

Niger not a debunking of the British intelligence that Iraq had sought uranium from Africa, but he did include things that suggested that it was even more likely.

Why did he go off on such a tangent? In an interview with the committee staff, Joe Wilson was asked how he knew some of the things he was stating publicly with such confidence. On at least two occasions, according to the committee staff report, he admitted he had no direct knowledge to support some of his claims, and that he was drawing on either unrelated past experience or no information at all.

For example, when he was asked how he knew that the intelligence community had rejected the possibility of a Niger uranium deal, as he wrote in his book, he told committee staff that his assertion may have involved "a little literary flair."

"A little literary flair," when you charge the Vice President of lying based on information you had that was insufficient, inaccurate, and did not relate to the basic underlying information the British Government intelligence service provided? I think "a little literary flair" is not accurate. It is a fraud and a hoax. His statements were fraud. They were a hoax.

I have talked before about the people who owe some apologies for the assertions they have made about the President and Vice President. Let me add Joe Wilson as one who owes the Vice President a public apology—a public apology—for the unfounded, unbiased accusations he made with just "a little literary flair." I think he owes the Vice President one, but I guess I will not hold my breath waiting until he provides it.

Unfortunately, that has been the practice. We have seen too often in too many places grand charges made and covered in the news media, and the committee goes back and we search and we search and we search to find what were the actual facts.

Democratic friends said the administration pressured analysts to change it or they influenced the views of the analysts. Chairman ROBERTS pursued every angle, invited everybody, pursued everyone, over 200, I think 240 interviews, and we came up with some conclusions.

Conclusion No. 83—and this is unanimously agreed to by Republicans and Democrats on the Senate Intelligence Committee:

The committee did not find any evidence that administration officials attempted to coerce, influence or pressure analysts to change their judgments related to Iraq's weapons of mass destruction capabilities.

#### Conclusion 84:

The committee found no evidence that the Vice President's visits to the Central Intelligence Agency were attempts to pressure analysts, were perceived as intended to pressure analysts by those who participated in the briefings on Iraq's weapons of mass destruction programs, or did pressure analysts to change their assessments.

I read an op-ed piece by one of my colleagues saying the administration

did not do a good enough job of checking up on the analysis by the intelligence agencies. And in another breath, another one of my colleagues said they asked too many questions.

Madam President, let me tell you something I have learned as one new to the workings of the intelligence field. A good intelligence analyst puts forth his best or her best judgment on what to conclude from the often sketchy, incomplete facts they have before them and the reports that have to be evaluated, and they expect to be questioned. They want to know that the policy-makers who are using that information have the best sense of what they know. And the Vice President, who was diligent—he was doing due diligence—went over and questioned them time and time again. Did he tell them to change their analysis? Did he tell them what judgment they wanted? No. What he told them was what the intelligence community knew they had to do, and that was to do their very best job to get it right.

There has been a lot of criticism of how the intelligence agency analyzed it. But we have lots of good people who work very hard. There are structures in place that have kept them from sharing. They did not have the information they needed. But to the best of their ability, they gave the Vice President what they thought was the best analysis.

The report also found in conclusion No. 1—most important:

The committee found no evidence that the IC's—

Intelligence community's—mischaracterizations or exaggeration of the intelligence on Iraq's weapons of mass destruction (WMD) capabilities was the result of political pressure.

#### Conclusion No. 11:

No analyst questioned by the committee stated that the questions were unreasonable, or that they were encouraged by the questioning to alter their conclusions regarding Iraq's link to al-Qaida.

That is, the link to terrorism.

As I said before, all of the charges, all of the outline of the Democrats' secret memo of November 2003 on how they were going to use the Intelligence Committee to attack the President, to influence the election have been debunked.

A lot of apologies are owed for the baseless charges that have been made against the President, the Vice President, the Department of Defense, and particularly Douglas Feith, who is attempting to serve the Secretary of Defense by asking questions and trying to get the best he could out of the intelligence community for the decision-making in the Department of Defense.

I hope, I trust—maybe I am gullible, but I trust now we can move beyond this and recognize that the intelligence that the administration had, the same intelligence that this body had when we approved going into Iraq, the same intelligence the world had when they said that Saddam Hussein was a bad

guy and U.N. Resolution 1441 said that we need him to disarm, that was the best information we had at the time.

When we look back on it, we were absolutely dead right to go into Iraq to depose Saddam Hussein. As David Kay said after he finished, Iraq was a far more dangerous place than we knew. It had the capability, it had the equipment, it had the scientists ready to turn out weapons of mass destruction, chemical and biological, to turn over to terrorist groups. Let us hope and pray they were not able to turn over any.

The world is safer, the Iraqi people are safer, and the United States is safer because of the bold leadership of President Bush and Vice President CHENEY and our magnificent men and women in the military who are putting their lives at risk in Afghanistan and Iraq. We remember them and thank them in our prayers, and we also offer our best wishes and support for the Iraqi people to regain a decent country out of the mess that Saddam Hussein left.

I thank the Chair and yield the floor. Mr. DEWINE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### FEDERAL MARRIAGE AMENDMENT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S.J. Res. 40 is withdrawn.

Under the previous order, the majority leader or his designee is recognized for the purposing of making a motion.

#### AMERICAN JOBS CREATION ACT OF 2004

Mr. MCCONNELL. Mr. President, pursuant to the order entered last night, I move to proceed to H.R. 4520.

Mr. REID. No objection.

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

The motion is agreed to.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

AMENDMENT NO. 3562

(Purpose: To provide a substitute for the bill)

Mr. McCONNELL. Mr. President, on behalf of Chairman GRASSLEY, I call up a substitute.

The PRESIDING OFFICER. The clerk will report the substitute.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL], for Mr. GRASSLEY, proposes an amendment numbered 3562.

(The text of the amendment (S. 1637) is printed in the RECORD of May 18, 2004.)

Mr. REID. Mr. President, before the distinguished majority whip leaves the floor, I want to say something. We get things done around here in a number of different ways. One of the ways we get things done is we have to trust each other. To be at the point we are on this piece of legislation today took a lot of trust.

Last night, about 9:30, the floor leaders met right here in the aisle and the Senator from Kentucky indicated he wanted to do something differently. I today extend to him, through the chairman, my appreciation. There was a slight misunderstanding, nothing intentional, and that is certainly underlined and underscored. We could have had a big puff-up here this morning and had name-calling—You should have understood, you didn't, it is your fault—but I have to say the Senator from Kentucky is a man of his word and indicated if there was any misunderstanding he would take care of it. And he did.

I want the record to reflect I appreciate that very much. We are now going to go forward with a very important piece of legislation. But we could not have done that with good will prevailing but for the act of the Senator from Kentucky, for which I, on behalf of the whole Senate, extend my appreciation.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, let me say to my friend and colleague, the assistant Democratic leader, I do think we had a good discussion last night, and reached an agreement on moving forward with this important piece of legislation. The minor snafu my friend referred to we were able to work out in short order this morning, and that is the way the Senate ought to work.

I congratulate him for his important contribution to moving this matter forward as well.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3563

(Purpose: To protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to eliminate the Federal quota and price support programs for tobacco, and to provide assistance to quota holders, tobacco producers, and tobacco-dependent communities)

Mr. DEWINE. Mr. President, I have an amendment at the desk that I call up.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE], for himself, Mr. KENNEDY, Mr. McCONNELL, Mr. HOLLINGS, and Mr. DURBIN proposes an amendment numbered 3563.

Mr. DEWINE. Mr. President, I ask unanimous consent that reading of the amendment be suspended.

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

(The amendment is printed in today's RECORD under "Text of Amendments.")

Mr. DEWINE. Mr. President, I am offering the amendment on behalf of myself, Senator KENNEDY, Senator McCONNELL, and Senator DURBIN.

Mr. President and Members of the Senate, the amendment I offer this morning is a long time coming, but it is an amendment that I think has historic meaning for this Senate and for this country. It really is two amendments that we are combining. One is Senator McCONNELL's bill, the tobacco buyout. The other part of the amendment is Senator KENNEDY's and mine and Senator DURBIN's FDA regulation of the tobacco bill. Each of these bills has been worked on for a long time. These bills are being combined in this amendment.

There is a time and a place for legislation. The time for both of these bills has come. This amendment is in a sense a marriage, a merger. Some people have referred to this as a shotgun marriage or an interesting marriage, an interesting alliance. I happen to think it is a proper marriage. I think it is a marriage that makes sense, and I believe it is a marriage that will last. I believe it is a marriage that will last not only through today when the Senate will vote on this amendment, and I believe will pass this amendment, I believe it is a marriage that will last through the conference committee that will come. I believe it is a marriage that will last to see this amendment and this bill become law. So I believe it will be a permanent marriage, a lasting marriage.

I will talk this morning about the FDA side. But before I do, let me say, I support Senator McCONNELL's bill because, you see, I understand the problems of tobacco farmers. We have, along the Ohio River, north of the Ohio River, tobacco farmers, certainly not as many as my colleague does from Kentucky, but we have them. I understand the problems they have. They need this bill. They need the tobacco buyout.

My colleague from Kentucky and I have had many conversations about the need and the necessity to merge these two bills. It makes eminent sense to do it. So I thank my colleague for his good work. I thank him for his good counsel. It has been a pleasure to work with him for, frankly, over a year, as we have worked together.

Let me also say to my colleague from Massachusetts, it has been a great pleasure to work with him as we have worked on the FDA part of this bill.

Let me talk about the FDA regulation of tobacco. Senator KENNEDY and I

have worked on this issue for some time. We introduced this amendment. This part of the amendment is designed to help protect consumers, especially children, from the dangers of tobacco.

Simply put, our amendment would finally—finally—give the Food and Drug Administration the authority it needs to effectively regulate the manufacture and sale of tobacco products. I say "finally" because many of my colleagues—first Senator McCain, back in 1997, 1998, began working on this. Senator FRIST did great work, as well as Chairman GREGG, who put a great deal of effort and work into this as well; and then Senator KENNEDY and myself. We have all been seeking FDA regulation of tobacco products. Congressman DAVIS and Congressman WAXMAN have a companion piece of legislation in the House of Representatives.

I say "finally" because the bill we are offering today is the product of long and hard discussions and negotiations that I have had with Senator KENNEDY and others and public interest groups and industry. Our bill has the support of the Campaign for Tobacco-Free Kids. Our bill has the support of Philip Morris. Our bill has the support of the American Heart Association, the American Lung Association, and the American Cancer Association.

It is a bill of which I am proud. It is worth the Senate's consideration and passage. It will provide the FDA, finally, with strong and effective authority over the regulation of tobacco products.

Why do we need this bill? I think we all know why we need it. Every day, nearly 5,000 young people under the age of 18 try their first cigarette. In my own home State of Ohio, 33 percent—one-third—of children smoke. These kids in Ohio by themselves go through 45 million packs of cigarettes each year. If that is not bad enough, think about this: 90 percent of smokers start smoking before the age of 19. More than 6.4 million children across this country will die prematurely because of a decision they will make as adolescents; that is, the decision to start smoking.

While States may have limited the options available for tobacco advertising under the 1998 master settlement agreement, the reality is tobacco companies are still able to choose the content of their advertisements, their ads that they run in magazines such as Sports Illustrated.

Sports Illustrated is read by tens of thousands of children across this country every single day. Kids read it every single day. These companies are savvy. They are smart. They have changed their marketing strategies. They have concentrated more money into different advertising markets. As a result, years after the major tobacco companies agreed to stop marketing to children as part of the tobacco settlement, children are still twice as likely as adults to be exposed to tobacco advertising. That is who is reading it. That

is who is seeing it. That is who is hearing it.

According to the Federal Trade Commission's "Annual Report on Cigarette Sales and Advertisement"—just to take 1 year, the year 2000—that year represented the largest increase ever in tobacco company spending on "promotional allowances." That is the money tobacco companies pay retailers to promote their products in prominent locations in stores or for highly visible shelf space such as near the cash register on an aisle that a customer must walk by to pay the cashier. That particular year, cigarette manufacturers spent a record \$9.57 billion on advertising and promotion.

That is an increase of 16 percent from \$8.24 billion spent in the previous year. Tobacco companies also spend billions of dollars advertising enticing promotional items—lighters, hats, other products—they give away for free at the point of sale or, in other words, the cash register or the place of checkout in a grocery or convenience store. In fact, spending on such promotional or value-added items increased by 37 percent in just 1 year.

Let's not fool ourselves. These promotional strategies and advertisements reach our children. Three-fourths of the children visit convenience stores at least once a week. The places where tobacco products are marketed influence their decisions. It is that simple. We must not allow the industry to continue targeting children.

This isn't just about an advertising and marketing scheme. It is about that, but it is about more. Our bill not only addresses advertising, it also addresses the second problem. What is the second problem? It is also about tobacco manufacturers' failure to disclose the specific ingredients in their products. While simply listing the ingredients, toxic as they might be, might not seem like much to some, think of it this way: Current law makes sure we know what is in products to help people quit smoking, such as the patch or Nicorette gum but not the very products that get people addicted in the first place, the cigarettes themselves. Isn't that crazy?

Think about this: Right now the Food and Drug Administration requires Philip Morris to print the ingredients in its Kraft macaroni and cheese but not the ingredients in its cigarettes, a product that contributes to the deaths of more than 440,000 people a year.

I ask unanimous consent to display in the Senate three different products: macaroni and cheese, a milk carton, as well as a cigarette carton I have right here.

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

Mr. DEWINE. Right now, the FDA requires Philip Morris-owned Nabisco to print the ingredients contained in Oreo cookies and Ritz crackers but not the ingredients in its cigarettes, even though cigarettes cause one-third of all cancer deaths and 90 percent of lung

cancer deaths. It is unfathomable to me that we would require the listing of ingredients on these products yet not require the listing of ingredients for one of the leading causes of death and disease.

Right now, the FDA requires printed ingredients for chewing gum, lipstick, bottled water, ice cream, but not for cigarettes, a product that causes 20 percent of all heart disease deaths and is the leading cause of preventable death in the United States.

A product that I consumed this morning, this carton of milk, we see all the ingredients on here. We can read them right on here: Reduced fat milk, vitamin A, et cetera, nutrition facts. It goes into great detail on the back. We can read all the details right here. It tells you anything you want to know. There it is. Here is the macaroni and cheese. We can turn it over and get the calories and all the ingredients: enriched macaroni product, durum wheat flour, wheat, niacin. It goes on and on and on and on, all the way down.

We see people, when they go to the grocery store, today they are so health conscious. They pick these things up and they start reading through to see if they have an allergy to something, to see what their kids are eating. They will read down to see if they want to buy the product. The same company that makes this, makes cigarettes. Yet certain brands of cigarettes they will get, there is nothing on here. There is the warning that has to be on here. It has been on here a number of years. There is nothing else on here—absolutely unbelievable.

Another way to look at this, another problem, if a company wants to market a food product that is fat free or reduced fat or light, that company is required to meet certain standards regarding the number of calories, the amount of fat grams in that product. Yet cigarette companies can call a cigarette, light or mild, and not reveal a thing about the amount of tar or nicotine or arsenic in that supposedly light cigarette.

Not having access to all the information about this deadly product makes no sense. It is something that needs to change. By introducing this bill, we are finally saying we are not going to let tobacco manufacturers have free reign over markets and consumers anymore. Today we are taking a step toward making sure the public gets adequate information about whether to continue to smoke or even to start smoking in the first place.

With this bill, we are not just saying: Buyer beware. We are saying: Tobacco companies, be honest. We are saying: Tobacco companies, stop marketing to innocent children. Tobacco companies, tell consumers about what they are really buying.

I realize full well that tobacco users and nonusers alike recognize and understand that tobacco products are hazardous to health. They understand that. But that is not what I am talking

about. I am talking about requiring the tobacco companies to list the ingredients that are in their products, things such as trace amounts of arsenic and ammonia. It is time we finally give the FDA the authority it needs to fix these problems. The legislation that we are introducing would do just that.

First, the bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco industry marketing, consistent with the first amendment, that targets our children. Additionally, our bill would require advertisements to be in black and white text only, unless they are an adult publication and would define adult publication in terms of readership. Tobacco advertising is in magazines and on billboards along the highway. Tobacco advertising is in convenience stores, along the aisles and at the checkout counter, right beside the candy, where children are likely to see it. Tobacco advertising is at sporting events, part of promotional items where consumers can buy one and get one free. Tobacco advertising is on the Internet and in the daily delivery of mail.

Our bill would make changes regarding tobacco advertising. It would give the FDA authority to restrict tobacco advertising marketing content, consistent with the first amendment, that targets our children. Our bill would require advertisements to be in black and white text only and would define adult publications in terms of readership.

An issue that is related to advertising and marketing of tobacco products has to do with the flavored tobacco products which clearly target our children. We have probably all seen the flavored cigarettes—flavors such as strawberry, chocolate, and wild rum. The scent of strawberries filters through the unopened pack of cigarettes. Guess what. The cigarettes smell like candy.

A recent New York Times article described the scent of chocolate-flavored cigarettes "as if someone had lifted the lid on a Whitman Sampler."

We need to stop this. Children will be curious about something that smells or tastes like candy. Cigarettes should not be flavored and marketed in such a way to attract children and to encourage children to smoke. Our bill bans the use of flavors such as strawberry and grape, orange, cinnamon, pineapple, vanilla, coconut, and coffee, and other flavorings that would attract children to the product.

Second, our legislation would give consumers more information about what is in tobacco products. Specifically, the bill would provide the FDA with the ability to publish the ingredients of tobacco products. Despite the fact that 40 million Americans use tobacco products, many of them do not know what is inside the cigarettes or the tobacco product they ingest. They do not know the ingredients like tar and nicotine that are in the product they use. Consumers do not know what

additives are included in the product, additives such as ammonia which makes the tobacco product more addictive because it increases the delivery of nicotine.

