. It is not a coincidence. It is not the collateral effect of trying to reach the 21- to 25-year-old market. It is very purposeful, very deliberate, and, regrettably, very effective.

In the course of the debate over the last several weeks we have taken diversions through many different areas. We are talking about tax policy. We are talking about child care policy. We are talking about how we spend these resources, whether this is an inappropriate tax. I think it is helpful to refocus why we are here. We are here because the tobacco industry, as I mentioned before, has, over decades, targeted young people for their advertising. They are attempting, and succeeding too well, to literally entice young people as young as 12 and 13 years old into smoking cigarettes and using other tobacco products.

I think that is wrong. I think the vast majority of the Americans think that is wrong. I think the vast majority of my colleagues in the Senate feel it is wrong. We can do something about it. As we have discussed all of these different issues of tax policy, fiscal policy, regulatory policy, it sometimes helps to remind all of us what the industry is doing.

I had a very graphic reminder sent to me by one of my constituents from Rhode Island. I mentioned this last week. This is a very slick, sophisticated, mailing piece, sent to his son, a 16-year-old junior in high school. I have blown it up here so the audience can see in larger detail what I am talking about. Again, this was sent to a 16-year-old. It was sent addressed to him, personally. It wasn't "occupant," or "resident." It was addressed to him.

As a first point, I can recall as a youngster when I ever got mail it was a big occasion. To think that someone would actually want to send me a letter, particularly a big company like the Brown & Williamson Tobacco company was a big occasion.

The first part of it grabs your attention: "We know you like it loud." How do they know they like it loud? Because he essentially was contacted and solicited because this young man went to a rock concert which Brown & Williamson sponsored the preceding summer. This is not coincidence, either. Their decision to sponsor a rock concert that attracts, as the father said in the letter, a majority of the audience being 18 or younger, much younger in some cases, was very deliberate. It wasn't spur of the moment. They sat around a conference room on Wall Street and Madison Avenue saying, "How do we get our target population? How do we reach them and make contact with them? And, oh, by the way, how do we draw them into this addiction of smoking?"

So he received this mailing at home. You open it up. It is three dimensional. I know in the course of some of my campaigns I have used them in mailings to my constituents. This is a very expensive, very professional, and very sophisticated mailing. It is a very targeted mailing.

Then you read the narrative. "You like it loud"; and "very, very smooth." "Kick back today and enjoy a bold treat. Refreshing menthol, and a coupon to save you some change. Relax with Kool, and slip into something smooth."

You are overwhelmed by this message. The message is not about the statistics, or the smoking, or the dangers of smoking, the information he or she would want as a rationale consumer if he or she were making a decision to smoke. You are being overwhelmed by I would argue misinformation. Oh, yes, there is the required Surgeon General warning here. "Warning: Smoking greatly increases serious risk to your health."

If you are 16 years old, do you really believe that, when everything else is talking about your favorite rock group, talking about how "we support" that rock group in the concert, how you are part of this "loud" generation, how you like it "smooth" personally directed to you? I don't think so. And the most ironic part of all of this is this message says "quitting smoking" will help your health. This message down

here says, "We will give you a buck, kid, if you buy two packs of our cigarettes." What a deal.

This is what we are talking about in this tobacco bill. We are talking about an industry that has deliberately, repeatedly attempted to market the kid shamelessly; without shame.

This took place 6 months ago at the same time they were talking about their arrangement with the attorneys general; at the same time they knew we were going to be debating tobacco legislation on the floor of the U.S. Senate. And yet they continued to try to sell their ware to kids.

You know, people get addicted to cigarettes. I think the industry is addicted to children. They just can't leave them alone. They just have to keep selling to them, even when common sense would say let off while the smoke clears. No pun intended. They can't stop because their customer base is hooking these kids. You hook a 16-year-old child, and that is 10, 20, 30 years of customer for your brand. Of course, we know that one out of three of these children will die prematurely. We know that 5 million people under 18 years of age today will die prematurely because they are addicted to cigarettes and other tobacco. But they don't want you to know that. They want you to think this is cool, this is smooth, and there is the whole adult world opening up for you. "You can be as successful and as attractive and as desirable as any rock star. You just have to smoke our cigarettes." That is wrong.

This is just one example of what goes on. It is ubiquitous throughout. This is a promotion by Winston Winston's, by the way, are the new health food of America. You see their ads. Smoking it is like eating health food; no additives; no anything; it is macrobiological; whatever. Again, they are taking an approach now with their campaign, which is making their product look like it is healthy for you; it is what you would buy if you were a research scientist trying to develop the best diet in the world. But they have sponsorship for NASCAR racing, which is a venerable tradition in this country. For the Winston Cup, they are sponsoring it. Not all; you could not argue that all of the people who attend these races are young people. But we also must recognize that this is a very attractive event for young people. There must be something here.

I read a few weeks ago in the New York Times that Mattel, Inc., is thinking of creating a NASCAR Barbie doll, the most popular toy in the world, because they figured it out, too. There are lots of young girls who are attracted to this whole scene of NASCAR racing and a NASCAR Barbie is going to be a very popular toy. The same type of calculations that are going on at Mattel are going on in some cases up in the cigarette headquarters of the world. But one should say, of course,

that the Barbie doll is a much more benign figure in American life than cigarettes. But this is ubiquitous. Our children are being subjected to this constantly.

My amendment simply says, listen, the FDA, after rulemaking at length, has come up with very reasonable restraints on tobacco advertising. If you follow those restraints, you will receive your full deduction. But if you violate them, you will lose your deduction. I believe most of my constituents would say the same thing, that we should not be subsidizing the tobacco industry as they attempt to lure our children into smoking. The industry spends about \$5.9 billion a year on advertising. We kick back, if you will, about \$1.6 billion through the deduction. That is money that, I think, is poorly spent. But as long as the industry is willing to refrain from targeting children I don't think we can object because it is available to other industries. But if they persist in targeting children and not following FDA regulations, then I believe we should act very strongly, very vigorously, and deny them this deduction.