Tobacco companies do not disclose the specific ingredients in their products because they don't have to. Tobacco products are unregulated. Our legislation would give consumers more information about what is in tobacco products.

Specifically, the bill would provide the FDA with the ability to publish the ingredients in tobacco products. It would require a listing of all ingredients, substances, and compounds added by the manufacturer to the tobacco paper or filter.

It would require the description of the contents, delivery, and form of nicotine in each tobacco product. It would require information on the health, behavior, or psychological effect of the tobacco product. Finally, it would establish the approval process for all new tobacco products entering the market, new products like Advance, with this "trionic filter," which claims to have all of the taste but less of the toxins of other cigarettes.

One of the most dramatic changes our bill makes is that tobacco products will now have to be approved before they reach consumer hands. It makes sense that tobacco products should not be able to imply that they may be safer or less harmful to consumers because they use descriptions such as "light," "mild," or "low tar" to characterize the substance in the product. The National Cancer Institute found that many smokers mistakenly believe that low-tar and light cigarettes cause fewer health problems than other cigarettes. Our bill would require specific approval by the FDA to use those words so the consumers could be informed.

Mr. President, this bill will make a difference. It is a bill that will save lives. I will have more to say about this later in the debate.

At this point, I yield the floor to my colleague, Senator MCCONNELL.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The assistant majority leader is recognized.

Mr. MCCONNELL. Mr. President, this is indeed a historic moment for Kentucky. Tobacco and the growing of tobacco has been an integral part of my State since it came into the Union in 1792. In fact, if you look carefully around the Capitol, you will find tobacco leaves actually painted here in the Capitol of the United States of America. Many people argue—and this is probably an exaggeration—that if it hadn't been for tobacco, the United States might not have been colonized because it was far and away the most profitable agricultural activity. That is most of what the people of that era did back in the beginning of our country.

The Senator from Ohio has correctly stated the important health con-

sequences of the use of tobacco. It has taken us several hundred years to figure that out and to reach the point where we are today.

I want to start by commending my colleague, Senator MIKE DEWINE from Ohio. I have never observed a more skillful legislator than he during my time in the Senate. You can always tell when the senior Senator from Ohio has an idea on his mind: He will come up to you quietly and pull you off in the corner and begin to twist your arm. You know he is a formidable force who, when he has made up his mind about an issue, never lets go. Many bills that have cleared the Senate in the 10 years the Senator from Ohio has been here obtain the fingerprints of MIKE DEWINE. He is truly an extraordinary legislator. I know he is excited today that the bill he believes so deeply in has a chance to be added to this bill. It is very likely to be added to this bill as it goes to conference. I congratulate him for his outstanding work.

Having said that, the Senator is correct; this was a marriage of convenience. I can recall as recently as 1996, when I was running for reelection in my State, we were wearing T-shirts that said "keep FDA off the farm." The idea of FDA regulating this product, particularly if it went down to the farm, was universally unpopular in my State. I am not a great fan of FDA regulation today, but these two issues needed to be married in the U.S. Senate if we were to get either one of them out of the Senate and on the way down the legislative road toward some accomplishment.

Mr. President, there is simply no way to overstate how central tobacco has been to the history of my State. We started growing it from the beginning of the country. Kentucky's soil and climate were particularly suitable for this cash crop. Even with all of the problems tobacco has today, we always laughingly say in Kentucky that tobacco is the most profitable thing you can grow on a per-acre basis in our State that is legal. We also have a little marijuana problem in the mountains that we try very hard to stay on top of, and I expect that growing marijuana is more profitable. But even with all of these problems, tobacco is the most profitable thing to grow on a per-acre basis, far more profitable than corn, wheat, and the other crops we also grow.

In the 1930s, tobacco got in serious trouble, as a lot of agriculture did. Part of the New Deal, in establishing farm programs, included the establishment of the Tobacco Program. Unlike the other farm programs, it was a permanent program. It didn't have to be reauthorized periodically, like the other commodities that are under a Federal farm program. It was a permanent program. It assigned the land, based on how much tobacco was being grown in the 1930s, a certain amount, a certain acreage, and it did that in Kentucky, Tennessee, Virginia, the Caro-

linas, and Georgia. In that acreage, you had a legal right to grow. It was like owning some stock—you could sell it; you could lease it; it had value. We called them "quotas." By the time I started moving around the State in the early eighties and learning more about tobacco, we had 100,000 growers in 119 of our 120 counties.

In many of these counties, there is not much flatland; but since tobacco was so profitable on a per-acre basis, even if you had a tiny little plot, or quota, you could make pretty good money. You would see these quotas tucked back up in the hollows, right up on the edge of where the mountain went straight up. We had it in 119 of 120 counties. It was sold at auction around Thanksgiving. Farmers would cut the tobacco, strip it, put it into the barns, where it would dry for a month or two. It would be sold at these auctions, and the auctions would start around Thanksgiving, go through the Christmas season, and finish up in the early part of the year. Many of these farmers were part time.

When I came to the Senate, the average grower in Kentucky had three-quarters of an acre. That was the average. A lot of these folks were part time. But this was dependable cash. They could count on it being produced around Christmastime. For many very low-income Kentuckians, it provided Christmas money; for some it provided the opportunity to send their kids to college. It has been an integral part of our culture for a very long time.

None of these folks, of course, are engaged in selling the product to kids. They were making a legal living producing an agricultural crop that is older than America itself. But beginning with the Surgeon General's report in 1964, it was increasingly clear that this is a product that is not good for you.

The campaign that has gone on over the last 40 years is legitimate. In Lexington, KY, today, the heart of tobacco country, you cannot smoke in a restaurant. That is in Lexington, KY, the heart of tobacco country. And in Louisville, KY, my hometown, they have been having a big debate about the same issue.

I say to my friend from Ohio, if anything sums up how this has all changed, it is when you cannot smoke in a public place in Kentucky. So I think the health argument has been made. It is, however, a legal product. The health groups are not trying to make smoking illegal. That, of course, would produce an enormous black market and no good result.

So it occurred to this Senator back in 1998 when we were considering another tobacco proposal that it was time for a buyout. I never will forget joining Senator LUGAR of Indiana in advocating a buyout back in 1998. I was rimracked—rimracked—by the two big newspapers in my State. They said I turned my back on Kentucky culture; I had gone Washington; I had been up

there so long I had forgotten what it was like in the hollows and the tobacco fields of Kentucky.

I was criticized by the Farm Bureau and the Burley Tobacco Co-op and all the establishment: How could you possibly be for a buyout? You are turning your back on us.

I took a survey of tobacco growers. I got a pollster and said: Let's go out and ask them how they feel about it. Frankly, they were against it, too. Fifty percent were against it; about 35 percent were for it. So the whole tobacco establishment was against the buyout in 1998 when I first advocated it.

Now, Mr. President, I am treated as a visionary. I was ahead of my time. If we had only joined you 6 years ago, we would have gotten this job done sooner.

Being treated as a visionary is kind of fun, but it does not get the job done. What is happening here today is we have an opportunity to move on down the road toward achieving something that neither the Senator from Ohio nor I thought was going to be achieved, which is some kind of FDA proposal, which I am not, as I said, very wild about, and a buyout which I enthusiastically support, and I cannot find a tobacco grower in Kentucky today who is not for the buyout.

The occupant of the Chair I know has tobacco farmers in his State as well. I bet he has not run into any lately who are not favorable to a buyout. There has been a complete shift in thinking, and the reason for that is apparent. This quota, this asset, is a shrinking asset. As the asset shrinks, the land values go down, and it has a real impact on our people.

Some people say: Why should the Government buy out this program? The answer to that is the Government created the asset. The Government, by establishing the quota program, created the asset, and now if the Government is going to terminate the asset, it is appropriate for the Government to compensate those for whom the asset was created.

As I said earlier, 20 years ago, we had 100,000 growers in 119 of the 120 counties in my State, and the average quota was about three-fourths of an acre. We do quotas by poundage these days, but three-quarters of an acre, which gives you the sense of the size, was the average.

Today, we are still growing burley in 117 of Kentucky's 120 counties, but the average has gone up to 5.7 acres. So we can see, Mr. President, tobacco farmers are leaving, consolidation is occurring even with the program.

The 2002 census of agriculture, which was released a year and a half ago, reflected about a 40-percent drop in the number of farms growing tobacco in all of the States—not only Kentucky, in all of the States. A 40-percent drop in the number of farms from 93,000 in 1997 down to 56,000 in all of the States. In Kentucky, from 1997 to 2002, we have gone from 46,850 tobacco farms down to

a little under 30,000. That is still a lot of farmers—a lot of them—but their asset is shrinking.

That brings us to today. The House of Representatives—and I particularly commend two Congressmen, Congressman RICHARD BURR of North Carolina and Congressman RON LEWIS of Kentucky, who spearheaded that effort over on the House side and very skillfully leveraged the votes they had on a bipartisan basis in tobacco country to make it possible for the FSC/ETI JOBS bill to pass the House at all. So that proposal, a buyout only, is in the House bill.

The occupant of the Chair and the rest of us from tobacco-growing States in the Senate knew we could not get a buyout only through the Senate. That would have been our first preference. I say to my friend and colleague from Ohio, he knows that would have been my first preference. So we have a marriage of convenience here, not a shotgun marriage. It is a marriage of convenience. These two issues converge, and in the best of the legislative process, we put them together and believe we will be able to pass them later this day to go into conference. Congressman BURR and Congressman LEWIS deserve a lot of credit.

I also commend my colleague from Kentucky, JIM BUNNING, who has been a stalwart on this issue from the beginning and extraordinarily helpful in every way.

I would be remiss if I did not mention Senator ELIZABETH DOLE, who has been every bit as intense and committed to achieving this issue as anyone I have ever seen. It was a big issue in her election in 2002. She came into the Senate and said it was her top priority for North Carolina agriculture, and she has pursued it with intensity, with conviction, with one-on-one meetings, with Senators who were in a critical place to make a difference. I know she and others are going to be speaking on this issue later. But I say to her, we would not be here today without her extraordinary effort on behalf of this proposal.

This does not guarantee a buyout. I want to make it perfectly clear to my folks at home the job is not finished. But we have come further than I, frankly, thought we would get. Toward the end of last year, I had pretty much given up on the prospects of being able to get this proposal through. But now we are on the verge of having a buyout. They are a little different. The Senate version will be different from the House version—that frequently happens in the legislative process—but we are on the verge of having the tobacco quota buyout in both the Senate bill and House bill in conference, and that is closer than we have ever been before.

So we have made extraordinary progress, but I do want to caution those folks at home who care deeply about this issue that we are not there yet. We have come a long way, but we are not there yet. I know all of us in

the Senate from tobacco-growing States on a bipartisan basis are going to continue to press this issue as hard as we can and hopefully conclude the buyout process.

I say in conclusion, it will be a big change. We have had a tobacco program in the burley and flue-cured States going back to 1938. It has been a way of life. But change is already occurring. The warehouse system is basically going away. People are growing tobacco under contract now, not selling it to warehouses in the way they used to. Change is coming. This is an opportunity to manage that change in such a way that people will be fairly compensated for the value of today's quota.

Mr. President, I am optimistic that we may be able to succeed, and I thank all of those who contributed to this process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my good friend and colleague from Kentucky for his very kind comments. Those of us who work with Senator MCCONNELL in the Senate every day know he is a visionary. We know he understands his State.

We also know if Senators want to know how to get something done, they go to MITCH MCCONNELL. I do go to him and I do talk to him and I do get him aside, and I do not know if I twist his arm or not. I do talk to him and seek his counsel and advice. I am kind of a pest sometimes.

He was the one who said these two bills are natural to come together. He said that well over a year ago, and here we are today. It was his idea or his thought that these two bills could be married, and now we are sort of at the altar today. Yes, it is a marriage of convenience, but I happen to believe it is going to be a good marriage. I think it is going to be a marriage that will last, not only through this vote today, but I think it is going to be a marriage that will last through conference, and it is going to be a marriage that will make its way to the President's desk.

I think it is going to be for the benefit of the American people, the tobacco farmers, and the children of this country. I think it will be for the benefit of all Americans and for the health of all Americans. So I think it is going to be a good marriage, and I thank him for his help in bringing it about.

I yield time now to my colleague and friend who has worked so very hard on the FDA portion of this bill and has brought us to the Senate floor, the Senator from Massachusetts, Mr. KENNEDY.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I join in commending my friend and colleague from Ohio, Senator DEWINE. Today I am joining him in presenting this amendment. We welcome obviously the workings and the contributions of Senator MCCONNELL together

with the proposal that has been described as a shotgun wedding because, on the one hand, as we have heard a very informative and eloquent statement of the history of the growth of the tobacco industry, the industry itself—not the farmers but the industry itself—by and large has resisted the ability of the Food and Drug Administration, which generally has the overall jurisdiction in dealing with health issues, to be able to deal with this issue in order to protect the children of this country.

I was here in 1964 when we received the Surgeon General's report. It arrived like the crack of a whip when we read the Surgeon General's report and found for the first time the dangers of tobacco and its impact in terms of the health of the population generally, in particular with regard to children.

For years, those of us who were trying to deal with the health aspects of this issue, and particularly the health aspects of these issues as they relate to children, found strong opposition by the tobacco industry. They resisted the commonsense efforts that were being made to try and provide protections for the children of this country.

Now we have a working partnership with those who are interested in the tobacco farmers, which I am interested in, and those who are interested in protecting the children. We have come together to try to make a recommendation, the result of which will provide equity and fairness to tobacco farmers, paid for by the industry itself and not by the taxpayers, but also to provide the Food and Drug Administration with the kind of authority to help protect the children of this country from the No. 1 preventable health disease for people that the Federal Government can do something about. Tobacco causes one out of every three deaths from cancer, one out of five deaths from heart disease and 87 percent of lung cancer cases. We must slow down the amount of children smoking and the addiction that has taken place.

We have had a considerable period of time since the 1964 Surgeon General's report. We have the efforts that were made in the 1970s and 1980s to try to provide labeling on cigarettes to give information to those who were going to start smoking, and it has not been very effective. On the contrary, it was used by the tobacco industry as an offset, saying, look, we are not responsible. There was information that was on the various tobacco products and people were acting on their own.

We tried to strengthen the Office of Preventive Health. We tried to put some labeling on smokeless tobacco. We made some very modest steps forward in trying to deal with this issue. Then in 1998, when we had the great debate on the tobacco issue about compensation, there was a provision in that legislation which had a good deal of the kind of protections that are included in the DeWine-Kennedy amendment. A great deal of that was actually

fashioned by our majority leader, Senator FRIST, who was very much involved in helping shape that particular proposal.

It is interesting, as we had this long debate on the Senate floor on tobacco, there was not a single amendment to try and alter that authority. It was generally agreed that that was a pretty good balance, going back to 1998. From that time, Senator DEWINE has picked up this opportunity and has continued to press this in the committee, and a number of our colleagues have been particularly involved in this issue. I think of our colleagues from Iowa and Illinois, Senator HARKIN and Senator DURBIN, and a number of others who have been extremely involved in trying to make sure we were going to provide some protections.

I mentioned the 1964 Surgeon General's report. I will include in the RECORD an appropriate part of the new Surgeon General's report that was issued on May 27, 2004. This is from the U.S. Surgeon General appointed by President Bush. He is this administration's Surgeon General, and this is what his findings are:

U.S. Surgeon General Richard H. Carmona today released a new comprehensive report on smoking and health, revealing for the first time that smoking causes diseases in nearly every organ of the body. Published 40 years after the surgeon general's first report on smoking—which concluded that smoking was a definitive cause of three serious diseases—this newest report finds cigarette smoking is conclusively linked to diseases such as leukemia, cataracts, pneumonia and cancers of the cervix, kidney, pancreas and stomach.

It goes on:

Statistics indicate that more than 12 million Americans have died from smoking since the 1964 report. . . .

Another major conclusion, consistent with recent findings of other scientific studies, is that smoking so-called low-tar low-nicotine cigarettes does not offer a health benefit over smoking regular "full-flavor" cigarettes.

Then it continues:

There is no safe cigarette, whether it is called "light," "ultra-light," or any other name, Dr. Carmona said. The science is clear: The only way to avoid the health hazards of smoking is to quit completely or to never start smoking.

The report concludes that quitting smoking has immediate and long-term benefits.

And then it illustrates these, which is very hopeful.

Dr. Carmona said it is never too late to stop smoking. Quitting smoking at age 65 or older reduces a person's risk of dying from a smoking-related disease by 50 percent.

This is an enormously important document. It updates the science and it demonstrates what an extraordinary challenge we are facing.

Now why do Senator DEWINE and I feel so strongly about giving the FDA the power to give particular focus with regard to children?

This chart, "Smoking begins early, adults who are daily smokers began smoking," shows that 16 percent of all of the smokers begin smoking by age

12; 37 percent by age 14; 62 percent by age 16; and 89 percent begin smoking by age 18.

This is a very clear indication of what is happening out across this country. For children, starting at the age of 12, 16 percent are smokers. Five thousand start every day, and 2,000 become regular smokers. Every single day, 5,000 children start smoking, and 2,000 continue.

We have to ask ourselves, what are the circumstances? Why does DeWine-Kennedy give the FDA the power, as he has mentioned—and I will go over that shortly—why particularly about children? As we see, the children are the ones who get started, they are the ones who get addicted to cigarettes. Now we ask ourselves, why is that?

This is the result of International Communications Research:

Have you seen any advertising for cigarettes or spit tobacco in the last 2 weeks?

Teens, 64 percent; adults, 27 percent.

Do we understand that? It is 64 percent of teens, 27 percent of adults. All we have to do to understand this is to look at the various magazines that are coming out. In Rolling Stone, here it is: the large Winston cigarette, "Leave The Bull Behind." Everybody is young, beautiful, and enjoying themselves. All they have to do is light up a Winston in order to reach those circumstances.

Take Sports Illustrated. It is filled with the same kinds of advertising. Camels, here it is:

The Roaring Twenties. Get it with a Camel. Smoke back-alley blend with a hint of bourbon.