By the way, too, independently, my amendment would not restrict speech whatsoever. Of course we have tobacco concerned any time the Government attempts to invoke any type of restriction on speech. But taken by itself, my amendment would simply say you can say anything you want. You can even promote your product using this. But don't charge the Government for your deduction. You can do it on your own money.

My amendment has been criticized on a couple of points, which I would like to respond to. First, there are many of my colleagues who say we shouldn't really do anything unless it is voluntary, because, if we do, the tobacco industry will sue us and we will be tied up in court for 10 years.

The reality is the tobacco industry is already suing the FDA, and not just the tobacco industry, but the advertising interests are all there, and it is absolutely their right. They feel strongly that not only commercial interests are at stake but also constitutional interests. But to deflect or defer from doing something today vigorously about tobacco access to children simply because we might be sued is absolutely, I think, an implausible and inappropriate comment. We will be sued perhaps, but we have to act to ensure that we do what is right for the children of America.

The other approach is suggesting that the Supreme Court decisions place a much higher standard when you come to restricting commercial speech. Specifically, the case of 44 Liquormart, Inc. versus Rhode Island. I feel somewhat familiar with the case. It originated in my home State. Actually it originated and the legislation was passed in 1956 in Rhode Island. Although I served in the assembly in Rhode Island, I was not there in 1956. I

was in grammar school in 1956. But this legislation that Rhode Island passed prevented the publication of price information with respect to liquor advertising.

Stepping back a bit, I think the judges probably got the same sense that I did when I read the statute in this case and realized what might be afoot; that it is equally likely that this legislation was passed 40 years ago not so much to increase temperance in Rhode Island but simply to prevent discount liquor stores from encroaching on established liquor stores. So right away, there is a suspicion about the underlying statute in 44 Liquormart.

But, first, let me say something about that case. The Supreme Court reaffirmed the doctrine associated with Central Hudson, which is the leading case on commercial speech, and they said essentially one may restrict commercial speech, first, if it is unlawful; or, it misrepresents significantly the product. Even if it doesn't do so, one may restrict it if there is a substantial governmental interest at stake. The legislation directly affects that interest. And the means are no more restrictive than necessary to accomplish the governmental interests. So the Central Hudson test is in place and remains.

In 44 Liquormart, the Court found essentially that the State of Rhode Island made no showing that their proposed legislation materially and directly advanced the goal of decreasing the consumption of alcohol. In fact, there was no evidence submitted in the record to show that this would have any effect at all on alcohol consumption in the State of Rhode Island. Alternatively, the Court discussed the fact that there were other means possibly available that had not even been used. On those factual bases, together with the Central Hudson doctrine, they declared that the statute was impermissible encroachment on commercial speech.

The case is much different here. The FDA has established a record that advertising decisively affects children's choices to begin to smoke cigarettes, and by maintaining appropriate restrictions on advertising, we can, in fact, directly affect the behavior of children with respect to cigarettes. This is not based upon whimsy. The FDA relied on at least two major studies: a study at the Institute of Medicine in 1994, and the Surgeon General's report in 1994. Both concluded that advertising was an important factor in young people's tobacco use. Moreover, these reports indicated that advertising restrictions must be a part of any meaningful approach to reduce underage smoking.

So this is not a situation of trying something that has not been tested or has not been tried by other means. Their conclusion authoritatively is that these types of restrictions must be in place.

I should also remind you that we have tried other ways to moderate the

consumption of tobacco products in this country. In the early 1970s, we banned television advertising of tobacco products.

But as Robert Pitofsky, the Chairman of the Federal Trade Commission, pointed out, what happened is the industry simply shifted to other forms of advertising. When I was a kid back in the 1950s and the 1960s, you would see TV advertising, but you would be very, very shocked if you could have a record of direct mail pieces sent to 16-year-olds, as happens today. And the sponsorship of NASCAR racing—all of these things are a direct result. In fact, cigarette advertising has exploded. From 1975 to 1995, 20 years, it has increased manyfold—going into not only these types of promotions, but also all the gadgets and all the other rigmarole that the industry is promoting.

This is a Camel cash collectible. Now you can get Joe Camel T-shirts, and Joe Camel lighters, and Joe Camel dart boards, and Joe Camel posters, and Joe Camel everything—wristwatches, you name it. That, too, is part of the ubiquitous promotion of tobacco. And although it says very precisely, "Offer restricted to smokers 18 years of age or older," I dare say I see more kids with Joe Camel T-shirts and bicycle caps and things like that than I do 40-year-olds, 30-year-olds, or even 20-year-olds.

So what the intent is, we will let the consumer decide.

Furthermore, when the FDA promulgated its regulations, they went on very clearly to state what was happening here.

Collectively, the studies show that children and adolescents are widely exposed to, aware of, respond favorably to, and are influenced by cigarette advertising. One study found that 30 percent of 3-year-olds and 91 percent of 6-year-olds identified Joe Camel as a symbol of smoking.

Thirty percent of 3-year-old toddlers knew that Joe Camel, that cuddly cartoon character, was associated with smoking. Ninety-one percent of 6-year-olds, in the first grade of school, might not know their ABCs, but they know that Joe Camel and smoking go together.

That is not good. That is what we are talking about here, and that is why, unless we effectively and dramatically affect the advertising of tobacco products to children, we will never turn the table on this epidemic of smoking among young people.

Mr. President, I have other comments I wish to make, but I notice that my colleague, the Senator from South Dakota, is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. I thank the Chair.

I thank the Senator from Rhode Island, my friend and colleague, Mr. REED. I commend him for this particular amendment. I am proud to be a cosponsor of this amendment.

If you were to talk to a typical South Dakotan and say, "You know, the Federal budget is tight this year; we may

not have the resources we need to do all we would like to do in terms of cancer or heart research at the National Institutes of Health; we may not be able to do all we would like to do for education, for health care; we may not be able to do all that we want for child care; and, oh, by the way, we do have some \$1.6 billion of your tax money we are going to turn back to the tobacco industry as a subsidy for their marketing messages to our children." I guarantee you, the typical South Dakotan would be appalled. He would be amazed that any institution could possibly have come up with a priority as wrong-headed as that.