My friend talked about the new chocolate cigarettes. This is what we are seeing.

The appeal is to children. The danger is to children. What we are trying to do is give the FDA the authority and the power to do something about protecting children.

As the Senator from Ohio knows, we lag behind virtually every other country in the world. Our neighboring country of Canada has done something about it; Australia has done something about it; and now the European Union is doing something about this issue. Now we have the opportunity to do something about it with our particular proposal.

This is a very modest program. As the Senator from Ohio has pointed out, it is a fair and balanced approach to the FDA regulation. It creates a new section in FDA for the regulation of tobacco products with standards that allow for consideration of the unique issues raised by tobacco use. It is sensitive to concerns of tobacco farmers, small businesses and nicotine-dependent smokers, but it clearly gives the FDA the authority it needs to prevent youth smoking and reduce addiction to this highly lethal product. This amendment also provides the financial relief for the hard-pressed tobacco farmers that has been outlined and commented about earlier by Senator MCCONNELL.

This proposal is a legitimate buyout plan designed by tobacco State members for the benefit of their tobacco farming constituents. It is far superior to the ill-conceived proposal in the House.

The heart of this amendment is the FDA provision which will lead to fewer children starting to smoke and to fewer adults suffering with tobacco-induced disease. Public health groups tell us it is the most important legislation we can pass to deal with the Nation's No. 1 health hazard. We must deal firmly with the tobacco companies' marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

The tobacco industry currently spends over \$9 billion a year to promote its products. Much of that money is spent in ways designed to tempt children, as I pointed out, to start smoking before they are mature enough to appreciate the enormity of the health risk. When you get 16 percent of children 12 and younger to start smoking, they certainly do not understand the health risks they are going to be faced with so that they can make a judgment or decision about the risk. The industry knows that more than 90 percent of smokers begin as children and are addicted by the time they reach adulthood. If we are serious about reducing youth smoking, the FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children.

This legislation would give the FDA the ability to stop tobacco advertising which glamorizes smoking where it will be seen by significant numbers of children; it grants FDA full authority to regulate tobacco advertising "consistent with and to the full extent permitted by the first amendment."

The FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to the children under 18, but the survey shows those laws are rarely enforced and frequently violated. The FDA must have the power to limit the sales of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machines.

We have the chart that will show where cigarettes are being sold. It is right next to the candy in stores. This is an average store where you see the candy bars. Who eats the candy bars? The children will eat this candy. Right above it are all the advertisements for tobacco products as well as tobacco products that have the same smell, the same scent and taste as candy as well.

This legislation will give youth access and advertising restrictions already developed by the FDA the immediate force of law, as if they had been issued under the new statute. There are rules that have gone through the proc-

ess extensively. They are ready to be implemented. This legislation provides that.

Nicotine in cigarettes is highly addictive. The medical experts say it is as addictive as heroin or cocaine. Yet for decades tobacco companies have vehemently denied addictiveness of their products, and no one should forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proved the companies not only knew of this addictiveness for decades but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

Given the addictiveness of their products, it is essential the FDA have the authority to effectively regulate them for the protection of public health. Over 40 million Americans are currently addicted to cigarettes. The FDA should be able to take the necessary steps to help addicted smokers overcome their addiction and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, the FDA must have the authority to reduce or remove the hazardous ingredients from cigarettes to the extent it becomes scientifically feasible. The inherent risks in smoking should not be unnecessarily compounded.

This legislation will give the FDA the legal authority it needs to reduce youth smoking by preventing tobacco advertising which targets children, to prevent the sale of tobacco products to minors, to help smokers overcome their addiction, to make tobacco products less toxic for those who continue to use them, and to prevent the tobacco industry from misleading the public about the dangers of smoking.

Now is the time for the Senate to address the critical health issues. The interest of tobacco State members in passing a tobacco farmers buyout provides a golden opportunity. By joining a strong FDA bill with relief for tobacco farmers, this amendment should receive broad, bipartisan support. We can accomplish both of these worthy goals during the session. This approach is supported by the public health community and by the farmers' organizations. Most importantly, it is the right thing to do for America's children.

(Disturbance in the Visitors Gallery.)  
The PRESIDING OFFICER. Order will be restored in the gallery.

Mr. DEWINE. I thank my colleague for his very strong statement. Again, I congratulate him for all his great work. He has been just a wonderful advocate. His advocacy for this issue goes back many, many years.

Let me yield to my friend and colleague from Virginia just for 2 minutes.

Mr. WARNER. Mr. President, I thank the distinguished manager. I commend

him, Senator KENNEDY, and many others who have worked on this legislation which I wholeheartedly support.

We are privileged to have, in my State, a number of tobacco farmers who are enduring extraordinary economic hardships. Also, I serve on the committee on which serves the distinguished manager of this legislation, the Health Committee, as it relates to the Federal Drug Administration.

I understand you have coupled the two together.

That has been the objective of our committee some several years now during which we have looked at this, and the two will be put together. I once again indicate my support and accommodation to those who made it possible.

Mr. President, I speak today with a great deal of anxiousness and anticipation. As a result of the World Trade Organization's finding of U.S. noncompliance with international trade obligations, retaliatory tariffs have been exacted on U.S. exports. Each month these tariffs will increase until Congress passes the FSC/ETI bill. The costs to the American economy can be avoided. I am pleased that we can pass this bill today and am hopeful that it can move swiftly through conference.

Oftentimes things move at a glacial pace here in the U.S. Senate. But if there is one thing I have learned in my many years as a Member of this institution, it is that there are rare instances that the pace becomes so swift that one could miss something if he or she were to blink. The announcement that we would return to consideration of the FSC bill with an amendment on tobacco may have struck many of us as an indication that today was to be one of those days. However, today is just the next step in the long journey for many of us in this room.

For a number of years I have worked with many of my colleagues in the Senate and Members of the House of Representatives to address an issue of vital importance to the rural communities of the South. We have met with our farmers, drafted numerous pieces of legislation, consulted with experts in economic and agriculture policy—and we have done it over and over again. Today, the Senate finally stands poised to speak as a body to end the outdated tobacco quota system.

Our tobacco-growing communities, long dependent on the cultivation of tobacco, have been devastated by foreign competition and the quota system that keeps the price of leaf artificially high. The amendment submitted by the Senator from Ohio contains language from a bill crafted by a coalition of members from the tobacco farming States of Kentucky, North Carolina, Tennessee, South Carolina, Georgia, and Virginia. The Tobacco Market Transition Act will end the current tobacco quota system, provide compensation to growers and owners of quota, and provide grants to States and institutions of higher education to reduce

community reliance on the production of tobacco.

I have been a member of this body for 26 years and can say without equivocation that for the farm communities of southside and southwest Virginia there is no more important national policy. I can also say that not much is more controversial and polarizing than tobacco legislation. There are concerns with a buyout that "makes farmers instant millionaires," or that it raises taxes, or that it imposes a cost to the general treasury. I am pleased to say that this amendment does none of those things.

Still, many have stated that a buyout will not pass the Senate without being coupled to legislation specifically giving the Food and Drug Administration the authority to regulate tobacco products. While these two policy goals have for years seemed mutually exclusive, sometimes in the legislative process major national needs that appear to be in conflict come together to forge a comprehensive national policy. Such is the case today, as we consider both a tobacco quota buyout and FDA regulation of tobacco as part of one amendment.

While many tobacco farmers vehemently opposed FDA regulation of tobacco not even 10 years ago, the issue has evolved since then. Today, the simple fact today is that most tobacco farmers support FDA regulation so long as it is coupled with a tobacco quota buyout. That has certainly become the predominant view of Virginia tobacco farmers who I have spoken with over the last several years. And, that is clearly the view of several groups who represent growers in my State. The Virginia Farm Bureau; the Virginia Tobacco Growers Association; the Virginia Sun-cured Growers Association; the Virginia Dark-Fired Growers Association; the Virginia Agricultural Growers Association; Allies for Tobacco, Inc.; and Concerned Friends for Tobacco all have signed on to a set of core principles stating that it is in the best interests of the public health community and the tobacco producer community for the FDA to have authority to establish fair and equitable regulatory controls over tobacco products.

But not only has the farm communities' position on FDA regulation of tobacco evolved over the years, so has the position of the largest tobacco company in the United States, if not the world. Less than 10 years ago, Phillip Morris actively opposed efforts to grant the FDA authority over tobacco. Today, that same company, now known as Altria, which is headquartered in the Commonwealth of Virginia, is actively supporting legislation to grant the FDA the authority to regulate tobacco.

What we have seen over the last 10 years is an amazing coming together of public health advocates, tobacco farmers, and a major tobacco company. Many in the Congress have helped lead

the way. The amendment that stands before us is the culmination of the hard work of many, including Senators FRIST, MCCONNELL, KENNEDY, DEWINE, and the chairman of the HELP Committee, Senator GREGG, who always helped keep this issue on the committee's agenda. My colleague from Virginia, Congressman TOM DAVIS, also played an important role.

The compromise that has been reached in the Senate is an important one not only because, as I stated earlier, it will provide the help that our tobacco farmers so desperately need. It is also important because it will improve our public health. And that second point is an important one to me.

You see, my father was a doctor. He was a surgeon gynecologist, and he dedicated his life to medical research. Much of his research was spent on efforts to eradicate cancer. Ironically enough, though, it was ultimately this same devastating illness that my father worked so hard to find a cure for that ultimately took his life.

So, as I think about my father today, I know that he is smiling down because the Senate is about to pass a bill that could help reduce the cases of cancer and reduce the number of premature deaths in this country related to tobacco.

We know that smoking is one of the foremost preventable causes of death in the United States. It is estimated to cause over 400,000 deaths in America each year. That is why we have warning labels on cigarette packages and public awareness campaigns against smoking. The dangers of smoking are clear.

The bill before us today will help us reduce those dangers in many ways. Most notably, in my view, is the modified risk section, which I believe is the hallmark of the FDA portion of this amendment. This section provides the FDA the authority to approve modified risk tobacco products that reduce harm of tobacco-related disease and benefit the public health. With the imprimatur of the FDA, current users of high-risk tobacco products could be encouraged to use these reduced risk products. And, as they move down the continuum or risk with the products they use, we should see a corresponding decrease in the number of tobacco related illnesses as well.

While the public health benefits of this amendment are strong, it is also very important to make clear that the FDA legislation before us today is balanced. I worked extensively with Senator DEWINE and Senator KENNEDY to make sure of that. For example, this legislation will in no way restrict the rights of adult Americans who wish to smoke or use other tobacco products. At my request, and the request of others, Senator DEWINE and Senator KENNEDY modified their original legislation to make it clear that the FDA would not have the power to ban all cigarettes and other tobacco products. Under this amendment, that power is

reserved to Congress, where it properly belongs.

Today we take a great step to protect the public health of all American citizens and the economic health of our tobacco farmers, their families, and their communities. The passage of this amendment is a great triumph for this body and represents the spirit of legislative cooperation and compromise that has long been the cornerstone of this institution. It is my sincere hope that we can soon celebrate the final conference report for this bill and the inclusion of the amendment on which we vote today.

Thank you, and I yield the floor.

Mr. DEWINE. Mr. President, I thank my colleague for his support and for his very good statement.

I yield at this time to my friend and colleague from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I rise today in support of the FSC/ETI bill that will end tariffs on our manufactures. But also, it will finally bring much needed relief to the tobacco growers of my State.

The bill before the Senate today addresses many important tax issues that face American companies, both at home and abroad.

The many international provisions that are contained in the bill are important changes to a badly outdated part of the Tax Code.

The centerpiece of this bill, of course, is a provision to expand tax incentives to America's manufacturing sector. During debate on this bill, I was pleased that we adopted the bipartisan amendment that I offered with Senator STABENOW.

Under our amendment, America's manufacturing companies—small and large—will see their tax rate decline by almost 1.5 percent this year. That is compared to the rate cut this year of only one-third of 1 percent that was previously contained in the bill. It is imperative that we get this relief to our U.S. manufacturers as quickly as possible.

We were also able to include in this bill my amendment to extend the net operating loss period to 5 years rather than the 3-year period included in the original bill. This important provision, which will allow companies facing financial challenges to see increased cash flow to assist them in investing and hiring, is one that Senator CONRAD and I have worked on together in committee.

The WTO ruling on the FSC-ETI regime authorized the European Union to start imposing sanctions of over \$4 billion on U.S. exports. During the first month of tariffs we have seen products from apparel to paper hit with penalties approaching 10 percent. Many other products important to my State, such as horses, are on the initial retaliation list and will also face this tariff.

They have a list of over 1,600 U.S. products from nearly every part of the

U.S. economy that will be penalized because we have not repealed the FSC/ETI regime.

But most importantly, this amendment will help my tobacco growers.

Since Daniel Boone first came through the Cumberland Gap, farming has been both the economic and cultural backbone of the Commonwealth. The family farm is the basis of Kentucky culture and it has been based around tobacco.

For years we in Kentucky have tried to diversify from the tobacco crop.

We have had some success, vegetables, beef cattle, cat fish, corn, chicken and other crops have been quite successful, worm farms and other have not been as successful. But nothing brings as much as a return as tobacco.

Most of the tobacco farmers in my State are not full-time tobacco farmers. They either have an off-farm job, or primarily raise other crops or raise livestock.

But the money they get from tobacco, pays their mortgage, or puts their kids through school or allows them to keep farming. Outside of the western part of Kentucky, we do not have tens of thousands of acres of flat land. We need a crop that grows on rolling hills and that thrives in our climate. Tobacco does that.

But a number of things have conspired against tobacco in the last few years.

The previous administration declared war on tobacco and by extension, tobacco farmers. The Asian economic crises have hurt exports. The Master Settlement Agreement and State tax increase have dramatically raised the price of cigarettes. And although American tobacco is still superior, the companies have invested so much overseas that the gap has narrowed between American tobacco and cheap foreign tobacco.

As I am sure most of my colleagues know, there are no direct payments to tobacco farmers, but we do have a price support and production control program. Growers own quota which they can buy, sell, or lease. The government administers this program to make sure it runs effectively and that growers only sell what they are allowed to under the quota system. If you grow too much, you can't sell it.

But the quotas have lost 60 percent of their value since 1998. Not many businesses would be around if they lost 60 percent of their income in 5 years, and we have lost a lot of growers. We have many who are barely holding on. They need help, we can give that to them and get the government out of the tobacco business at the same time.

We don't have big tobacco in my State. The last big tobacco company pulled out a few years ago.

What we have is little tobacco. We have over 30,000 tobacco growers. We also have over 100,000 tobacco quota owners. Many of those are elderly who can no longer work their land, so they lease their quota and that income be-

comes a major part of their retirement security.

That quota is tied to the land. It has a direct effect on the property taxes Kentuckians pay.

Those taxes build and fund schools, provide clean water, pay for emergency services, pave roads and help fund every community in Kentucky. If we don't help my growers get relief, we face the very real prospect of having ghost towns in Kentucky.

The amendment we have before us today will buy out the tobacco program.

We will give our growers relief and end the federal price support program. We will also let many growers, whose average age is 62, retire and get out of the business. Dr. Will Snell, of the University of Kentucky, estimate 70-75 percent of tobacco growers will get out of the business with a buyout. We will allow growers to pay off their debts and enjoy their retirement.

The amendment also has FDA Authorization of tobacco. This is a dramatic increase in the regulatory authority of the FDA.

I am not comfortable with it. I do not want the FDA inspecting my growers' crop.

FDA regulation is a bad idea. My growers are in dire straits. They desperately need help. FDA regulation is a very steep price to pay for a buyout, but if it is the only way to get my growers relief, this Senator will vote for it.

Make no mistake about it, the program will end. The only question is whether we end it on our terms or big tobacco terms. Please, please support the tobacco growers in this country and give them an equitable solution for the little tobacco growers all across this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Kentucky for his very good statement. I assure my colleague that with the language which has been drafted in the FDA section, we have taken certainly one of his concerns into consideration and the FDA is not allowed on the farm. There is protection in there. I appreciate his comments.

I ask unanimous consent to add Senator COLLINS as a cosponsor of this amendment.

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

Mr. DEWINE. Mr. President, one of the very enlightening aspects about this legislation, the FDA part of this legislation, is how many of the editorial writers—not just in the national papers but many of the papers throughout the country—have weighed in on this issue and they have done this very eloquently. Frankly, they have been more eloquent about this than I have been in the Senate.

I will take a couple of minutes and read what some of the editorials have

said about this issue. I start with the Lexington Herald Leader, Lexington, KY, May 21 of this year.

Tastier poison: New cigarettes prove need for FDA control.

Mandarin Mint. Smooth Fusions. Midnight Berry. We're not talking herbal teas or fruit smoothies, folks. We're talking cigarettes.

The latest evidence that the tobacco industry has no shame is the marketing of sweet-flavored cigarettes. . . . Straight-faced company spokesmen say the new brands are aimed at adult palates. Please. The goal is obvious: Appeal to kids and hook new smokers.

This lethal version of candied cigarettes, along with the appearance of the new generation of "safer cigarettes" is also the latest evidence that Congress should at long last give the Food and Drug Administration oversight of tobacco.

The FDA has the authority to monitor a manufacture's claim about a pack of breath mints or chewing gum but the tobacco industry can roll out new brands of cigarettes and claim they pose less risk of emphysema and cancer or help smokers quit, and the FDA has no say-so at all.

This is from the Columbus Dispatch, Columbus, OH, June 26, 2004:

The legislation to allow FDA regulation of the tobacco industry is far from frivolous. It has the support of many anti-smoking groups, along with cigarette maker Philip Morris. The tobacco industry has operated irresponsibly for decades, and every time it shows a sign of turning over a new leaf, it does something to remind people that it is not trustworthy. FDA regulation should have happened decades ago.

That smoking-cessation products are heavily regulated, but the products that actually kill people are not is the ultimate absurdity. . . .