And so, Mr. President, I rise today to express my support for the Reed amendment which would deny tobacco companies any tax deduction for their advertising and promotional expenses when those ads are aimed at America's most impressionable group, its children. This amendment has the overwhelming support of the public health community, and it would greatly strengthen the underlying McCain bill. I congratulate my colleague from Rhode Island on this amendment.

It is almost incomprehensible to me that taxpayers actually subsidize the tobacco industry's promotional efforts even as we go about forming a consensus on the dangers of smoking and the problems created by the industry's efforts to target children.

Numerous studies have implicated the tobacco industry's advertising and promotional activities as the cause of continued increases in youth smoking rates in recent years. Research on smoking demonstrates that increases in youth smoking directly coincide with effective tobacco promotional campaigns.

We simply have to address the industry's ceaseless efforts to market to children. It is time for this Congress to put a stop to the industry's practice of luring children into what is an untimely progression of disease and death.

Under this amendment, if the tobacco manufacturers do not comply with the advertising restrictions as promulgated by the FDA, the manufacturer's ability to deduct the cost of tobacco advertising and promotional expenses will then be disallowed for that particular year. This approach has overwhelming support of the public health community, supported by Dr. C. Everett Koop, the American Lung Association, the Center for Tobacco-Free Kids, and ENACT Coalition, a coalition comprised of leading public health groups including the American Cancer Society, American Heart Association, and many others.

Mr. President, the importance of this issue is simply enormous. The facts speak for themselves. Today, some 50 million Americans are addicted to tobacco. One of every three long-term users of tobacco will die from a disease related to their tobacco use. About three-quarters, 70 percent, of smokers

want to quit, but fewer than one-quarter are successful in doing so. Tobacco addiction is clearly a problem that begins with children. Almost 90 percent of adult smokers started using tobacco at or before the age of 18. The average youth smoker begins at age 13 and becomes a daily smoker by 14½.

Each year, 1 million children in our Nation become regular smokers. One-third of them will die prematurely of lung cancer, emphysema, and similar tobacco-caused diseases. Unless current trends are reversed, 5 million kids currently under 18 will die prematurely from tobacco-related disease.

So, Mr. President, this is a public health crisis. A recent survey by the University of Michigan found that daily smoking among 12th graders increased from 17.2 percent in 1992 to 22.2 percent in 1996 and continued to climb in 1997 to 24.4 percent. This represents a cumulative 43-percent increase in daily smoking among our Nation's high school seniors just over these past 5 years.

One of the advertising campaigns most markedly aimed at young people is the now notorious Joe Camel campaign that my colleague has alluded to. After R.J. Reynolds introduced this campaign, Camel's market share among underage smokers jumped from 3 percent to over 13 percent in just 3 years. Although Congress had banned cigarette advertising on TV in 1970, tobacco companies routinely circumvented this restriction through sponsorship of sporting events that gave their products exposure through television.

The Federal Government subsidizes advertising through a tax deduction, generally a 35-percent deduction, for advertising expenses. In 1995, this subsidy cost the American taxpayers approximately \$1.6 billion. In terms of lost revenue to the Federal Treasury, this is a very significant sum of money. In effect, the Federal Government is subsidizing industry's advertising costs. For example, in 1995 the cost of the cigarette advertising deduction covered the total amount spent by the industry on coupons, multipack promotions, and retail value-added items such as key chains and other point-of-sale advertising, the kind of items that are most attractive to children.

In 1995, the tobacco industry spent \$4.9 billion on advertising, double the total Federal Government appropriation for the National Cancer Institute in fiscal year 1995, \$2.1 billion, and almost four times the National Heart, Lung and Blood Institute appropriation, which totaled \$1.3 billion that year. In 1995, the tobacco industry spent this \$4.9 billion on advertising, 40 times the amount spent by the NIH on lung cancer research during that year.

It is certain that Congress has authority over the Tax Code. We understand the first amendment, free speech rights of any individual, and even in the case of commercial speech. We are very much aware of that. But there is

no constitutional right to have the expense of a corporation's speech subsidized by the taxpayers. So, while I concur that within some limits, which the Senator from Rhode Island has outlined relative to commercial speech, there is a first amendment right that is at the heart of all of our concern about advertising, that certainly there is no constitutional right to taxpayer subsidy. When a message is designed to addict vulnerable youth to a deadly product, it is absolutely imperative for Congress to act with great urgency.

So, again, I commend the Senator from Rhode Island for this amendment, for his excellent outline of the legal history of how we have arrived at where we are today. But it would seem in the course of all the contentious amendments that we have dealt with on this floor over the last several weeks, and will still in the week to come, that this ought to be an amendment around which there would be great bipartisan, commonsense support. I challenge any Member of this body to go home to his or her State and explain to constituents that at the same time we are trying to come up with ways to reduce youth addiction to tobacco products, that we continue to spend in the range of \$1.5 billion of the taxpayers' dollars—dollars that could be better used for medical research, for education, that could go back into the pockets of the taxpayers in the form of tax cuts, for that matter. Almost any other use would be more productive than to use it in such a negative way as a subsidy for marketing techniques directed at our youth.

Again, I commend the Senator from Rhode Island. I commend this amendment to my colleagues and yield my time back to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, first I thank the Senator from South Dakota for his fine words and support of this amendment and also for his effort in this legislative process. He has been there every step of the way, working very closely to ensure that we develop legislation that will work for the children of this country, their parents, and for all Americans. I thank him for that and for his kind words today.

Again, continuing to respond to some of the issues that were raised today with respect to my amendment, there are suggestions that under the latest case, 44 Liquormart, there has to be a material showing that the regulation proposed, the proposed restriction on speech, will significantly and materially advance the underlying Government objective. Once again, in that particular case they do not find such significance. In this situation, the significance is obvious and compelling. The FDA, after its extensive rule-making, concluded that limits on advertising will avert the addiction of anywhere between 25 percent and 50 percent of the children at risk. So, literally, we have within our power the

ability to save 250,000 a year from the ravages of smoking. That is not hypothetical. That is not conjecture. That is based upon sound analysis by the FDA. And that is material and significant.