Congress has a duty to protect public health, not to shield an industry that has a long history of deceit and death.

Mr. KENNEDY. Will the Senator yield?

Mr. DEWINE. I yield to my colleague from Massachusetts.

Mr. KENNEDY. There was reference made by our friend, the Senator from Kentucky, about the FDA and its ability to interfere with farmers, to somehow impose their guidance or will upon farmers.

I ask if the Senator from Ohio does not agree with me that we addressed this issue on page 23 of the amendment, which says:

The provisions of the chapter shall not apply to tobacco leaf that is not in possession of a manufacturer of tobacco products, or to the producers of tobacco leaf, including tobacco growers, tobacco warehouses, and tobacco grower cooperatives, nor shall any employee of the FDA have any authority to enter on to a farm owned by a producer of tobacco leaf without the written consent of such producer.

This issue is of concern. This was not what we were looking for. Looking at it is enormously important. Those under that view will have assurances from the Senator from Ohio. Not only our assurances but the legislative assurances that the FDA is not in any way going to have any role whatever in

dealing with any of the producers themselves, the farmers.

Mr. DEWINE. I thank my colleague for the question. I am looking at the same language. He read it correctly. It is directly in the amendment. It was originally in the bill that my colleague from Massachusetts and I wrote and introduced.

I have penciled in here "FDA can't go on the farm," which is a shorthand version of what he said. But actually it goes further than that. It is not just on the farm but it is basically any kind of FDA interference in this area.

In earlier versions, years ago, the bill may have given my colleague from Kentucky something to worry about but this version clearly makes it abundantly clear the FDA cannot do this. I am glad my colleague has pointed this out.

I have other editorials I can read but I see my colleague from Illinois is in the Chamber. If he is ready to speak, I am more than happy to yield him time.

Mr. DURBIN. I thank the Senator from Ohio. I don't know how much time is remaining. I don't want to take too much.

Mr. DEWINE. I inquire of the Chair how much time remains.

The PRESIDING OFFICER. Thirteen minutes remain.

Mr. DEWINE. Mr. President, I say to my colleagues, the Chair, and to my colleagues in the Chamber, I have only had one Senator come to me requesting time in opposition. I probably would propound a unanimous consent request to take some time from the opposition with the understanding that—I have not done that yet—anyone who wants to speak in opposition, obviously, we would make that time available.

I yield 10 minutes to my colleague from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Ohio and the Senator from Massachusetts for their leadership.

This is an issue which hits close to home for many Americans. It is an issue we have faced in our families where people we dearly love have been victims of tobacco-related disease. It is an issue which we face every day in America when children make the decision to start using tobacco products—either spit tobacco or cigarettes—and become addicted, and one out of every three of those children who choose the addiction will die from it. That is a reality.

Tobacco is still the No. 1 preventable cause of death in America today. It is preventable if we do our job, regulating the product.

The bill before the Senate says we will give to the Food and Drug Administration the authority to regulate tobacco. The Food and Drug Administration operates under a law which specifically excludes tobacco. It said tobacco is neither a food nor a drug. It falls between the cracks.

So the Food and Drug Administration has the responsibility, when it

comes to macaroni and cheese, to make sure it is wholesome, to make certain it is safe, but it does not have that same opportunity or authority when it comes to Marlboro cigarettes or any other package of cigarettes. When you look at the back of the macaroni and cheese, it states the contents and ingredients. You can look all over the Marlboro cigarette package and you will never figure out what is in it. It is more than just natural tobacco. There are a lot of chemicals in here, and these chemicals are harmful.

What Senator DEWINE and Senator KENNEDY do today is to call us together and say, finally, after so many years—40 years of being convinced that tobacco causes cancer, heart disease, stroke, lung problems—after all these years we are going to give to the Food and Drug Administration the authority to regulate this product.

This is not a radical idea. This is common sense. Mr. President, 15 years ago, as a Member of the House of Representatives, I offered an amendment to ban smoking on airplanes. It was an amendment that was opposed by the tobacco lobby, opposed by the leadership, Democrat and Republican, in the House of Representatives, and no one thought I had a chance. But I won, and I passed it. It became the law of the land. Now, if you went into an airplane and said: "Incidentally, we decided to change the rules. Anybody who wants to smoke, go ahead," people would just stand up and say: "Are you crazy? Secondhand smoke can kill you. We're not going back to those old days."

What Senator DEWINE and Senator KENNEDY are doing is telling us: Look forward to a future where we start making commonsense health decisions that are going to save the lives of millions of Americans.

Now, what is going on politically here? Sadly, there is an effort coming out of the House of Representatives to put together an \$8 or \$9 billion buyout of those who have tobacco allotments in America. It is an old piece of agricultural law that some people were able to claim the right to grow tobacco and be given a Government allotment. It is the closest thing to being given some title or royalty that you can imagine because those folks are then entitled to grow tobacco and have special treatment under the law.

What they have said is, if we want to end this program, you have to pay us to end it. We have made money over the years with it, but you have to pay us to end it, \$8 or \$9 billion.

Well, I swallow hard when I think about that notion of giving \$8 or \$9 billion from hard-working taxpayers across America to these tobacco growers. But I finally was brought to the conclusion that if that is the only way we can get FDA regulation of tobacco products in America, all right, I will buy that compromise. It is a painful compromise to think of that much money, but that is the reality.

What we have today with this proposal from Senator KENNEDY and Sen-

ator DEWINE is to move us in the direction of what we need: to put into FDA law the power to regulate tobacco; for the first time in our history, to give the Food and Drug Administration the authority to restrict tobacco advertising.

Cross the border into Canada and look at a package of cigarettes. There is a clear warning—not the worthless warnings we have been stuck with for four decades—clear warnings that might give somebody some pause before buying this dangerous product. Our FDA ought to have that same authority.

We also need more authority to aggressively stop the sale of these deadly tobacco products to our kids. The Food and Drug Administration can do that, but they need the authority to do that.

We also need to make sure the Food and Drug Administration has stronger warning labels that prevent the tobacco industry from making terrible misrepresentations about their product.

Do you remember "light" cigarettes—lower in tar, lower in nicotine, and so forth? It turns out it was a complete fraud on the public. A class action lawsuit brought against the tobacco companies disclosed that they knew they were lying to the American consumers but did it anyway. They made so much money at it they were going to do it anyway.

Well, they were nailed with a lawsuit that a lot of people are talking about. But it is because of their deliberate misrepresentations about the facts of their product that they were nailed by this lawsuit.

The passage of this law gives the Food and Drug Administration the right to police tobacco advertising, to make certain they do not lie and mislead American consumers.

It also sets standards for reduced-risk products. There is a lot of research going on here. I do not know if it will lead to anything positive, but it leads us in the right direction, as far as I am concerned.

I know there are others on the floor who want to speak. I am happy to co-sponsor this measure. I believe this is a historic moment that the Senate has a chance to acknowledge what the tobacco companies themselves have acknowledged. When they entered into an agreement with the States' attorneys general across America, they acknowledged that the Food and Drug Administration needed to have the authority to regulate their product. A major company, Philip Morris, has come forward and said they accept that. They are prepared to accept this proposal from Senator DEWINE and Senator KENNEDY. Now we have a chance to put it in law.

What we are going to do with this legislation is save lives in America. We are going to reduce the incidence of pulmonary disease, the incidence of disease and stroke and heart attack and death associated with tobacco.

If we did nothing else in this session—and we may do nothing else—this

is the single most important thing we can do to make America a healthier place and to give our kids a fighting chance. I stand in strong support of this proposal by Senator KENNEDY and Senator DEWINE.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I ask unanimous consent that Senator SNOWE be added as a cosponsor of S. 2461, the Family Smoking Prevention and Tobacco Control Act.

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

Mr. DEWINE. Mr. President, I see my colleagues on the floor. Before I yield time, I want to read one more editorial. As I said, to me, it is interesting how the editorial boards across this country have spoken out about this bill, and I think have done so very eloquently.

On June 19, 2004, the Cleveland Plain Dealer wrote as follows in their editorial:

Most people know that smoking cigarettes is risky. But no one can say for sure what's in them, or if "low tar" cigarettes and other "safer" smokes live up to their claims.

The bill would give the FDA the power to approve cigarettes, to force them to live up to their billing and to allow the states to regulate advertising. Altria, alone among cigarette makers, has blessed the DeWine-Kennedy bill—possibly as a shield from lawsuits, although aggressive trial lawyers will try to turn that shield into a smoke screen.

However, the bill does not exceed its grasp. For example, it forces companies to eliminate tutti-frutti scents that appeal to youngsters, but it prevents the FDA from banning nicotine, that poisonous active ingredient in cigarettes.

The growth of so-called "low-tar" or "mild" cigarettes, the lure of fruit scents and the biochemical stew of ingredients stuffed into smokes demand some government supervision.

Cigarettes can't be banished. That would make outlaws of thousands whose only crime is destroying their own health. But the FDA should know exactly what Americans are smoking when they light up. The DeWine-Kennedy bill will help clear the air.

Mr. President, I yield to my colleague, Senator REED from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I commend and thank my colleague Senator DEWINE and my colleague Senator KENNEDY for this legislation. They have been in the vanguard for many years of protecting the health of all Americans, but particularly protecting the health of children. I have also been active, along with Senator DURBIN and others, in this effort.

Actually, in August of 1996, the FDA promulgated rules to regulate the tobacco industry. But these rules were litigated to the Supreme Court. In a very closely divided decision—5 to 4—the Court essentially said: Congress, you must make it clear that the FDA has the authority to regulate the tobacco industry. That is what the DeWine-Kennedy amendment is

doing—making it very clear, very explicit that the Food and Drug Administration may regulate the tobacco industry.

Now, there was a question about the law, but there was no question in the minds of the Justices about the effect of tobacco as a public health issue. Justice Sandra Day O'Connor stated, in her majority opinion, that tobacco was "perhaps the single most significant threat to public health in the United States." Justice Breyer, who was in the minority, recognized that the FDA should already have this power because essentially their mandate is "the overall protection of the public health." And this is the gravest crisis in public health we face in terms of a product that is unregulated, certainly in our economy.

The DeWine amendment brings this issue to, I hope, resolution today. I hope we will give authority to the FDA to involve itself in the greatest public health issue that faces the United States; that is, the consumption of tobacco products.

This DeWine-Kennedy amendment also is very timely because less than a month ago a 50-year study was published in the British Medical Journal chronicling the outcomes of almost 35,000 British doctors who smoked.

This detailed, longitudinal study is the first one to clearly link cigarette smoke to lung cancer and show that on average, a life of smoking will be a decade shorter than a life without smoking. Of the 35,000 subjects, epidemiologist Richard Doll reports that almost half of all persistent cigarette smokers died because of smoking, and a quarter died before age 70. Perhaps more striking was a finding that quitting smoking can mitigate or even reverse these effects. For instance, stop smoking by the time you are 30 and you will have the same average life expectancy as a nonsmoker. Stop at 50 and you will lose only 4 years of life instead of 10.

Clearly, there is still time to help, and particularly to help the children of America. But that can only be done if the FDA has the power to regulate the sale and distribution of cigarettes.

That is something at the heart of the Kennedy-DeWine amendment. It will ensure that children will not have easy access to tobacco products by restricting tobacco advertising and limiting the sale of cigarettes to face-to-face transactions where the purchaser's age can be verified. It will provide for stronger warning labels and allow the FDA to change their text over time to keep their impact strong. And it would help the 46 million Americans addicted to cigarettes by authorizing the FDA to reduce or remove hazardous ingredients from cigarettes, as science allows. These are important provisions that will have a real impact on the health of all Americans, and it is no surprise that this legislation has enlisted the strongest possible support of, among others, the American Cancer Society, the American Heart Association, the

Campaign for Tobacco-Free Kids, and the American Lung Association.

We understand the dangers of cigarette smoking. This legislation will empower the Food and Drug Administration to confront those dangers head on, to confront the most significant public health problem that faces America. It will allow them particularly to protect children. It is typical of the concern and the conscientious efforts of the two principal sponsors, Senators DEWINE and KENNEDY. I thank them for their effort, and I join them in this endeavor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague for his eloquent statement.

There are still some who question whether the tobacco industry is targeting young people. If anybody doubts that, I refer them to what the tobacco industry is continuing to do as far as advertising. Sports Illustrated is read by adults, but it is certainly read by kids, anybody who has a teenager who is interested in sports. And you don't have to be a teenager. Kids start reading Sports Illustrated when they are 9, 10 years old. I did. When you look at some of the advertising in Sports Illustrated, it is absolutely, unbelievably focused on kids.

Here is an example. This is Sports Illustrated, 2002 NFL preview. Look at the back. An awful lot of kids are going to see that. Here is advertising for smokeless tobacco. Just take a look at that. "Where's the chicks? Intense premium tobacco taste, Rooster, icy minute, the bold one." If that isn't targeted to kids, teenagers, I don't know what is.

The next one, if that is not targeted to young kids, I don't know what is. I suppose it is targeted to someone 22, 23, but it is also targeted to someone 16. We know where they are going and what they are doing.

Let me get back to some of the editorials. The Hartford Courant said it very well on June 14:

Four decades ago the Government linked smoking to lung cancer and urged Americans to kick the habit.

Now the Surgeon General Richard Carmona says the impact on health is "even worse than we knew" and has added nine diseases to a growing list conclusively linked to cigarettes. The latest includes leukemia, cataracts, pneumonia and cancers of the cervix, kidney, pancreas, and stomach.

Although many people have quit, smoking remains the leading contributor of death in America, killing 440,000 people each year. Smokers typically die 13 to 14 years younger than do nonsmokers. With 2 percent of adults smoking, the rate is declining so slowly that the Government concedes it will not meet its goal of 12 percent by 2010. The Surgeon General's sobering report ought to stir Members of Congress to take up legislation to give the Food and Drug Administration authority to regulate tobacco. A proposed bill would let the FDA prohibit the marketing of tobacco to minors, require stronger warning labels, a listing of ingredients on packages, and limit the use of harmful chemicals in the product.

That was from the Hartford Courant.

An editorial from the Columbus Dispatch, May 30:

Congress needs to grant FDA the power to regulate big tobacco. Because of its long history of reckless disregard for the truth, the tobacco industry is in dire need of strong Federal regulation. The latest demonstration of industry irresponsibility is the introduction of cigarettes in flavors such as mandarin mint and mocha taboo. Such cigarettes would seem to be a violation of the multibillion-dollar 1998 tobacco settlement which was supposed to prohibit tobacco companies from marketing to minors. This isn't the first time the tobacco companies have blown smoke in the face of the tobacco settlement. A study in the New England Journal of Medicine reported in August 2001 that tobacco companies spent more on advertising in youth-oriented magazines in the 2 years after the agreement was signed than they did in the year it was signed. Let's not forget the years of lies spewed by the tobacco companies as they claimed cigarettes posed little or no danger to smokers, all the while knowing the deadly truth. Congress needs to pass it. Then the FDA needs to take aggressive action. The tobacco companies have operated for far too long with inadequate oversight, leaving death in their wake. It is time for Congress to stand up for the people and grant the FDA the power to crack down on this irresponsible industry.

So said the Columbus Dispatch on May 30 of this year.

The Hartford Courant again, another editorial, January 26, 2004:

The U.S. Food and Drug Administration regulates food, drugs and medical devices, but it has no authority over tobacco products which annually are linked to millions of deaths.

When he was FDA commissioner in 1994, David Kessler proposed regulation of cigarettes, but the Supreme Court nixed the idea, saying only Congress could give the agency such power.

Giving the FDA oversight of a product that is detrimental to public health seems like a matter of common sense. Congress, however, hasn't seen it that way.

The FDA has long performed a critical service by testing and regulating consumer products to ensure safety. That authority should extend to tobacco.

Another editorial, this one from the Akron Beacon Journal, dated June 28 of this year:

The Federal Food and Drug Administration can make manufacturers disclose what goes into your bottled water, foods and medications. [But] it can't make tobacco companies reveal what goes into their cigarettes and other tobacco products. The agency can demand that drug companies support with research the health claims they make for their products. [But] not so with tobacco companies.

Tobacco products were identified as leading causes of cancers, heart disease, and other serious ailments decades ago. They account for billions of dollars in health care costs and are a factor in the deaths of several hundred thousand people every year. It is long past time to put the products under regulations at least as strict as those for ice cream.

The Akron Beacon Journal continues:

It has been four years since the U.S. Supreme Court told the Food and Drug Administration and its commissioner at the time, David Kessler, that Congress had not given

the authority to regulate tobacco products. Congress has an opportunity to fill the void through bipartisan bills recently introduced in the Senate by Ohio's Mike DeWine, a Republican, and Democrat Edward Kennedy, and in the House by Tom Davis, a Virginia Republican, and Henry Waxman, a Democrat from California.

This legislation would grant the FDA the necessary authority, none too soon, to protect the public health and guard children, in particular, against addictive and risky tobacco use.

Among other provisions, the legislation would give the FDA approval authority over all new tobacco products entering the market, bar the use in tobacco products of flavors that are enticing to children, and restrict advertising and promotions that target children. It also would require companies to provide research information for claims on reduced-risk products and to submit a list of product contents and components, including the paper and filters.

This is an editorial from the Akron Beacon Journal, June 28, 2004.

Mr. President, we are getting close to the end of this debate. I say to any of my colleagues who have any desire to come to the floor of the Senate and argue in favor of this amendment or come to the floor and argue in opposition to the amendment, we are getting close to closing out this debate. I invite them to come to the Senate floor. We are getting very close to coming to the end of the debate. Now would be the appropriate time to come to the floor.

At this point, I yield to my colleague, Senator LAUTENBERG.

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

Mr. LAUTENBERG. Mr. President, I thank my colleague from Ohio for the good work he so often does on behalf of the safety and well-being of young people. Therefore, it is no surprise to see Senator DEWINE sponsoring or creating this kind of amendment—something that can markedly affect the well-being of children in our society in general.