Consequently, all the criticism directed to the amendment with respect to the first amendment, and particularly with respect to 44 Liquormart, failed, I believe, and we are left with legislation that is focused, that deals with a very substantial national interest—the reduction of teen smoking—that directly affects that interest, that will produce significant material beneficial results, and also one that is used now after several other attempts have failed—noticeably warning labels, noticeably banning certain types of advertising, television advertising.

So I believe we are on sound constitutional grounds and very, very sound policy grounds, because intuitively I think we all grasp that this barrage of advertising images has an overwhelming and upsetting effect on children. If 90 percent of 6-year-olds recognize Joe Camel and smoking, then that is pretty compelling evidence that we have to do something to restrain the way cigarettes are advertised and marketed in this country. That is what this amendment proposes to do.

Let me also suggest that within the FDA regulations there are provisions which are not particularly novel. All of these discussions about restricting speech, I think, fail to recognize the fact that many States already put significant restrictions on cigarette advertising. For example, in California the State prohibits advertising of tobacco products within 1,000 feet of any public or private school playground. The statute also allows local ordinances to be more restrictive.

A second statute makes it clear that one cannot sell, lease, rent, provide any video game which will primarily be used by minors if the game contains any paid commercial advertisement for tobacco products.

In Indiana, the State prevents non-point-of-sale advertisements for tobacco within 200 feet of a school. In Kentucky, the State has banned tobacco billboard advertising within 500 feet of a school. In Texas, the State prevents tobacco advertising within 1,000 feet of a school or church. In Utah, the State law bans all tobacco advertising on "any billboard, street car, sign, bus placard or any other object or place of display." In fact, the Utah statute originates from 1929.

All of these States have, by their State laws, imposed restrictions on tobacco advertising. The justification, of course, is that they are protecting children. They have been on the books, in some cases, as in the case of Utah, for 60-plus years. So we are not breaking new ground. What we are doing, finally, is assembling a coherent set of rational regulations based on extensive findings by the FDA which will, we hope, for the first time ensure that

children are not the objects of tobacco advertising.

The other aspect or complaint that has been made about the amendment is that it might not work out well, it is using the Tax Code to enforce a public policy.

Lately, this body has been preoccupied with using the Tax Code to enforce public policy positions of the various parties, so that is not a novel idea. But one aspect of this legislation which I think is very commendable is that essentially what will happen is that the industry itself will have to police itself. Today, the FTC, the Federal Trade Commission, could come in and take any one of these ads and say, "This is false and misleading. You have no evidence to say it's smooth. This is just totally misleading." They can do that.

It will take 2 years of administrative procedures to work through the administrative law judge level. And at the end of those 2 years, if the company is distressed with the outcome, they will simply sue and go to the court of appeals, claiming that the ALJ's decision was arbitrary, capricious, et cetera, and that appeal will be stretched out.

In the world of advertising, the product life of an advertising campaign is measured probably in a month, maybe a year; there are perennials that last a long time. But that particular advertising will be old hat in a matter of months, so there is every incentive, when there is a question about whether they are pushing across the line or not, to go ahead and advertise, because, remember, if you hook that 16-year-old, you have a faithful customer for 30 years maybe.

In this situation, they are going to have to look very carefully, because the consequence of violating this amendment is that they lose their tax deduction, it goes right to the bottom line, and it is something that if they choose to litigate for years or months and, at the end, they are found liable, not only do they pay the taxes owed, but also interest and penalties. They are very much concerned, as they should be.

This is an effective enforcement device. I believe we need effective enforcement devices. We have tried other approaches—the advertising ban on television, the warning labels, even FTC jurisdiction to ferret out individual ads—but still we are seeing our young people deluged by these advertisements and, again, remarkably, 90 percent of 6-year-olds being able to recognize Joe Camel as a symbol for cigarette smoking in the United States. So I believe we need this amendment very, very much.

Let me suggest also there has been another general argument against the amendment, and that argument has essentially been: Well, the sky's falling, the slippery slope; if you do this, you will enforce every Federal regulatory policy with the Tax Code, and that will be a terrible thing. Again, I think that is more alarmism than rational.

The reason I am here today is that central to the business of tobacco is the business of promoting it through advertising. People smoke cigarettes like this not because they have, I think, some need to do it, but they have been subjected to this type of advertising over many, many years. Advertising and cigarette promotions have been hand in hand for as long as anyone can remember.

If you go back far enough, the industry was much more aggressive in some respects, and blatant. They put in magazines pictures of doctors smoking away, suggesting that cigarette smoking was really good for them; they put in photographs, pictures, drawings of very attractive, sophisticated young women, suggesting that smoking was good to control weight—none of which, of course, was buttressed by the fact that smoking is an addiction that ultimately prematurely kills people.

There is such a logical connection, an inextricable connection, between advertising, the way they do it, and the promotion of a tobacco product that it is logical to take this step. It is not logical to suggest that FDA regulations will be enforced by denying deductibility or any other type of regulatory policy. So the whole issue of, this is just the first step on a very slippery slope is, I think, refutable on its face.

We have before us the opportunity to pass significant legislation which will materially, effectively improve the public health of this country. We have to recognize—I think so many of us do—that cigarettes probably are the No. 1 pediatric disease in the country. It affects kids adversely. It takes it a while to catch up with them, but it affects kids adversely. Ninety percent of smokers begin before they are 18 years old. This is a pediatric health crisis, and we are responding.

The fear I have is, if we don't respond in this manner, that we really won't be able to effectively accomplish what we want to do. Even if we pass this legislation—and Senator McCain has done a remarkable thing moving this legislation through; his perseverance and strength, along with Senator Kerry and along with so many of my colleagues, has been remarkable—even if we pass legislation that has increases on the price of cigarettes, that has effective funding for a public health program, if we do that and yet we still have no real check on advertisements like this aimed at young people, I believe we will end up not doing what we are setting out to do: to restrict smoking among underage Americans.

I think we should do it, I think we must do it, and I urge careful consideration and support for this amendment.

Mr. President, I yield the floor.

Mr. ABRAHAM. Mr. President, I rise to raise concerns about the Reed amendment to the pending tobacco legislation. The amendment offered by the Senator from Rhode Island may sound appealing on first impression, but

could have some harmful consequences. While I believe that the amendment is offered in all sincerity, in my view it would be wrong for us to take this approach to tobacco use. In particular, this amendment would establish a dangerous precedent by using federal tax policy as the primary enforcement penalty for federal agency rules issued by an agency other than the IRS.