I want to lend my support to the DeWine-Kennedy amendment, to see if we cannot finally get past these years of delay and obstruction, to permit the FDA to have jurisdiction over tobacco products. It is long overdue, and I am hopeful that the Senate will take this historic step today.

There are very few people my age who weren't induced to smoke by all kinds of influences. When I was a soldier many years ago in Europe during the war, the thing we used to look for in our emergency pack was the little packet of four free cigarettes. We never realized it, but the military was marketing for the cigarette companies, because once someone had a few cigarettes, that was it for almost a lifetime. Nothing, other than perhaps some illegal drugs, illicit drugs, such as cocaine, is more addictive than tobacco. Perhaps even they don't compare.

I used to smoke. I smoked a lot. Fortunately, my youngest daughter, who was about 7 years old at the time, had

more sense than I did. She said to me: Daddy, today we learned in school that if you smoke, you get a black box in your throat." She said, "I love you; I don't want you to have a black box in your throat." That was after dozens of times that I tried to stop smoking. I smoked for 25 years. There were dozens of times I swore I would stop smoking and never could quite muster the energy or conviction to do it. But when she gave me that message, within 3 days I was no longer smoking. All I had to do was remember how her eyes looked at me so pleadingly and said, "Daddy, stop smoking." That was it for me.

When I came to the Senate, I was determined to do something where I might be able to protect Americans, especially our young people, from the dangers of tobacco. I am pleased to have worked on tobacco control, starting long before it became a mainstream issue.

In 1987, along with now-Senator DURBIN, formerly Congressman DURBIN, we authored the law banning smoking on airplanes. It was a tough fight and it was said, "You will never get it done." But we persisted and convinced a lot of people that changing the rules about smoking in airplanes was worthwhile. It had a long, arduous trip. First, we were able to negotiate for 3 hours, or 2 hours, and settle for 2 hours, with a promise that we would examine the result and maybe change our minds in 18 months and relent.

I had a friend in the tobacco business, and one day he said to me, "Frank, come on, this hasn't been proven dangerous yet." This goes back to the 1980s. I said, "I'll tell you what. If you can convince your father and the other members of your family to start smoking and confirm that they smoke two packs a day, and do it for a year, I will call off my opposition." Obviously, that never happened. They knew how dangerous tobacco was, as did the manufacturers of tobacco products going back to the 1930s.

The addiction and the harm that comes from nicotine was widely known by the people in the industry, again, in the 1930s. We saw that once non-smokers could experience a smoke-free environment in the cabin of an airplane, they began to demand it in more places than that. It changed things radically for people who were unable to fly because they had respiratory conditions. And they learned something. If cabin attendants who didn't smoke were on a flight, they learned that the nicotine residue could last for many days after in their body fluids. So it was pervasive. The attitude on tobacco began to change radically.

I had an opportunity to write further law, and I put into the statutes a law that required that any building that children inhabited, whether it was a library, hospital, youth hostel, daycare center, could not have any smoking present unless it was in a confined room, a single room that was ventilated to the outside, as long as Federal

money was being given there. That succeeded in turning into law and protecting our children even further.

I have long supported FDA jurisdiction over tobacco—a milestone I hope we will reach today.

Mr. President, make no mistake, tobacco addiction is still a huge problem in America. Tobacco continues to be the No. 1 cause of preventable death and disease in our Nation.

Each year, tobacco claims over 430,000 lives in the United States and serious health impairment occurs as a result of tobacco—emphysema, heart trouble, all kinds of terrible conditions associated with tobacco.

According to the Centers for Disease Control, if current tobacco use continues in the United States, an estimated 6.4 million children will die prematurely from a smoking-related disease. This is alarming because every day nearly 5,000 young people buy cigarettes for the first time.

Once again, that addiction is enormous. In addition to the human costs, huge economic costs occur in our Nation. It is estimated that direct medical expenditures attributed to smoking total now more than \$75 billion each and every year.

Despite all of this, the Food and Drug Administration has not been able to take action to reduce tobacco's harm on society. By way of example, right now the FDA, as we have seen on a poster displayed here, can regulate a box of macaroni and cheese but not a pack of cigarettes. If you want to know the ingredients in macaroni and cheese, it is on the label. But for cigarettes, there is scant information on ingredients, toxins, chemicals, et cetera. It makes no sense.

Today, we have worthless health warnings, no control over what tobacco companies claim about the relative health effects of their products, no authority to curtail tobacco marketing to kids, and no ability to order the industry to remove especially hazardous ingredients.

The amendment before us today has the support of the entire public health community, including the American Cancer Society, the American Heart Association, the American Lung Association, and the Campaign—an effective campaign, by the way—for Tobacco-Free Kids.

Today, we have a historic opportunity to give the FDA the legal authority it needs to prohibit tobacco advertising that targets children, the authority to prevent sale of tobacco products to minors, and the authority to make tobacco products less toxic than they need to be, although I am very suspicious about that because there is much misleading advertising talking about tobacco light cigarettes, et cetera. There is no assurance they are less lethal than ordinary cigarettes. We want to give them the authority to prevent the tobacco industry from misleading the public about the dangers of smoking.

I join with other colleagues and hope that we can muster enough support for this bill to give the U.S. Food and Drug Administration the authority it needs to regulate tobacco, as it does other drugs. We owe it to families across this country. We owe it to young people who think it is going to be a kick, but it is a kick they will remember for the rest of their lives once they start.

Mr. President, I yield the floor.  
The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank all the cosponsors of this amendment for their good work. Senator HOLLINGS has done an excellent job. I congratulate him, as well as the other cosponsors. I thank my colleague, Senator LAUTENBERG, for his very eloquent remarks. He and I have worked on issues that affect public safety. He has been a leader in highway safety. He and I have been on this floor together and have worked on legislation that we hope has saved the lives of children. He has been a good partner. I appreciate his comments again today. It is good to be working with him again.

Mr. LAUTENBERG. If I may intervene, Mr. President, for one moment, with Senator DEWINE's approval, we worked on issues that focus on protecting children's health in particular. We want the drunks off the highways. We want to get tobacco out of the grasp of children. We want them not to be seduced into smoking to look like they are bigshots, like they have grown up to a point. I remember the days—and I am sure the Senator from Ohio does—when athletes were endorsing tobacco products and doctors were endorsing tobacco products. Thank goodness we do not have that anymore.

I commend the Senator from Ohio. I have always enjoyed working with him on issues. I pay my respects to his excellent work on this amendment. I hope it is adopted.

Mr. DEWINE. Mr. President, I appreciate my colleague's good comments but, more importantly, I appreciate his good work.

I know from talking to a few of my colleagues that there is some reluctance to grant the FDA this authority. I want to make a few comments directly to those colleagues.

I do not think there should be this reluctance. We do not worry about having a product, such as macaroni and cheese, that has labeling information on it. We have come to accept that. We have come to think it is a pretty good idea to know what is in a product. If tomorrow we went to the grocery store and all this information on the side panel, nutrition facts, was all blank, some of us would think that was rather strange. We have come to accept that. We think it is OK. In fact, we expect it. It is the right thing to do. We want to know what is in the product.

Every product we buy, from bottled water to macaroni and cheese, we know what is in it, every product except tobacco. Every product we consume we

know what is in it; there is a label; it is regulated, except tobacco.

How did we get here? We got here because there is an anomaly in the law. Without going through all the lawyer talk and all the constitutional and statutory history, basically the Supreme Court looked at Congress and said: If you guys want to change that and give FDA the authority to regulate tobacco, too, you have to do it. You are the ones who have to do it. That is why we are here today. We are the ones who have to do it. It makes sense for us to pass legislation that says to the FDA: You go ahead and do it. That is what this is all about.

This is not exactly a radical idea or a revolutionary idea. The only reason it sounds strange is we have just never done it before. But it is time to do it.

It is also time, when the tobacco companies make outlandish claims about low tar and ultra light, for them to be held to the same standards as the macaroni and cheese is or the milk. There are certain standards, and when you say the food product is thus and so, it has to be thus and so. There are certain standards. It ought to be the same way with tobacco.

Again, all we are saying is they ought to be held to the same standards as anything else we put into our bodies.

We all know that even tobacco, a legal product, if used as it is intended to be used, is still dangerous.

So it still makes common sense to have some regulation and have the FDA do it. So this is not a radical, crazy idea. This just makes good, common sense. The reason it is in front of us is because the courts have said, if the FDA is going to have this authority, it has to be given to them and it has to be given to them by statute, and we are simply giving it to them by statute. So in a sense, it is a simple bill that a quirk in history, a quirk in the law previously, has brought us to this point. So we are the ones who are doing it.

That is one major part of the bill. The other major part of the bill is to say we are going to control how they market this dangerous product, and there is no doubt it is a dangerous product. That debate ended years ago. Legal, yes, but dangerous, yes. We have a right, as a society, to control how this dangerous product is marketed to children, and we are going to control that within the bounds of the first amendment.

The court is going to confine us to the first amendment. We are not going to violate the first amendment because the courts are not going to allow us to do that. But we are going to confine it and say there are limits. Kids cannot be targeted because it is a dangerous product. There is no dispute it is a dangerous product. We know it is a dangerous product. We cannot make it illegal for all the reasons we know we cannot make it illegal because that just is not going to work. Prohibition will not work. But it is dangerous.

We do not want kids to get addicted. We know that most people who smoke today started smoking when they were minors. We know if one makes it to 19 or 20 and they have not started smoking they are probably never going to smoke in their life. So there is an inherent societal interest in not having our kids smoke before they are 19 or 20. If they can make it that far, they are probably going to be OK.

So we have an interest in not allowing these companies to target young kids, and we are going to do everything we can within the confines of the Constitution, and that is what this bill is trying to do and will do.

This bill will save lives. It will save lives because we are going to allow the FDA to do what it can in regard to regulation, and because we are going to allow more regulation in regard to advertising a lot of lives will be saved by this bill. It is the right thing to do. The time for the bill is now.

I see my colleague from Georgia is on the floor, and I yield to him.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. I thank the Senator from Ohio for yielding me some time to talk about this bill today. I want to talk about three things. First, with respect to the issue of smoking, all of us know and now understand that smoking is hazardous to one's health. There is simply no question about that. That is not even in the debate. Fortunately, I am one who has never smoked in my life, but I come from a part of the country, as does the Presiding Officer, where tobacco has been a mainstay. So I want to talk about the effect of what we are doing today is going to have on tobacco-growing regions of our country.

Tobacco has been a mainstay of the agricultural community since the Indians first inhabited this country. Tobacco has been a product that has been traded and bartered for literally hundreds of years, both in America as well as outside of America. In my part of the country, which is a heavy growing tobacco area, it has been the mainstay and the staple product of small family farms for literally hundreds of years. That is going to be coming to an end, in my opinion, with the passage of this legislation.

The tobacco industry has taken any number of hits over the last two decades, and some of it for the right reasons. We need to educate people about the hazards of smoking tobacco. We need to educate people that if they do smoke, it is likely going to kill them.

The fact is, there are a number of individuals in this country who having been educated have still made a conscious decision to use tobacco products. The last thing I think we need for the Federal Government to do is to intrude further into the lives of Americans and say they cannot do this.

Now, that is one thing we are doing with this legislation. I think it goes that far. Maybe not saying one abso-

lutely cannot do it but it is pretty well going to limit the number of customers to future tobacco growers and future tobacco manufacturers in this country, which means that jobs in the tobacco industry are going to be moving out of this country and we are going to see a complete overhaul and change in that manufacturing sector, as well as in the growing sector.

I can remember very well in my hometown where we had three tobacco markets, and we used to sell all tobacco at the auction market. We would have buyers come in every summer and all of the farmers and their families would go to the tobacco market on opening day. We would literally have an auction bale by bale or pile by pile of tobacco that would be bought by one of the tobacco companies and used in the manufacturing of various tobacco products.

As soon as that auction was completed on the sale of the farmer's tobacco, he would take his family downtown in my hometown, and this happened literally across dozens of other communities in the South, and he would buy the family clothes for school that year. The opening day of the tobacco markets was a big deal because that is the product that provided the income for the family farmer for literally hundreds of years in the South.

Today, it still does. Even though over the years with the attacks that have been made on the tobacco industry and we have seen the tobacco quota cut in half, our farmers are generating half the income today with about double the expenses that they were 20 years ago. This is simply because the demand for tobacco has decreased due to Federal regulations and because we are seeing imported tobacco replace domestic tobacco. This is a result of the price that the farmer needs to receive due to the cost of production that he faces each and every year.

What we are doing today to that farmer is we are going to increase the price even more. We are going to make him less competitive and we are, as a practical matter, going to drive the American farmer out of the tobacco-growing business, which is going to be a change in a way of life for many small towns across the South. Is it the right thing to do?

Well, I am not sure everything in this bill, outside of the FDA, is perfect, but I do agree with the way we are doing it and the reasons why we are doing it. Now I am going to talk about the FDA for a minute.

What we are saying to the tobacco farmer is, look, we gave you a quota that you earned over the years through your growth of tobacco. We know you bought this quota in some instances and in some instances it was passed down from father to son to grandson. In some instances you bought it when you bought the farm. But in any event, a price was paid for the ownership of the tobacco quota. Today, we have cut your asset that you bought and paid for

by 50 percent just in the last 5 years. We have taken the ability away from you to generate an income sufficient to meet the needs of the quality of life that your family is used to living.

So what we are doing is compensating those farmers. We are going to give some money to them for this quota that we have taken away. We are now going to take it all away and, even though we did not compensate them for that 50 percent they have lost in the past 5 years, we are going to compensate them for the remaining quota that they have. I think that is a fair and reasonable thing for us to do.

I have been adamant from the very first day that we engaged in this issue regarding the buyout, and I have been working on this for 4 years now, but we have been very adamant that the taxpayer ought not to fund this buyout.

I don't think that is right. I don't think we should use money from other valuable programs to pay for this buyout. I think it can be funded in the right way, by those folks who use tobacco products.

Is that going to be injurious to the tobacco industry? You bet it is. But that is the only way it should be funded in a reasonable and rational society in which we live today when you are dealing with such a controversial product.

What this bill does is it provides compensation to the tobacco grower, compensation to the quota holder, and the funding of that compensation to be paid for by those individuals who use tobacco products. That is fair and reasonable, and I support that aspect of this particular amendment wholeheartedly.

Last, I want to talk about FDA. I have been very strongly opposed to the inclusion of FDA regulation in any tobacco buyout bill or as a stand-alone without a buyout. However, I intend to support this today because it is the only means by which we are going to get this buyout bill done. I support it because I hope that in conference we are going to be able to change some of the provisions that are included in the FDA portion of this amendment. I want to mention some of those specifically.

First of all, what we are granting to the FDA in this amendment is this: It will grant FDA indirect authority to mandate changes in farming practices. This bill places no limits whatsoever on FDA authority to reduce or ban compounds found naturally in tobacco leaf. Many new mandates FDA is likely to adopt will be achievable only through dramatic changes in tobacco farming operations—for example, changes in things like types of soils where tobacco may be grown, changes in cultivation practices or even curing techniques. If we think that by passing this bill we are not going to put FDA on the farm, we are wrong. That is simply going to happen.

Next, the bill would give FDA extremely broad authority to regulate

advertising, sale, and promotion of tobacco products, thus giving the bigger tobacco companies a tremendous advantage over smaller tobacco companies. The effect of that is going to be this: Anyone who does smoke—and I encourage everybody to quit smoking—but if you are going to smoke and you are going to buy tobacco products, when you go into the 7-Eleven to buy a pack of cigarettes, they are not going to be visible. The only thing you are going to be able to do is either tell the proprietor of that store, Let me see all of your tobacco products, or you are going to walk in and announce what brand of cigarettes you want to buy.

We all know that name-brand identification is key to marketing of any product, particularly when it comes to something like tobacco. The bigger companies who have been around for years and years and have made brand names very popular and very identifiable are going to be the successful entrepreneurs and the successful companies at the end of the day. The smaller companies that have come into business in the last several years do not have a chance. We are telling those companies: We are sorry but nobody knows the name of your product, so, in effect, nobody is going to walk up to the counter and say: I want a pack of that cigarette brand that was started just a couple of years ago. That is not going to happen. We are going to put the smaller companies totally out of business, in my opinion, and we are going to make the bigger companies bigger. They are going to still keep marketing tobacco, they are still going to keep selling tobacco, and it will continue to have the same harmful effect it has today.

Again, the FDA should focus on its primary business. It is widely acknowledged that the FDA approval process for new drugs is not as fast as it could or should be. If the FDA has additional regulations to administer to make cigarette products safe, it will no doubt remove the primary mandate of ensuring a safe food supply and safe effective drugs.

In effect, what we are going to do with the passage of this bill is to put the FDA on the fender of every tractor that is driving across a tobacco field in the South. It is going to be a new day for a lot of us who come from very rural areas where tobacco has been a mainstay of the economy of our particular counties and communities. It is not going to be a very pleasant day. But on that day, if it is going to happen, we need to make sure those individuals who have made it their life's work to grow a legal product and send it to a manufacturer to manufacture in a legal way will get some compensation to offset the negative impact this is going to have on their lives. We need to make sure as we do this we do not get unreasonable with respect to the thousands and thousands of jobs that are dependent upon this industry.

Tobacco products are going to be sold anyway. My guess is it is going to be

manufactured by offshore manufacturing facilities in Europe or some other country and shipped into the United States. These jobs are going to be lost here and moved to those facilities. If it is going to happen, we need to make sure that the individuals at the very lowest level, at the grower level, are compensated for the loss they are going to have.

I compliment my friend from Ohio, who has been very open to discuss this issue. I know he feels just as passionately about his amendment and making sure that we strengthen FDA regulations. I respect that. We just happen to disagree on this particular issue.