Let me give a few examples to highlight the concerns I have:

First, imagine that General Motors has announced its fall line of new Chevrolets, but that the Department of Transportation determines that the cars fail to meet the minimum fuel consumption standards. Now imagine that the Department of Transportation could instruct the Internal Revenue Service to disallow as a business deduction the cost of all General Motors advertising for 1998. That could be devastating, and it would place tremendous and potentially destructive power in the hands of the federal government.

Another example: Say the Department of Agriculture conducts a routine inspection of one of the nation's largest food processing facilities in the Midwest. Upon finding unsanitary conditions, the Secretary of Agriculture might announce under a similar regulation that the food processing company that operates the plant and every company that markets its products will be punished by losing the entire deduction for 1998 of all of their food product marketing and advertising costs. Again, the result could be disastrous.

The pending amendment would make such scenarios all the more likely.

Under the Reed amendment, if the FDA found that one advertisement of a tobacco product failed to comply with marketing and advertising rules issued by the FDA nearly two years ago and still under litigation, the offending company would lose the entire business expense deduction for all of its advertising. This is unsound public policy, unsound tax policy, and an unwise expansion of federal regulatory authority.

Federal agency rules are generally enforced with other fines or penalties that are tailored to the violation. The Reed amendment would allow the same result—a higher tax payment, which could in some cases be quite substantial—regardless of whether a violation was inadvertent or inconsequential.

In addition, the financial impact could itself be tremendous and could get into the hundreds of millions of dollars. The Congress should not be giving the FDA such expansive and punitive authority. The possibility of such a penalty could chill advertising and deter legitimate, protected speech. In my view, this raises constitutional concerns and liberty interests that should at a minimum be seriously considered in the appropriate committees, including the Finance and Judiciary Committees, before we consider placing such an unprecedented and potentially

damaging provision in the pending legislation.

We should be especially careful about creating a precedent that will not only distort the Tax Code but will lead to more expansive and intrusive authority on the part of regulatory agencies. Mr. President, I ask unanimous consent to have printed in the RECORD a letter by Grover Norquist, President of Americans for Tax Reform, expressing strong concerns about the tax implications of the Reed amendment and about the significant increase in governmental authority contemplated by that amendment as well.

While I believe Senator REED to be well-intentioned, I urge my colleagues to oppose the amendment.

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

AMERICANS FOR TAX REFORM,
Washington, DC, June 12, 1998.

Hon. SPENCER ABRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR ABRAHAM: I am writing to express my strong opposition to an amendment that Senator JACK REED (D-RI) is offering to the anti-tobacco legislation (S. 1415). This fatally flawed amendment would for the first time in our nation's history link the denial of a necessary and ordinary business expense deduction to complying with rules issued by a federal regulatory agency. It is my understanding the Reed amendment will be debated today and possibly voted on next Monday evening.

The Reed amendment, which would eliminate the ability of tobacco companies to deduct all advertising, marketing, and promotion costs if only one advertisement violates regulations promulgated by the Food and Drug Administration, is a reckless attempt to use the Tax Code for a purpose for which it was never intended. I can find no sound public policy reason to start using the Tax Code to help enforce FDA regulation, which by the way have been declared illegal by a Federal District Court.

This amendment, if adopted, could establish an unacceptable precedent of granting power to such agencies as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), the Equal Employment Opportunity Commission (EEOC), the Federal Trade Commission (FTC), or any other government agency that issues regulations to increase taxes on businesses by millions of dollars for technical violations of rules that are highly complex and confusing.

For example, would it be proper to allow OSHA to deny the ability of a large consumer product manufacturer from deducting its advertising costs simply because a building among its many facilities around the country violates one OSHA standard? Or another example, should EPA be permitted to use the Tax Code against a small business, which greatly depends on advertising to stay in business, because the small businessperson inadvertently violates an EPA regulation because of a technical misunderstanding?

This is exactly what the Reed amendment, if approved, puts in motion as every anti-business group in the country will attempt to enlist the Tax Code to fulfill their agenda.

In short, the utilization of the federal government's taxing authority for regulatory enforcement may represent one of the largest expansions of the federal government's power since enactment of the Great Society

programs of the 1960's. Therefore, I strongly urge you to vote against this ill-conceived proposal.

Sincerely,

GROVER G. NORQUIST,
President.

Mr. MCCAIN. Mr. President, I wish I could support the Reed amendment. If this amendment simply disallowed the tax deductibility of any advertising deemed in violation of FDA rules, I believe we might be in the ballpark.

However, this amendment goes well beyond. It says that if a company advertises in any way, even unintentionally, that violates FDA rules, then that company may not deduct any advertising expenses incurred that year which are otherwise legal and deductible under current law.

Mr. President, concerns have been expressed about the advertising deduction as generally applied. In fact, both the CATO and the Progressive Policy Institutes have identified this deduction as one that should be reformed. Perhaps that is something we should do in a manner that treats all taxpayers the same. But, this amendment is not a general reform, it is specific and I believe goes too far.

I appreciate the motives of the Senator from Rhode Island but I will not vote for this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Chair advises the Senator, under the previous order, the Senate is to proceed to the amendment by the Senator from Rhode Island, No. 2702, with 10 minutes allowed for debate, 5 minutes each, and then a vote no later than 5 o'clock on or in relation to the amendment, unless consent is granted otherwise.

Mr. REED. Mr. President, I propose a unanimous consent that we begin the debate on my amendment at 5 o'clock, to conclude at 10 minutes past, and to begin the vote at 5:10.

Mr. GORTON. Unfortunately, I must object on behalf of the majority leader. He wishes the vote take place then. Then I will yield the floor.

The PRESIDING OFFICER. The objection is heard.

Mr. REED. Mr. President, at 5 p.m. the Senate will vote on my amendment, which would deny advertising deductions to the tobacco industry if they do not follow the FDA rules and regulations with respect to advertising to children.

We are here debating a large, comprehensive tobacco bill because our major goal, our overriding interest, is to prevent children from being enticed into smoking. We know from the industry's own records that they have relentlessly, over decades, deliberately

mounted promotional advertising campaigns aimed at children as young as 12 or 13 years old. We know from the effects of this record that in a survey of 3-year-old children, 60 percent or so recognize Joe Camel as a symbol of smoking; 6-year-old children, first grade, 91 percent recognize Joe Camel as a symbol of smoking.

Advertising and the promotion of cigarettes are inextricably linked. My amendment goes to the heart of that. The FDA has proposed narrowly based and narrowly focused regulations. The amendment would say if the tobacco industry does not want to abide by these regulations, they lose their tax deductions for advertising. Taken by itself, my amendment does not even preclude them from saying anything or doing anything. What it simply says is they will do it on their own nickel.

Now, we have a great support from the public health community. The following organizations and individuals are supporting it: C. Everett Koop, the former Surgeon General, the American Lung Association, the Center for Tobacco-Free Kids, ENACT Coalition, and many others. Cosponsors of this legislation include my colleagues Senator BOXER, Senator WYDEN, Senator KENNEDY, Senator DASCHLE, Senator DURBIN, Senator WELLSTONE, Senator FEINSTEIN, Senator BINGAMAN, Senator CONRAD, and Senator JOHNSON.

This amendment is a logical way to strengthen and make effective the major goal of this legislation. It also is constitutionally permissible under the Central Hudson test, the Supreme Court case that outlined permissible limits on commercial speech. It meets that test. First of all, we are advancing a substantial national interest. According to the FDA documents and their research and the rulemaking, if we have effective controls on advertising to children, we can save approximately 250,000 children a year from becoming addicted to nicotine.

It is also directly related to the substantial national interest. In fact, the industry itself is the best evidence of this. They spend \$6 billion a year on advertising. We are subsidizing them to the tune of \$1.6 billion, but they know and they have demonstrated that advertising is the way they entice young people to smoke. If we stop this linkage, we will do more than anything else to ensure that we protect the children of America.

The final aspect of the Central Hudson test is that this legislation is narrowly constructed and focused. As I mentioned before, it does not absolutely forbid any ban on speech. What it does do, however, it essentially restricts their ability to put posters near schools and to do many other things.

This legislation is both constitutionally sound and is a public policy which will support what we are here to do—to prevent children from smoking.

The PRESIDING OFFICER. All time has expired.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Washington is recognized.

Mr. GORTON. How much time is available to the opponents?

The PRESIDING OFFICER. There is approximately 2 minutes 45 seconds allotted to the majority.

Mr. GORTON. Mr. President, in the absence of any other person here, I yield myself that time to say that during 2 years when I was not in the Senate, between 1987 and 1989, I had the privilege of being a partner in a Seattle firm, Davis, Wright and Tremaine, the senior partner of which, Cameron DeVore, is one of the most distinguished first amendment lawyers in the United States. He informed me in no uncertain terms, and I agree with him, that this proposal is clearly and blatantly unconstitutional. You cannot condition a right, a privilege, available to everyone else in the United States, on its abandonment of its first amendment rights—a highly simple proposition.

We can and we should limit advertising of cigarettes. We can only do that constitutionally, Mr. President, if we come up with a bill like the proposal made by the State attorneys general that has the agreement of those who are asked to give up their first amendment rights to advertising. Therefore, this amendment should be defeated.

On another matter, Mr. President, on Thursday, for the second time, I voted against limitations on attorney's fees in these cases, because in both cases I thought they were unfair. I will soon introduce an amendment that allows higher attorney's fees for those who began these cases early, when they were greatly at risk and ask for lower attorney's fees for those attorneys who got in late, when winning cases of the nature that have been discussed here is like shooting fish in a barrel.

I think we should be fair. I think we also have the right to propose and propound such limitations to those who have come before the Congress asking us to intervene in what previously was litigation outside of the scope of the Congress at all.

I am sorry I have no more time at this point to discuss that proposal, but it is both nuanced in favor of those attorneys who really did the yeomen's work in this connection and much less favorable to those who got in essentially after the fact and who will be engaged in such litigation in the future.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Washington to lay on the table the amendment of the Senator from Rhode Island.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I am now informed that the leaders of both sides are willing to postpone this vote for approximately 10 minutes. I ask

unanimous consent that the vote on the motion to table take place at 5:10.

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

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, again, the vote before us is a vote on my amendment which would restrict the deduction of advertising expenses for tobacco companies which do not choose to follow FDA rules and regulations. There are many reasons why this is appropriate. The most compelling reason is simply the record of tobacco itself. It is a record that has shown over many, many decades a consistent attempt to market to children.

There have been some objectives with respect to the first amendment. Let me suggest, first, that commercial speech under the doctrine of the Supreme Court is not afforded the same level of protection as pure political speech. This is clearly a case of commercial speech.

Second, the test of the leading case, Central Hudson, clearly states that if there is a substantial governmental interest, if the proposed legislation addresses directly that interest, and if it is done by means that are narrowly focused and no more than is necessary, that it would pass the test. I submit that this legislation does that. There can be no more compelling national interest than curbing teenage smoking.

Under the record of the FDA, they have demonstrated that if we take effective advertising restrictions and put them in place, we could on an annual basis save 250,000 children from addiction to nicotine. That is a direct, material, significant correlation between the substantial national interest and this legislation.

Finally, this legislation is narrowly focused.

I also submit that this legislation does not spring up de nova. We have had a long record of trying to constrain access to tobacco products to children. In the 1970s and 1960s, we put warning labels on cigarettes. That has proven ineffective. In the early 1970s, we banned TV advertising on tobacco products. That has proved ineffective. We have reached an intellectual consensus that in order to get the job done—that is what we are here to do—in order to effectively prevent the children from the addiction of nicotine, we have to have reasonable constraints on advertising. This legislation does it.

I should also point out that many States in the United States already impose certain restrictions on advertising to children. For example, the State of Utah precludes the placement of billboards or other types of visible advertising for cigarettes within that State.

To point out that in many other jurisdictions—Texas, for example—there

are limits on how close one can place a billboard within a school. All of these have been in effect for many, many years. They have been tested. They are constitutionally permissible. We can do it. And, indeed, we must do it.