But I say, too, my friends over on the House side—Congressman RICHARD BARR from North Carolina, Congressman JACK KINGSTON from my State of Georgia, Congressman BILL JENKINS from Tennessee—that have been real stalwarts in making sure they included the buyout provision in the FSC/ETI bill, thank you for your hard work. We are here today to make sure a buyout is included the Senate bill.

I am very hopeful in the conference committee, as it moves forward, they will look at the result of this FDA regulation. What we as conservatives need to think about is keeping the Government out of our daily lives on a more regular basis rather than putting the Government on the shoulder of every individual in the tobacco industry, more than they are today. I believe that is wrong. I do not think that is the route we ought to take. But I am going to support this amendment simply because it appears that is the only way we can get a buyout that is going to adequately compensate our tobacco farmers.

I thank the Senator from Ohio for yielding the time. I thank him for his cooperation in moving this amendment forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Georgia for his statement. Obviously we have a disagreement about the impact of FDA on farmers. He knows I do not agree with him in regard to that impact. The language of this bill is pretty clear. I believe we have done a good job keeping the FDA away from the farmers, but that is certainly something we can discuss in the future.

Let me yield to my colleague from North Carolina who has just come to the Senate floor, Senator DOLE.

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

Mrs. DOLE. Mr. President, significant progress has been made toward achievement of a tobacco quota buyout which our farm families and rural communities in North Carolina and other tobacco-producing States so desperately need. A few weeks ago, thanks to the commitment and hard work, in particular, of RICHARD BARR and MIKE

MCINTYRE from the North Carolina delegation as well as Chairman THOMAS and House leadership, a tobacco buyout passed the floor of the U.S. House of Representatives. Today, we have the historic opportunity to get a tobacco buyout across the floor of the U.S. Senate. I thank Senator MCCONNELL for his legislation and his leadership in bringing us to this point.

Why should we go along with the tobacco buyout on the FSC/ETI bill? Why is a buyout necessary? Because the status quo is simply not an option. If nothing happens this year, according to noted agricultural economist Blake Brown, tobacco families and farmers face a 33-percent cut in quotas for the 2005 crop year.

Let's take a look at how we got where we are today. Look at this chart. By 1996, tobacco farmers had experienced 7 straight years of a stable and significant supply of quota. In 1997, quota increased 12 percent, leading many farmers to expand their operations. Barns were bought to cure more tobacco, equipment was bought to replace that which was worn out, and land and quota was bought to make their operations more efficient. Significant amounts of money were borrowed to make these investments.

Since 1997, quota has dropped almost 60 percent. Farmers still have outstanding loans at the bank to pay for quota they no longer have. To put this in layman's language, this type of cut in quota is equivalent to cutting your paycheck more than half while you are still paying the bank for an asset you no longer own.

The current devastation our farm families and their rural communities face is certainly not of their making. The current tobacco program was never designed to accommodate the significant changes that have engulfed this industry. It is an outdated New Deal program that is discouraging purchases of American tobacco by domestic and foreign buyers because it has made the United States uncompetitive on the world market. Foreign buyers who once looked to the U.S. market are now purchasing tobacco from other countries and bypassing the U.S. market altogether for their supply.

The numbers do not lie: The U.S. now accounts for only 7 percent of all flue-cured tobacco production in the world. Let me be clear: All we are doing under current policy is allowing countries such as Brazil and China to reap the economic benefits of worldwide tobacco production. We are not reducing overall tobacco production—we are simply allowing it to be siphoned off by other countries.

Let me bring a little more perspective to the buyout of quota. People in North Carolina and other tobacco-growing States invested in tobacco quota since the 1930's. The Government created this asset—allowing it to be bought and sold. As a result, the value of quota makes up a substantial portion of many farmers' balance sheets.

The value of quota is recognized by county governments; it is taxed just like land and other assets. In fact, tobacco quota is even subject to the inheritance tax.

It is estimated that more than 60 percent of the tobacco farmers today will exit the business entirely if a tobacco buyout is achieved. Most are at retirement age, just hanging on a little while longer in hopes of being able to pay off their debts. They have hung on and continued to produce in hopes that things would get better, knowing that if they got out now they would have to sell their farm and liquidate other assets to settle up with their lenders. Even with a buyout, many will still be short.

Every week my office continues to receive numerous calls from tobacco farm families in desperation. There is a deep feeling of helplessness. And all they can do is get on their knees and pray that those of us who have been given the privilege of serving in Congress will act—and act soon.

A tobacco quota buyout is sorely needed. It will allow those who want to pay off their debts, and who want to retire, the opportunity to do so with dignity. The opportunity to know that all they have worked for has not been in vain. It will allow the widow whose sole source of retirement income is from quota rent and social security the opportunity to get a fair return in exchange for the taking of her quota.

If nothing happens this year, these farmers will be forced to give up all that they have. After 6 years of loaning on collateral, there is nothing left for the banks to do except foreclose, especially with another 33 percent cut in quota for the 2005 crop year on the horizon. There will be no holding out for just a while longer. This may sound like rhetoric to some, but it is the precise truth for countless thousands of farm families. I have been there to see it and I could not be more dead serious about this. Status quo is simply not an option.

It is absolutely critical that this legislation is achieved this year, and I am grateful for the progress that has been made to get this bill to conference. I look forward to working with my colleagues to ensure that this much needed legislation becomes reality.

It is either now—or never. These rural citizens—the very ones who have helped make this country great—are barely hanging on for their very survival. And it is not just them. It is the retailers, equipment dealers, chemical and fertilizer dealers and a whole array of small local businesses. These are the very small businesses that create the majority of new jobs in tobacco-producing States—and jobs that are much needed. With enactment of a tobacco buyout, rural communities will be able to grow back the jobs that have since left our borders and restore hope to countless families who have labored all of their lives under the sun to feed and clothe America and the world.

My State has thrived on traditional industries such as textiles, furniture and tobacco. In recent years, thousands upon thousands of jobs have been lost—leaving rural economies devastated and creating pockets of poverty in many of North Carolina's counties.

And now, as tobacco farmers and rural communities reach for a life-line, we have the opportunity to help them. Rather than conceding tobacco production to countries such as China, rather than allowing foreclosures to thousands of farmers, rather than allowing the negative economic ripple effect to be felt throughout rural southeastern America, let us do the right thing for our farmers and rural communities.

It is way past the time for us to take action, and getting this bill to conference is a very important and critical step.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from North Carolina for her eloquent comments.

At this time, I yield time to my friend and colleague from the State of Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Thank you, Mr. President. I thank my colleague, Senator DEWINE, for yielding.

Let me commend the eloquent remarks of the Senator from North Carolina, Mrs. DOLE. Her remarks are the same sentiments that I will be expressing, maybe not with the same eloquence but with the exact same concern we both share for the citizens of North Carolina and Virginia.

I also thank Senator CHAMBLISS for looking out for the people of his State. But most importantly, when we listen to the remarks of the Senators from Virginia, from North Carolina, from Georgia, South Carolina, Kentucky, and Tennessee, it is common sense why this is such an important issue for the people of our States, for our economies, and the opportunities for many people.

I commend Senator DEWINE for his efforts in this regard. But mostly I want to commend Senator MCCONNELL of Kentucky for his leadership. He has worked very hard, along with the others of us in the tobacco-growing States in this effort to achieve a tobacco quota buyout.

In the other body, as was stated by Senator DOLE, Congressman BURR and Congressman MCINTYRE worked very hard, as well as Congressman VIRGIL GOODE from Southside Virginia. I know many of my colleagues have said on many occasions that it is all important to be advocating policies and ideas that promote freedom, that promote job opportunities, and improve the competitiveness of America. That is why I think we must equitably find a way to end this tobacco quota system.

As I said, I agree with the comments of Senator DOLE and Senator CHAMBLISS who spoke before me. But

some people question, "Why is it so important to end this outdated, old, punitive quota system?" The reason it is important is because it is antiquated, it is a restrictive quota system which harms the ability of tobacco-growing families to earn a living by artificially increasing their costs of production because they have to pay the quota holder.

If you are producing a product and you have added costs per pound, those dollars per pound for the right to grow has to go into the price for which you sell that product. Otherwise, you keep running a loss and you go bankrupt. Senator DOLE was talking about the similar experiences farmers are having in her State. I know these tobacco-growing families are hard-working families in Southside and Southwest Virginia who have worked long and hard hours on these farms. Their families have owned those farms and those lands for many years. Growing is not easy. You have to prepare the soil, you have to get seedlings going, you have to plant them at the right time, and you have to tend the crop. You have to worry about pests and mold. Then there is the harvesting which has to be done, whether it is flue-cured or whether it is a burley tobacco which has different harvesting requirements, and then the curing of that crop after you have harvested. It is a lot of hard work.

In Virginia, there is estimated to be about 8,400 tobacco farmers and more than 120,000 tobacco-related jobs throughout the Commonwealth of Virginia. Virginia is the fifth largest tobacco-producing State. It is the second largest manufacturer of tobacco products. Virginia is the largest exporter of tobacco products. Clearly, tobacco plays an important role in Virginia's economy, agricultural or otherwise.

These tobacco-growing families and farmers and communities in my own State of Virginia, as well as many other tobacco-growing States, need this quota buyout to remain competitive in the world marketplace. They have to be competitive because our States are not the only places in the world that grow tobacco. It is grown all over the world, whether it is in South America, Africa, or Asia. Without getting rid of this quota system, we stand to lose thousands of jobs at a time when a lot of our manufacturing base is being lost to other countries.

There are provisions—and I know the Senator from Georgia, Mr. CHAMBLISS mentioned this—in this amendment which I do not favor, specifically, the potentially burdensome oversight by the FDA on merchants who sell tobacco products. However, I believe this buyout is needed to allow an important element of our American economy to survive. This buyout will allow farmers who wish to continue to grow tobacco to do so in a competitive environment or at least allow them to better compete. If they do not care to grow it any longer, they will be able to use this buyout in a way to find a transition to

some other farming or another line of work, rather than allowing this just to continue, which will be a long suffering collapse and disaster economically for those families.

We talk about many of the farmers. One of the farmer's name is Kevin Mottley, a fourth-generation young farmer who says he wants to carry on with his family tradition. That is something to be proud of. We are happy to hear that. Of course, he is talking about a tough situation with international competition, but he wrote that, "With the recent cuts in tobacco quotas and prices on other farm commodities down, it's harder to keep our farm operating."

That is the economic impact on a real farmer, a real person, in Virginia. He understands this buyout is not only important for individual families; it is also important for the communities that depend on the strength of the tobacco-growing segment of our economy. The current quota system makes Virginia-grown tobacco less competitive versus foreign-grown tobacco. While U.S.-grown tobacco is generally a better quality, it does cost much more due to this onerous quota system. Thus, the cigarette manufacturers are using or have an incentive to use more foreign-grown tobacco.

As less tobacco is grown, it is less profitable, obviously, to growing families in this country and also in their communities and counties in which they are farming. If we can achieve this buyout, it will make U.S. tobacco more competitive, thus positively impacting the economies of rural communities and towns.

Some will grouse about the cost of this buyout. I believe it is fair compensation to end this government program. Well, look at how much the Federal Government taxes tobacco. There is a 39-cent tax per pack of cigarettes. The Federal Government garners about \$8 billion a year on tobacco taxes. Throw in all the State and local taxes, heck, it is around \$30 billion. Beginning July 1st, 2005, Virginia cigarette taxes will increase to 30 cents a pack. Those that will be hurt by this increase are all the businesses along the Tennessee and North Carolina borders. Raising those taxes means they will lose sales at those convenience stores and country stores.

The Federal Government gets plenty of money, \$8 billion a year, from taxing tobacco. We need to realize when farms are hurt, it also hurts our economy. When the tobacco farming sector suffers, there are other non-tobacco sectors that are affected, as well. The economic losses associated with the recent changes in the tobacco sector have resulted in the loss of more than 57,000 jobs in the six major tobacco-growing States. While the primary sector affected is the tobacco-growing sector, losing more than 39,500 jobs, these tobacco sector job losses created an additional loss of nearly 18,000 jobs in the non-tobacco sectors.

It demonstrates that the tobacco production prices impact such diverse businesses as local farm supply stores, banks, health care providers, manufacturers, retail businesses, and many others in the non-farm sector in these communities.

One needs to understand there is no crop that produces the yield per acre that tobacco does. When the tobacco quota is reduced, that affects all of the money, all of the revenues available within these rural communities.

I have previously stated I am not in favor of FDA regulation. The reality, however, is that it has been joined to this measure. It is the way that the salutary, vitally necessary quota buyout will be addressed today in the Senate.

I am voting for this because of the quota buyout. I hope the conference report—I know Senator DEWINE may not have the same hopes but I will express my views—I hope the conference report will knock out or diminish the harmful impact of FDA on convenience stores and advertising consistent with First Amendment rights.

I have heard Senator DEWINE state this will not have an impact on growers. I hope it will not have an impact on growers. There may be some certain aspects we ought to look at. Maybe it ought to be done through USDA in making sure foreign-grown tobacco meets the same standard we want for tobacco grown in this country, for pesticides or chemicals that are not naturally occurring in the tobacco plant.

I do believe, however, that we do not need FDA regulation to prohibit and protect children from purchasing cigarettes. That is usually the argument, that we have to protect the children. That is fine, but I think it can be done without onerous FDA regulations. I fear, if FDA has regulatory authority over tobacco manufacturers and producers, we will end up with decisions being made further away from the people, given to officious and meddling regulators. Rarely do I see the federal government or any agency resisting a temptation to expand its power. Once the FDA has control over tobacco retailers and manufacturers, they will be subject to ever changing restrictions dictated by future political considerations.

I do commend the efforts of Senator DEWINE and Senator MCCONNELL and others who worked on this; I will be voting for this measure to keep this bill moving and gaining momentum. It is very important. We are taking a major step forward with this measure in making sure our tobacco-growing families can be competitive with foreign-grown tobacco.

It is also important that we understand there are a number of aspects in the underlying bill, the JOBS bill, which are important to our economy. There are aspects of it I have worked with my colleagues on to put in, including the Homestead Preservation Act which helps displaced workers who

have lost jobs due to international competition. There are folks, and many are in the same areas as the tobacco farmers, in rural communities who have lost textile jobs. The Homestead Preservation provision will help them with mortgage assistance for 1 year to help them keep their homes and protect their credit ratings as they work toward strengthening and updating their skills and getting back on their feet with a new job. That is an important provision.

There are also provisions that help make the United States more attractive for foreign companies to invest and create jobs in this country.

The main point is this is an amendment that advances a long talked about, long sought after, absolutely essential provision, the tobacco quota buyout, which is so important to people not only in Virginia but also tobacco-growing States across this country.

I am glad, while there may be some differences clearly on the FDA provisions, that the Senate has come together and has put forth this, on balance, very positive, competitive idea in an amendment. I hope my colleagues will vote for it, it will be passed, and we can move to the conference committee, and, ultimately, next fall pass this JOBS bill which is so important for our country.

I thank my colleague Senator DEWINE and yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Virginia for his good statement. I thank him for his support of the amendment. I just say that our hope for this bill, after passage, obviously, is different. I hope this marriage continues. He hopes for a divorce. I hope the marriage will be a long-lasting one. As I have said earlier, I think it will. It is a logical marriage. I think the FDA regulation will not be onerous. It is logical.

I think tobacco farmers will not in any way be burdened by this legislation. But the children of tobacco farmers, as well as the children of all Americans, will be benefited by FDA regulation, just as they are benefited by FDA regulation of milk and macaroni and cheese and of every other product we consume. It just makes sense to me, and it makes absolutely no sense we would not be regulating products such as tobacco. The time is finally here that we will recognize this, and the American people will recognize it today, that we should, in fact, be regulating a tobacco product.

At this time, let me yield to my colleague Senator HARKIN. Before I do that, let me inquire of the Chair, how much time is remaining?

The PRESIDING OFFICER. Seventeen and a half minutes.

Mr. DEWINE. Seventeen and a half minutes.

Mr. SESSIONS. Seventeen and a half minutes total?

The PRESIDING OFFICER. Seventeen and a half minutes total.

Mr. DEWINE. Seventeen and a half minutes total is remaining.

How much time would my colleague from Iowa need? I ask my colleague from Alabama, do you seek time as well?

Mr. SESSIONS. Seven minutes.

Mr. DEWINE. Senator KENNEDY wants some time at the end, I know. He told me he wants 5 minutes at the end. I probably will want a minute or so.

I ask the Senator from Iowa how much time he would like.

Mr. HARKIN. I would ask for 15 minutes, if I could have it.

Mr. DEWINE. We only have 17½ minutes.

The PRESIDING OFFICER. Seventeen minutes.

Mr. DEWINE. Seventeen and a half, and Senator LOTT wants some time.

Mr. HARKIN. We only have 17½ minutes left on the whole debate?

Mr. DEWINE. Seventeen and a half minutes total.

Senator LOTT is going to speak in opposition.

I ask the Senator from Alabama, are you in opposition?

Mr. SESSIONS. In opposition.

Mr. DEWINE. I say to the Senator, Senator LOTT and my colleague from Alabama both have preference because it is all opposition time.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. I ask the floor leader, the Senator from Ohio, did I hear correctly, there is only 17½ minutes left on the side that is for the amendment?

Mr. DEWINE. No. There is no time.

The PRESIDING OFFICER. Under the total time, the total time on the amendment.

Mr. HARKIN. Is it 17½ minutes?

The PRESIDING OFFICER. Sixteen minutes now.

Mr. DEWINE. We need to move.

I wonder if I give my colleague, to start with, 4 minutes, and then go from there.

Mr. HARKIN. I will try. Thank you.

Mr. DEWINE. And then maybe an additional minute, if you need it, and we can go from there.

Mr. SESSIONS. Mr. President, I know Senator LOTT wants to speak, also. I will try to keep my comments to 6 minutes or 5 minutes. So I don't want to object to the 4 minutes, but I think the Senator would need to come in on that time or there won't be enough for this side to be heard effectively. So I will not object.