We have literally within our power the opportunity to save 250,000 children a year from the ravages of smoking. That is the conclusion of the FDA after their extensive, detailed rulemaking process. We can and we must insist on this type of regulatory authority. I think it will provide a device that will lead the companies to do what they have yet been unable to do; that is, stop marketing cigarette products to children.

We see it in every manner in every form. I have been for the last several days pointing out an advertisement, a mail solicitation that a 16-year-old junior high school student received in Providence, RI. It was slick. It was sophisticated. It was based upon a rock concert that he attended several months before, a concert attended by many people under 18 years of age. It was not coincidental. It was a deliberate, calculated, focused attempt by the industry using the talents of advertising executives, focus group directors, people who understand psychology and the dynamics of youth addiction, to figure out how they could get the message right in the hands of a 16-year-old that smoking is good; not only good, it is socially desirable.

We shouldn't stand for that. We don't have to stand for it. We know that for years and years and years the tobacco industry has been misleading the American public. That is objectionable. But when we discover, as we do from all of these documents and all of this litigation, that their target has been young children as young as 12 and 13 years old, that becomes unconscionable. And the conscious of this country and the conscious of this Senate will be tested today. Will we take effective steps to preclude access to tobacco products of children?

This amendment is constitutionally sound. This amendment will, in fact, provide decisive and effective controls on tobacco access by young people in this country. We shouldn't shrink from this responsibility. We should pass this legislation to ensure that when we finish this great debate, and as we look ahead, we will be confident that we have taken effective, practical steps to prevent children from being addicted to nicotine and tobacco. If we don't do that, many, many young people—the estimate is 5 million young people under 18—will die prematurely. We can stop that if we vote today to support this amendment.

I retain the remainder of my time.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, how much time is in opposition to the amendment?

The PRESIDING OFFICER. The Senator from Oklahoma has 3 minutes remaining.

Mr. NICKLES. Mr. President, I urge my colleagues to vote against this amendment.

First, let me say to the proponents that if they want to have an amendment to ban advertising, or deduction of advertising, for tobacco products, they can do so. But to turn it over to the FDA, I think, may be some of the worst tax policy we have seen. This bill already has some of the worst tax policy we have seen. The look-back penalties, as I have stated a couple of times, are clearly not working. But if I read this amendment right, advertising is deductible, unless it doesn't comply with FDA regulations.

What are the FDA regulations? You are in violation of FDA regulations if you have a ball cap that says "Marlboro" on it. If I have a staff member who went to a car race, or something, that has a ball cap that says "Marlboro," they would be in violation. I don't know if a ball cap under FDA regulations would be in violation of advertising restrictions. They would lose deductibility of their advertising expenses.

Again, if people want to be more direct, let's be more direct. Just say, I have an amendment to disallow all advertising expenses for tobacco products. I expect some may have that. They probably will have it on this bill. But to say you cannot have the deduction unless you comply with FDA regulations, and treating FDA regulations as sacrosanct, as if they make sense—some of them don't make sense. For example, there is an FDA regulation that says people selling tobacco must check IDs up to age 27. A lot of people aren't aware of it. But that is part of the same FDA regulation that we are talking about. I don't think that is workable. It is legal to buy cigarettes if you are over 18. But if you are 18, and they come up with a regulation that says we are going to mandate that you check identification of people up to age 27—they also have restrictions on advertising that says you can't have a T-shirt, a ball cap, or tobacco companies—you can't advertise during the races. This is auto racing time—Indianapolis 500. My friend from Indiana is here. My guess is there was a car running around the track that had "Marlboro" on it. Somebody probably said, "Wait a minute. That is directed at youth." I don't know if it is directed at youth or not.

If they did it, if they sponsored a sporting event, they would be in violation of this provision and they would lose deductibility of advertising.

I just do not think we should have FDA making tax policy. I do not think we should have FDA deciding what is compliance or whether a company is allowed to take the deduction. If Senators do not want to have tobacco advertising, they want to ban it, let them introduce that on a tax bill, but let's not turn that kind of authority over to

FDA. I think this bill has already granted FDA too much authority, including the authority to totally ban nicotine without prior congressional approval, which I think is a mistake, and I think the ID check up to age 27 is a mistake. I think that is FDA overreaching. I think their ban on ball caps and T-shirts, again, is overreaching.

Now, I do not want them targeting teenagers either, but I think to turn over tax policy to FDA would be a serious mistake. So I urge my colleagues to vote no on this amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, in whatever time I have remaining, I would like to respond.

First of all, I do not want to let stand the suggestion that this has anything to do with checking IDs at a retail store. That is not part of the FDA regulation.

The PRESIDING OFFICER. The time of the Senator from Rhode Island has expired.

Mr. REED. I thank the Chair.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Reed amendment No. 2702. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. I announce that the Senator from Montana (Mr. BURNS) and the Senator from Oklahoma (Mr. INHOFE) are absent on official business.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Illinois (Mr. DURBIN), the Senator from Nebraska (Mr. KERREY), and the Senator from Illinois (Ms. MOSELEY-BRAUN) are necessarily absent.

The result was announced—yeas 47, nays 47, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—47

Abraham	Gorton	McConnell
Allard	Gramm	Moynihan
Ashcroft	Grams	Murkowski
Bennett	Grassley	Nickles
Bond	Gregg	Roberts
Brownback	Hagel	Santorum
Campbell	Hatch	Shelby
Coats	Helms	Sessions
Cochran	Hollings	Shelby
Craig	Hutchinson	Smith (NH)
Domenici	Kempthorne	Smith (OR)
Enzi	Kyl	Stevens
Faircloth	Lott	Thomas
Feingold	Lugar	Thompson
Ford	Mack	Thurmond
Frist	McCain	Warner

NAYS—47

Akaka	D'Amato	Kerry
Baucus	Daschle	Kohl
Biden	DeWine	Landrieu
Bingaman	Dodd	Lautenberg
Boxer	Dorgan	Leahy
Breaux	Feinstein	Levin
Bryan	Glenn	Lieberman
Bumpers	Graham	Mikulski
Byrd	Harkin	Murray
Chafee	Hutchison	Reed
Cleland	Inouye	Reid
Collins	Jeffords	Robb
Conrad	Johnson	Rockefeller
Coverdell	Kennedy	

Roth	Snowe	Wellstone
Sarbanes	Torricelli	Wyden

NOT VOTING—6

Burns	Inhofe	Moseley-Braun
Durbin	Kerrey	Specter

The motion to table the amendment (No. 2702) was rejected.

The PRESIDING OFFICER. The question now occurs on the amendment of the Senator from Rhode Island.

The amendment (No. 2702) was agreed to.

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

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I enter the motion to reconsider the vote by which the Reed amendment was adopted.

The PRESIDING OFFICER. The motion to reconsider has been entered.

Mr. SARBANES. Mr. President, I rise to voice my hopes that the Senate will this week have the opportunity, after several weeks of debate, to vote on the pending tobacco bill.

The course that this bill has taken is in marked contrast to the course taken by many other important bills that we have considered in the 105th Congress. Whereas the Republican leadership has severely truncated debate on such important matters as campaign finance reform and education policy, we have been on the tobacco bill for several weeks, have engaged in hours of debate, and have considered a wide range of amendments. I have no doubt that when the Republican leadership has wanted quick resolution of an issue during the 105th Congress, it has understood how to accomplish that goal, and worked toward it. A similar commitment has not been apparent in the area of tobacco legislation.

Let me be clear, Mr. President. I support the idea of full and considered debate on an issue as important as this one. I also believe, however, that once an issue has been fully vetted, once Senators have had a chance to listen to the debate and vote on amendments, it becomes time for the Senate to step up to the plate and vote on the legislation before us. That is what we are paid to do, and it is what the American people expect us to do.

This is the fourth week of the tobacco debate. We have debated and voted on germane amendments and non-germane amendments; we have consumed dozens of hours of floor time and hundreds of pages in the CONGRESSIONAL RECORD. I worry, Mr. President, that the delays we are now facing on this bill are not designed to allow further thoughtful consideration of tobacco legislation, but rather to delay and obfuscate that legislation, to add to tobacco legislation layer upon layer of unrelated measures, to divide supporters of action in this area, and to run the clock in a legislative session that is evaporating before our eyes. The American people deserve better than that.

Now I do not support everything in this bill. I have voted for some of the amendments the Senate has considered and against others. I have found the wide-ranging discussion on the Senate floor to be valuable and enlightening in some instances and irrelevant and repetitive in others. I do believe, however, that by the end of this week, after the Senate has had the chance to consider the handful of remaining outstanding issues, we will be ready to take a stand on how to deal with the problems of smoking—especially the problem of teen smoking—in our nation.

Mr. MCCAIN. Mr. President, it is my understanding the Senator from Texas is waiting to speak, and the Senator from Minnesota. I ask both of them if they would like to begin and would ask their indulgence of Senator GORTON, who is going to come over for a brief time to lay down an amendment—very briefly, if they would allow him to interrupt for a few minutes upon his arrival.

Several Senators addressed the Chair.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, I ask unanimous consent that the Senator from Texas be allowed to go into morning business, followed by the Senator from Minnesota, and at some time the Senator from Washington be recognized to interrupt for morning business to lay down an amendment.

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

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, before you finish, let me make sure that I will be able to ask for a resolution to be unanimously passed and if I can do that in morning business. I want to be sure that I can do that. It has been cleared.

The PRESIDING OFFICER. Repeat the request.

Mrs. HUTCHISON. I have a resolution that has been entered by both sides. I wanted to be able to bring it up, read the resolution, and speak for about 5 minutes, and ask unanimous consent that it be passed. So I didn't want to be prohibited from doing that in morning business.

The PRESIDING OFFICER. Will the Senator from Arizona make that part of his request?

Mr. MCCAIN. I do.

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

Mrs. HUTCHISON. I thank the Chair. I thank the Senator from Arizona.

CONDEMNATION THE BRUTAL KILLING OF JAMES BYRD, JR.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 248, which was submitted earlier today by myself and Senator GRAMM and Senator MOSELEY-BRAUN.

The PRESIDING OFFICER (Mr. FRIST). The clerk will report the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 248) condemning the brutal killing of Mr. James Byrd, Jr., and commend the community of Jasper, TX, for the manner in which it has come together in response.

There being no objection, the Senate proceeded to consider the resolution.

Mrs. HUTCHISON. Mr. President, I want to read the resolution because I think the Senate is taking a step that is very important, and I want to speak for a few minutes on the great honor I had this weekend to attend the services for one of my constituents, Mr. James Byrd, Jr.

The resolution condemns the brutal killing of Mr. James Byrd Jr., and it commends the community of Jasper, TX, and Jasper County, TX, for the manner in which it has come together in response to this brutal killing.

The findings are as follows:

Mr. James Byrd, Jr., of Jasper, TX, was brutally murdered on June 6, 1998.

Since this heinous tragedy, the citizens of Jasper, from all segments of the community, have come together to condemn the killing and honor the memory of Mr. Byrd.

The sheriff of Jasper County, Billy Rowles, spoke for the community when he appealed that the Nation not "label us because of this random, brutal act."

Mr. and Mrs. James Byrd, Sr., called for "justice and peace," asking that "we * * * get this over and put it behind us."

The community's response reflects the spirit that other communities across the Nation have shown in the face of recent incidents of random and senseless violence.

The Senate condemns the actions which occurred in Jasper, TX, as horrific and intolerable, to be rejected by all Americans.

The Senate expresses its deepest condolences to the Byrd family for their loss and the pain it caused.

The Senate notes the strong religious faith of the Byrd family, under the inspired leadership of James, Sr., and Stella Byrd, and the Reverend Kenneth Lyons, Pastor of the Greater New Bethel Baptist Church, that has helped the family through this most trying time.

The Senate sees in the Byrd family reaction to this tragedy the inspiration for hope, peace and justice in Jasper and throughout the United States.

The Senate commends the leadership shown by Jasper County sheriff, Billy Rowles, City of Jasper Mayor R.C. Horn, and other community leaders in responding to this tragedy.