Mr. DEWINE. Let me ask the Chair, is the time now controlled by the opposition or is it total time?

The PRESIDING OFFICER. The remaining time can be controlled by the opposition.

Mr. DEWINE. All right.

Mr. SESSIONS. Mr. President, I yield the Senator from Iowa 4 minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 4 minutes.

Mr. HARKIN. Mr. President, I rise in support of the amendment. We have an opportunity to address one of the most significant health threats of our lifetime; and that is tobacco use.

Quite frankly, we have been trying for some time to get FDA jurisdiction so they could better control advertising. I have a couple charts to show why we need to do that. The tobacco companies continue to say they do not advertise to minors, but here is Kool cigarettes. They have advertisements for hip-hop and rappers and all that. They are not going after me. They are going after kids. This is what Big Tobacco is doing. That is why we need to regulate tobacco.

Here is another one: Liquid Zoo flavored cigarettes. This happens to be strawberry. They are not going after adults. They are going after kids to get them hooked on tobacco.

Then we get this fraudulent kind of advertising. This is Eclipse cigarettes: The best choice for smokers who worry about their health is to quit. Here's the next best choice. But there is absolutely nothing to back up their claim that it is some kind of a healthier cigarette, of which I say there is no such thing. That is why we do need to get FDA authority.

Secondly, as a member of the Agriculture Committee, and as ranking member, I am sorry this did not come to the Agriculture Committee. It is the committee of jurisdiction.

But I will say this, that we have a lot of farmers who hold quotas on tobacco. They have held them for many, many years. They are now seeing that the amount of tobacco they can produce under the quotas is being reduced, so their future and their ability to earn a living from tobacco is slipping away. This buyout will help them to build a better future. For many, it will not be in tobacco growing, and they need help to move to something else. But at least this tobacco buyout will give them some equity, some hope. Many of these farmers are growing tobacco because their parents did. Many of them have small plots of tobacco. They are using that for their family income.

Now, as we try to phase out tobacco use in this country, to get people to smoke less and less because of the health costs and health risks, we cannot forget about a lot of these farmers who, let's face it, their family incomes are based on this, so they need help. That is why I have been for a tobacco buyout in the past, to help these farm families. As they transition out of growing tobacco—maybe into other crops—they need help. I hope those of us on the Agriculture Committee will help them to do so. I think this amendment is a good amendment. It will tend to move us in the right direction on both fronts.

I say, in closing, in my estimation, the FSC bill needs this. The House approached it the wrong way. They put it on the backs of taxpayers, when it

ought to be paid for by the manufacturers, which I assume would pass the cost on to users of tobacco. That is the way it ought to be done. That is the way we had agreed upon doing it prior to the House adding that amendment.

So I say the conference committee must adopt the approach that insists on combining a strong FDA regulation with an industry supported buy-out for tobacco farmers unlike the approach the House took by putting the buy-out on the backs of the taxpayers and completely disregarding FDA regulation.

So again, this amendment moves us in the right direction, both to help a lot of family farmers but also to help our kids, to help future generations so they will not be bombarded with this kind of phony advertising we are seeing from the tobacco companies.

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

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I guess it is only in the Congress that we can have one bad bill that cannot be passed on its own, and we can add to that another bad bill that cannot be passed on its own, and, lo and behold, we can have two bad bills that you would think would not have a dog's chance of passage, and here we are on the verge, I am sure, of passing this amendment.

I do not know how the quotas need to be paid out, and how much people ought to get, but we really need to spend some time on it. It was basically suggested to me recently that we ought to be thankful this bill started out at \$18 billion in buyout costs and that now it is only \$13 billion. We are supposed to say thank you for saving us. But I wonder how we started out at that figure to begin with.

Mr. President, I ask to be notified when I have used 5 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. SESSIONS. Mr. President, the chairman of the Committee on Health, Education, Labor, and Pensions, Senator JUDD GREGG, has worked very hard on the tobacco regulation issue. He has had hearings. He has studied it. His staff has worked on it. Members of the committee have been engaged in it. His ideas have been completely bypassed in this amendment that is going forward today.

Senator MIKE ENZI is a champion of small business, who has spent a lot of time dealing with small convenience stores and working with them on their problems. The breadth of this language they feel very strongly about. He had amendments and some ideas to fix that. All of that has been bypassed.

The trade bill is a critically important bill. We want to see that pass. It is just too typical of how we have to do business or feel we have to do business that the bill gets these two pieces of legislation—neither one of which has been thoroughly considered and effectively analyzed—attached to it. I don't believe it is about public policy, and it is something we ought not support.

They say they are going to tax the manufacturers. I can understand some of my colleagues on the other side of the aisle believing that is not a tax on consumers, but everybody knows a tax on the manufacturer drives up the cost of the product and is, in fact, a tax on the people who consume the product. We might as well put it on the cigarette package so the citizens will know how much the Federal Government has made them pay extra for the cost of the product they wish to consume.

I do not favor tobacco. I believe it is a deadly product. We ought to eliminate it in any way we possibly can in a reasonable way. But I also believe in freedom, and I know that there are people who believe that they have a right to smoke and have been given that right. To just exorbitantly continue to exercise more and more of our ability to put taxes on it is not a good idea.

The regulations in the FDA bill are very troubling. We know there was a lawsuit over this issue sometime ago, and the courts ruled that the FDA did not have the power to regulate tobacco. As a result of that, we now come back with this legislation.

I know there are some good people involved in this, wanting to see this bill pass for various reasons. One group is absolutely committed to increased regulation of tobacco, and they don't care if we spend \$50 billion on the buyout. Another group wants a big buyout, and they don't care what kind of regulations we put on convenience stores or on the sale of this product.

The net result is an unhealthy deal for public policy in America. I wish we had more time to get into it. I am told that the cost of the buyout per acre is \$20,000. I know Senator LOTT has some fine farmland in Mississippi. I don't know how much he could buy at \$20,000. It would be more than one acre, I am sure. He probably could buy land in Jackson, MS. I am just kidding.

I think we are moving in the wrong direction. I want to be on record as objecting to this process. I am sorry that it was sprung on us this way. It is adding too much. We should not allow this to happen. I hope we can make this thing better as time goes by.

I yield the floor and reserve the remainder of the time for this side.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, are we still operating under the 3-hour time agreement with regard to the tax bill and the tobacco issue?

The PRESIDING OFFICER. That is correct. The opposition has approximately 6 minutes remaining. The proponents have no time.

Mr. LOTT. Mr. President, I yield myself such time as I may consume. I am not sure whether I could be considered pro or in opposition to in this particular case, but I do want to be heard on the broader issue and also on the tobacco provisions.

I begin by congratulating and expressing my appreciation to leaders on

both sides of the aisle for finally coming to an agreement on a process that will get us into conference on this important legislation. It is unfortunate that it has been delayed for weeks. We should have been in conference a month ago or more. Some of the demands about how we would go to conference or what would happen in that conference have been very inappropriate. One can't preordain what will come out of a conference. They can't say that any one person will determine whether a conference is reported, whether it is a leader or anybody else. But this issue is so important that we need to go into conference. It is about some important tax provisions that will help manufacturing, service, and our high-technology businesses and workers.

It is a way to deal with a problem we have caused by a ruling by the World Trade Organization saying that our tax provisions, our alleged subsidies, were not in compliance with WTO, and we are being penalized in an increasing amount each month on a lot of American products because we have not dealt with this issue. We should have dealt with it a year or two ago, but at least now we will have an opportunity.

Without rewriting the history, I think we need to get this bill into conference. We need to deal with this problem caused by the World Trade Organization's ruling, and we need to deal with the funds that are available because of that in a way that will help job growth and the economy.

This is all well-intentioned. I have been pushing to go to conference. I must say, I am very worried about what is going to come out of conference. This bill and the one from the House have acquired a lot of barnacles. If you allow enough barnacles to be attached to the hull of a ship, it will sink. This one is in real jeopardy of sinking.

First of all, as has become our pattern in the Congress, we are greedy. A bill that should be revenue neutral or should be somewhere around \$50 billion has become—I don't know how much—\$150 billion. How far is it going to go? The distinguished chairman of the Budget Committee tells me it is \$170 billion. We do have a little deficit. Anybody notice that?

Here we have taken a good opportunity to do something good that would be responsible in dealing with trade practices and protecting our own producers and creating jobs, and we are going to distort it way out of proportion. It has become a pretzel. I went along with adding the energy tax provisions to the bill. I didn't think that was the way to do it; I said so at the time. But it was at least the tax provisions, and it gave us some way to maybe deal with the energy needs of the country. But that was the first of the barnacles that was added.

And then in the House, I saw on the media this week where all these provisions have been added that will benefit

General Electric, that would give them additional tax breaks and will contribute probably to more jobs going overseas. How did that happen? Did somebody miss that? Did it get in there without anybody being aware of it?

Then the House added about \$10 billion for a tobacco allotment buyout. I assumed that was just an aberration in the House and that Democrats and Republicans would say they are not going to do that and we would get back to the basics of this bill. Now the Senate is going to join the stampede. We are going to regulate tobacco with the FDA, and we are going to have a buyout even bigger. I guess this alternative would be paid for by the industry. What in the world is tobacco policy, whether it is the amount of the allotment or the FDA, doing in this bill?

I am very worried that this bill is going to—and we are adding to the confusion—sink under its own weight in conference, and our companies and producers in America will be hit with an ever-increasing import fee every month.

Here is what we ought to do. We need to get a grip, cut out all of this unrelated stuff in this bill. Some of it I would have to sacrifice, too. I want an energy bill. This may be the only vehicle leaving town. I would like to put the entire energy bill, with some modifications that may be necessary, in this bill. But this bill, on its own, needs to be done. It needs to be done clean. It needs to be cut by probably two-thirds. And we need to get all the undergrowth that has been added to it off of it.

If we could do that and still find a way to get an energy bill, a highway bill, and a jobs growth bill done without all of the adds that are costing billions of dollars, we could go out of this session with our heads held high. But we are setting up a box that we may not be able to get out of.

I oppose this proposal on tobacco. I am very much concerned about how we are going to get through conference and get this bill down into the \$50 billion range where it should be instead of \$170 billion. We have all contributed to the problem. I plead guilty. We all have. But now is the time where generally, when you go to conference, you get over your temporary political fantasies and you do the right thing. You produce a bill that can pass and will help the economy.

Will we do it this time? I am sure that the distinguished chairman of the Finance Committee, who enters the Chamber smiling, can work miracles in this conference. I am expecting it and looking forward to supporting him in that effort.

With that, I yield the floor.

The PRESIDING OFFICER. All time has expired.

The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I ask unanimous consent to speak on the FSC/ETI bill for 10 minutes.

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

Mr. NICKLES. Mr. President, most of the speakers have been proponents. I compliment Senator DEWINE and Senator MCCONNELL for getting included this deal. I want to make two or three comments. One is on the process. The FDA bill we are now going to vote on—I venture to say nobody knows much about it because, and correct me if I am wrong, it has not been reported out of any committee. The very extensive bill, very important bill, has 155 pages of regulations and not 1 paragraph that says the FDA has regulatory authority over tobacco. It is a lot of regulatory statute proposed to be the law of the land.

There is a tobacco buyout provision that costs \$12 billion. I have yet to see the language. Neither of these bills was reported out of committee, and neither should have had a time agreement. I wasn't consulted on a time agreement on these particular amendments. All of a sudden, we find out at 9:30 there is a time agreement and we are talking about spending \$12 billion—and, oh, yes, you cannot amend it. I am kind of offended by that.

Senator GRASSLEY used to say we should have some kind of limitation on payments. We find out, according to some analysis, some farmers will make millions of dollars on the tobacco buyout. I would say, wait a minute, if we are going to buy out a quota—a quota is a Government benefit basically which we have given and which has benefited a few. We find out that 85 percent of the quotas go to nonfarmers. I would like to have the benefits go to the farmers. We don't have a chance to offer that amendment. I would like to say the benefit should be going to tobacco farmers. We don't have a chance to offer that. We have an FDA bill before us. Senator GREGG has a proposed amendment; I would like to offer that or consider it. We don't have a chance to do that. We don't have a chance to offer one amendment. Yet we are saying let's add this to the FSC/ETI bill.

I agree with Senator LOTT, who says we should pass the FSC/ETI bill, and we are held up for weeks after we already passed it on the floor of the Senate.

The House, in my opinion, made a mistake. The House made a mistake when they passed FSC/ETI. They put in a \$9.6 billion tobacco buyout as part of their package. Now we are getting ready to say that two wrongs make a right. Since they do it, we will do it, too, except where they spent \$9.6 billion, we will spend \$12 billion. At least, to their credit, they got out of the tobacco program when they spend \$9.6 billion. They are going to pay the tobacco farmers and get out of the Federal price support program for tobacco. But we don't do that on this proposal. We are going to spend \$12 billion on supposedly buying out quota. Guess what. At the end of the day, you still have a tobacco program, a price support program. That is ludicrous. What a waste of money. We are going to

spend \$12 billion and not end the program? I cannot imagine doing that. I cannot imagine that we would pay people for a quota, most of whom are not farmers, and then we are going to continue a price support program at the end of the day. That is in this bill. It is all tied together. You don't have a chance to break it apart, don't have a chance to amend it. This is very offensive to the legislative process. It is very offensive to the taxpayers.

The regulatory authority I have heard many people bragging on is very broad. For example, I don't know if people are aware of it, but maybe we want to give the Secretary of HHS a blank check to regulate and/or outlaw tobacco. In reading on page 45, it says:

The Secretary may, by regulation, require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to and the advertising of and promotion of the tobacco product, if the Secretary determines such regulation will be appropriate for the protection of public health.

The Secretary can do anything he darn well pleases, including banning tobacco, I guess. I am no fan of tobacco. Frankly, I have had family members who got cancer as a result of it. It almost took my mother's life—lung cancer, emphysema, all probably directly related to tobacco. I had a brother with serious cancer. I am no fan of tobacco. I don't use it. I don't want my kids to use it. I urge people not to use it. I question having a new Federal program where we are going to have \$12 billion to buy people out of their quotas, including most of the people who don't even grow tobacco, and then we are going to say, yes, at the end of the day, we are going to continue the tobacco program, and then we are going to put it on a FSC/ETI bill where it doesn't belong.

We need to pass the tax bill and resolve conflicts with the WTO so we can eliminate surcharges and tariffs on products coming into the U.S. We need to do our work.

This tobacco provision, which has not had a hearing in the Agriculture Committee or in the HELP Committee, and hasn't had a hearing on either FDA or a markup of the appropriate legislation before the appropriate committees—all of a sudden we are getting ready to pass legislation that is going to make, according to one estimate, over 500 people millionaires—millionaires—and we don't even have a chance to amend it. I wonder how many of my colleagues are aware of that. I wonder how many have a clue what is in this proposal. I venture to say that very few do. Maybe the sponsors do. Maybe there was some deal cooked up last night. I don't know. I am looking at the size of that amendment and saying, Mr. President, that is pretty thick. I wonder how many billions of dollars are going to be spent as a result of this amendment without people really knowing what they are voting on.

I will vote no on the amendment. I urge my colleagues to vote no on this

amendment. If we pass this, there is going to be a tobacco provision in the House bill and the Senate bill, and that will make it difficult to delete in conference. As a conferee, I plan on opposing tobacco. I was going to oppose energetically having the House pass that as part of the FSC/ETI bill. It doesn't belong there. If we put a similar provision in the Senate bill, it more than likely will be there. I will tell you it may be too much of a load for that bill to pass conference. I can see all kinds of ways that this could bog down the conference totally, and we will end up having no bill. Who wins out of that? Certainly not the tobacco growers. Certainly not tobacco.

Some people allege that the regulations benefit one tobacco company at the expense of the others. I don't know. I just know this is a crummy way to legislate. This is not the way we should be doing business in the U.S. Senate. We should not be gumming up an already overloaded bill by including this provision.

I urge my colleagues to vote no on this amendment when we vote later today.

I yield the floor.

Mr. COCHRAN. Mr. President, I am pleased that we are finally able to proceed with this legislation and remove serious barriers to American agricultural exports.

Since the World Trade Organization ruled against the United States over our Foreign Sales Corporation and Extraterritorial Income tax rules, we have had ample time to address this issue. In fact, the Senate Finance Committee reported legislation that would bring the United States into compliance with our trade obligations on October 1, 2003.

European Union tariffs on our farm exports have steadily increased, making them increasingly less competitive in international markets. The EU retaliation list includes about 400 agricultural, food and forest product tariff lines of imports from the United States. Proceeding with this legislation will help us regain market share and export opportunities that will have added benefit for truckers, rail lines, shippers and related businesses. This will help the export of U.S. agricultural products to hit a projected record of more than \$60 billion this year.

In addition, I am pleased that an agreement could be reached to allow for the consideration of a tobacco buyout amendment to this legislation. I commend our members of the Senate Agriculture Committee who have worked diligently to reach this point. Particularly, Senators MCCONNELL, CHAMBLISS, DOLE and MILLER and their staffs have brought us to this point through careful negotiation.

Over the past decade, tobacco producers have seen their tobacco quota cut in half and resulting in an economic crisis among tobacco-dependent communities. This buyout provision will provide the estimated 57,000 tobacco farms in the United States the

necessary resources to continue their livelihood or transition into more diversified operations. The amendment is also a move in the right direction in eliminating the archaic tobacco quota system. It is my hope that this important provision will enable tobacco producers the ability to better compete in a free market system.

As chairman of the Committee on Agriculture, Nutrition, and Forestry, I look forward to working with my colleagues in both the Senate and House of Representatives to ensure that farmers in the United States who choose to continue to grow tobacco will have that opportunity. I urge my colleagues to support this amendment and the underlying bill.

Mr. ROBERTS. Mr. President, I discuss the amendment we are about to vote on. Let me state at the beginning: I am supportive of a tobacco buyout for our tobacco producers and quota holders, and I will work to help them achieve this goal. However, it should be a buyout without strings attached and that will truly end the program.

Unfortunately, this legislation does not achieve this goal. While the bill does provide a buyout, it then implements annual restrictions on acreage and production. I have previously stated on this floor my opposition to acreage and production controls for all crops and commodity programs. This program should be no different.

I am also concerned that these acreage controls may not be legal under our World Trade Organization commitments. If these controls would indeed be declared illegal under our commitments, we could be subject to a ruling that would put us far above our WTO agriculture spending caps. This would not only have significant impacts for tobacco and this program, it could have a significant impact on all our commodities and farm programs. I cannot support voting for this proposal and putting all our other commodities at risk.

If these provisions were removed, I believe there would be no question that this proposed program would be WTO legal, and I would have no trouble supporting the buyout. I will let my colleagues that serve on the conference of this bill make their own decision regarding FDA regulation and the funding mechanism for the buyout. But, I urge them to support the House language implementing a buyout with no future acreage and production restrictions being put in place.

Mr. FEINGOLD. Mr. President, I will support the amendment offered by the Senator from Ohio, Mr. DEWINE, and the Senator from Massachusetts, Mr. KENNEDY, but in doing so I also want to note my concern about the potential for unconstitutional infringement on commercial speech that the amendment may engender in the regulations it directs to be promulgated to regulate tobacco advertising. There is little doubt that the health of our citizens, and in particular the health of our chil-

dren, are a substantial governmental interest. And given that substantial interest, some regulation of tobacco advertising may be appropriate.

Further, the amendment appropriately sets forth some safeguards that strive to prevent unconstitutional infringement on commercial speech, and I commend the authors for including that sensible protection. Moreover, in the wake of the Lorillard case in 2001, we now have a somewhat clearer legal standard in this area that can guide these proposed regulations.

But the rights spelled out in the first amendment of our Constitution are so fundamental to our liberties that we must be especially sensitive to the potential for Government overreaching. For that reason, while I will support the amendment, I will also be monitoring this aspect of the amendment closely as regulations of tobacco advertising are developed and implemented.

Mr. HATCH. Mr. President, I address the DeWine-Kennedy amendment to H.R. 4520, the American Jobs Creation Act of 2004.

Let me say at the outset that I will vote for this proposal tonight, because I am fully supportive of measures to end tobacco use in the United States. I can think of few public health dangers worse than tobacco, and this is especially true for young people. Certainly, in my home state of Utah, I hear time and time again from concerned parents and health advocates who point out the devastating health consequences of tobacco use.

So, I think it is critical that we go to conference on this issue. However, my support for the amendment is not without some serious reservations, and I hope they can be addressed and corrected in conference.

My first concern is that the committee of jurisdiction, the HELP Committee, should have had the opportunity to consider fully the text of S. 2461, the Family Smoking Prevention and Tobacco Control Act, which is included in the DeWine-Kennedy amendment, before it is brought to the floor for this vote.

Having been the chairman of that committee for several years, I know full well the complexities of the Federal Food, Drug and Cosmetic Act. Three hours of debate are not enough time to consider legislation that makes such dramatic changes to current law.

I have only had a short time to review this legislative language but I believe there are several troubling components. For example, the tobacco company marketing provisions alone in this amendment raise serious 1st Amendment issues, as do the provisions granting authority to state and local governments to impose specific bans or restrictions on the time, place and manner of tobacco advertising. I would have preferred we have a more lengthy debate on about the implications of these provisions before we vote.

I also think we need to give serious study to the drafting of the language providing the FDA with the authority to regulate tobacco products. This area of the law is extremely complex. In addition, I must point out that the FDA already has been charged with numerous responsibilities and has been criticized time and time again for its inability to meet statutory requirements due to funding constraints. In fact, just yesterday, I held a hearing in the Senate Judiciary Committee on the safety of imported drugs where FDA officials told members of my Committee how difficult it would be for them to ensure the safety of imported drugs because the agency is already strapped for resources. How can we expect the FDA to take on new responsibilities without supplying the agency sufficient funding for performing its current duties?

In closing, let me address the tobacco buyout provisions.

Mr. President, I am all for measures to reduce our Nation's dependence on tobacco, and measures to encourage less tobacco production are an important part of that equation.

I am encouraged that the amendment we are considering tonight does not use taxpayer funds to accomplish the buyout. That is an important point. I also recognize that the program will help get the Government out of the farming business while making temporary assistance available to farmers as they adjust to the free market. That being said, questions worthy of serious consideration have been raised about where this assistance will go, and I think we need to study that more.

Mrs. FEINSTEIN. Mr. President, I rise today to support the amendment offered by my colleagues Senators DEWINE and KENNEDY. The amendment they have offered today is the product of many years of hard work and leadership.

The amendment combines legislation to empower the Food and Drug Administration, FDA, to regulate tobacco products with Senator MCCONNELL's tobacco buyout bill.

I believe this is the right approach. Last week, seven of my colleagues and I wrote to Senators FRIST and DASCHLE to express our view that no tobacco buyout plan should move ahead if it does not include meaningful and effective FDA oversight of tobacco.

The 5-year, \$9.6 billion tobacco buyout provision in the House FSC/ETI bill is not only worse for tobacco growers than the McConnell bill, but it does nothing to protect public health and to reduce tobacco's tremendous toll in health, lives and money.

The DeWine-Kennedy amendment gives the FDA the authority to: Restrict advertising and promotions that appeal to children; stop illegal sales of tobacco products to children; require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive; prohibit unsubstantiated health claims about so-

called "reduced risk" tobacco products that would have the effect of discouraging current tobacco users from quitting or encouraging new users to start; and require the disclosure of the contents of tobacco products and tobacco industry research about the health effects of their products.

This amendment is supported by the American Cancer Society, the American Heart Association, the Campaign for Tobacco-Free Kids, and the American Lung Association.

Tobacco use is the leading preventable cause of death in the United States. Every year in America, tobacco use kills more than 400,000 people and costs our Nation more than \$75 billion in health care bills. Today approximately 4,000 children under age 18 will try smoking for the first time and 2,000 children will become regular smokers. Smoking is the cause of one-third of all cancers.

Unless we act to pass FDA regulation of tobacco, this number will only get worse.

During my time in the Senate, I have become very involved with cancer. I am the co-chair of the Senate cancer caucus and the vice-chair of C-Change, formerly the National Dialogue on Cancer, which is chaired by former President and Barbara Bush.

The cancer community is united in the belief that the single most important preventive measure is to place tobacco products under the regulatory control of the Food and Drug Administration. I stand behind the cancer community and express the same belief.

I firmly believe that cancer cannot be conquered without addressing smoking and the use of tobacco products.

Smoking results in death or disability for over half of tobacco users, according to the Centers for Disease Control, CDC.

Over the past two decades, we have learned that tobacco companies have manipulated the level of nicotine in cigarettes to increase the number of people to their product.

There are more than 40 chemicals in tobacco smoke that cause cancer in humans and animals, according to the CDC. Tobacco smoke has toxic components, as well as tar, carbon monoxide and other dangerous additives.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. I believe that empowering the FDA to regulate tobacco will help do that.

The U.S. Surgeon General and the Centers for Disease Control and Prevention have unequivocally demonstrated that, for example, antismoking campaigns can reduce smoking, a major cause of cancer.

California is a good example. My State started an aggressive tobacco control program in 1989 and throughout the 1990s. As a result of California's aggressive approach, is the first State in the Union to see a decline in lung cancer among women, as a result of the State's active prevention efforts.

This amendment will provide meaningful regulation by the Food and Drug Administration of the content and marketing of tobacco products, especially the addicting and carcinogenic components.

I am pleased to note that even the Philip Morris companies has acknowledged the need for FDA to regulate tobacco.

It is long past time to reduce the addictive nature of cigarettes and curtail the marketing of these products to young people. This amendment gives FDA the power to regulate tobacco products' content, design, sale, and marketing.

I am a strong supporter of this amendment. However, I will not support any final proposal that weakens the DeWine-Kennedy amendment or contains a tobacco buyout provision that is fully funded by general revenues.

Mr. ENZI. Mr. President, I cannot support this amendment that would place the regulation of tobacco products under the jurisdiction of the Food and Drug Administration.

The question is not whether the Federal Government should regulate tobacco products. It should and it does already, through a variety of agencies. The regulations are based on a variety of laws that Congress has passed over the past few decades.

We have Federal laws to require health warnings on all packaging and in all print and outdoor advertisements. We have prohibited the advertisement of tobacco products on television and radio. We require the Secretary of Health and Human Services to report to us every 3 years on research findings about tobacco and addiction.

We also require States to prohibit the sale of tobacco products to anyone under age 18. States that do not comply with this requirement risk the loss of Federal block grant funding.

The question again is not whether Federal regulation of tobacco products is appropriate. It is whether the FDA should be responsible for a broad new regulatory scheme that would cover everything from the manufacture of smokeless tobacco to the sale of cigarettes at the corner store.

At a time when the FDA's challenges have never been greater or more significant, the last thing we need is to give the FDA a huge task that will draw attention and focus away from its already considerable responsibilities.

The FDA is already overworked and underfunded. We ask the FDA to be responsible for so many things: ensuring that new drugs and medical devices are safe and effective, safeguarding the Nation's blood supply, regulating the manufacture and distribution of food additives and drugs that will be given to animals, and increasing the security of our food supply. Consumer and industry groups regularly complain that the FDA's budget is inadequate and its mandate is too broad to enable the

agency to manage its current workload.

Yet here we are, proposing to give the FDA another huge responsibility, for which it will have to create another huge bureaucracy within its already sprawling structure. Now, more than ever, our families and children need to know that the FDA can meet its current obligations.

I recognize that a number of important voices in the public health community are calling for FDA regulation of tobacco products, but I fail to understand why regulation by this particular agency is so critical.

Those who support FDA regulation of tobacco say that they are not interested in banning cigarettes or other tobacco products. This makes no sense to me. With everything we know about the dangers of tobacco use, how would the FDA arrive at any other conclusion but to ban tobacco products?

One of the purposes of the bill would "vest the FDA with the authority to regulate the levels of tar, nicotine, and other harmful components of tobacco products." Well, we know that nicotine is an addictive drug and by itself may cause health problems. And we also know that tar and other chemicals in tobacco products are very harmful to our health.

How would the FDA remain true to its mission without requiring manufacturers of tobacco products to reduce the level of nicotine to zero? Reducing the level of the addictive drug in tobacco products would effectively result in a ban of tobacco products—after all, how would a smoker get their "nicotine high" from a nicotine-free product?

Having said that, I believe an outright ban on tobacco products is impractical. If I thought that banning cigarettes would stop people from smoking, I would say let's pass a law and make it so. Banning cigarettes will not stop people from smoking, though, just like prohibition failed to stop people from drinking.

So if we are not going to ban tobacco products, then what is the point of FDA regulation of tobacco? We already have the necessary tools to address the other concerns that some use to justify giving the FDA this new power.

For instance, the Federal Trade Commission has broad authority to prevent false or misleading claims for consumer products, and Congress has given the FTC the explicit authority to oversee the labeling and advertising of tobacco products.

For health or safety claims in advertising, the FTC generally requires a high level of substantiation, including competent and reliable scientific evidence. The record shows that the FTC has not hesitated to exercise its enforcement authority to prevent or correct false or misleading tobacco product advertising, including express or implied claims about exposure and other health-related issues.

So, if a cigarette manufacturer were to promote a "reduced-risk" product

with misleading advertising or unsubstantiated claims, I am confident that the FTC would take decisive action against them. In fact, researchers supported by the National Institutes of Health are already studying "reduced-risk" products with a skeptical eye, providing the type of independent scientific review that goes well beyond anything the FDA customarily produces on its own. This suggests to me that manufacturers of "reduced-risk" products are not going to be able to count on the Government's silence in response to any advertising claims they may make.

I would rather have the FTC continue its vigorous enforcement against dangerous or deceptive advertising claims rather than set up a regulatory scenario under which the FDA puts its "stamp of approval" on a reduced-risk cigarette. Most Americans see the FDA as the protector of the public health, yet everyone agrees that smoking kills, and that there is no such thing as a "safe" cigarette. The FDA would send a mixed and confusing message if it were suddenly to begin approving tobacco products that would still kill the user, just at a slower pace.

Another argument for FDA regulation of tobacco products is that we need to involve the FDA if we are going to crack down on illegal sales of tobacco products to children. Right now, this job belongs to State and local governments, and I believe it should stay that way.

Every State has laws against selling tobacco to people under the age of 18, so the issue is enforcing these laws, not creating new ones. And these current laws are working. The number of kids who have purchased tobacco in retail stores has dropped by 50 percent since the implementation of the Federal Synar amendment in the late 1990s.

Working together with States, communities and retailers, we already are making great strides in preventing kids from purchasing tobacco. Our current efforts are working, so it makes no sense to change horses in mid-stream and bring the FDA into every convenience store across America.

To reduce underage access to tobacco, we ought to build upon the successes of the Synar amendment. This Congress is due to reauthorize the agency that oversees the implementation of the Synar amendment. This gives us the perfect opportunity to consider how the Synar amendment is working and what we could do to make it even more effective.

Combining greater education with tougher enforcement is the answer to tobacco prevention. The States that take the most comprehensive approaches to tobacco prevention, particularly those that work closely with local programs and coalitions, have achieved some of the best records, in preventing the initiation of tobacco use by kids.

We should hold these States out as models for others, instead of inserting

a new Federal bureaucracy into the equation. Our Federal efforts should support our communities by providing tools and information for adults on the dangers of tobacco use, teaching our kids about these dangers so that they don't start using tobacco, and on enforcing the laws we already have on the books. But our local communities and states should take the lead.

Stopping kids from smoking will require continuing collaboration between State governments, local governments, community organizations, academic institutions, and Federal agencies like the FTC and the Department of Health and Human Services. And this partnership is working. It has successfully reduced the prevalence of smoking in the United States by 22 percent from 1990 to 2002. It also has reduced the prevalence of smoking by high schoolers by 22 percent from 1997 to 2001.

These numbers show that we are making progress. Let's not mess with success. Let's stick with what is working.

I am not a fan of tobacco, but I am going to vote against giving a huge new responsibility to the already overburdened FDA. Giving tobacco regulation to the FDA will not stop adults from smoking, and I doubt whether the FDA would do any better at keeping cigarettes out of the hands of kids than our States and communities are doing.

I reject the notion that the way to show you're "for kids" and "against big tobacco" is by voting for the creation of a new and unnecessary bureaucracy that would operate under a mandate that is simultaneously too broad and too vague.

This vote is not a choice between kids and big tobacco. This vote is about the best way for the Federal Government to continue regulating tobacco products.

I will oppose this amendment because I believe the best role for the Federal Government in tobacco prevention is to focus on education and enforcement. We already have the laws and regulations in place. Let's use them to the fullest before we create new ones.

Mr. DASCHLE. Mr. President, for several years, those in tobacco country have been working to enact a program to transition tobacco farmers out of the current tobacco quota program. At the same time, many of us have been working to give the Food and Drug Administration regulatory authority over tobacco. Today we have the opportunity to pass legislation that does both.

In the finest tradition of the U.S. Senate, this amendment embodies compromise that represents a careful balance of often disparate and competing interests. While no member got everything they wanted, each participant has won important victories that made this proposal stronger.

Senators from tobacco areas have been pushing for a tobacco buyout, to transition tobacco farmers from the antiquated quota system. Being from a

rural State, I understand the economic engine that agriculture provides rural America. And, I appreciate the struggles that tobacco farmers have faced in recent years.

The tobacco buyout included in this amendment provides tobacco farmers and quota holders important economic assistance as they transition from the current tobacco quota program to the free market. The buyout has several features that are superior to the House-passed buyout bill. First, the buyout is paid for through assessments on the tobacco manufacturers instead of by the taxpayers. Second, the legislation limits the production of tobacco to traditional growing areas. This ensures that tobacco farmers who choose to continue growing tobacco do not have to unfairly compete with startup tobacco production in other parts of the country. Third, this legislation provides impacted states with economic development grants to help diversify tobacco dependent economies.

On the Democratic side, both Senator EDWARDS and Senator HOLLINGS have been working tirelessly on tobacco for several years. And, Erskine Bowles has personally called scores of my colleagues to let them know how important a buyout is, and how important it was to get this done. In large part, his efforts to educate members about the effects the quota cuts have on farmers and communities helped ensure passage of the buyout today. His advocacy also helped ensure an additional \$50 million in economic support for North Carolina was included in the bill.

Many of us also feel very strongly that we need to provide FDA with authority to regulate tobacco. Each year, I am visited by South Dakota youth advocates who volunteer their free time to discourage tobacco use by their peers. They are some of the most impressive young people you could hope to meet. And their cause couldn't be more important.

In the United States, over four million high school students are current or past smokers—29 percent. Thirty-three percent of South Dakota high school students smoke. In South Dakota alone, 5,100 kids try cigarettes for the first time each year. Of those, 2,300 South Dakotans under the age of 18 become regular, daily smokers each year. These numbers are alarming because it is truly a matter of life and death.

Four-hundred thousand people die each year from their own cigarette smoking. Forty thousand die because other people smoke. In South Dakota, 900 children have lost at least one parent to a smoking-caused death. And, in addition to the human cost, there are significant financial costs. The total public and private health care expenditures caused by smoking in this country total over \$75 billion each year. Medicare alone has over \$20 billion each year in smoking-related expenditures.

Today, we are considering legislation to address this critical public health

need. I thank Senators DEWINE and KENNEDY for their hard work on this issue. The bipartisan bill we have before us would give the FDA the authority to restrict tobacco advertising, particularly advertising that targets children. Under this bill, the FDA could prevent tobacco sales to children and limit cigarette sales to face-to-face transactions in which age can be verified. The bill calls for stronger warnings on packaging and allows the FDA to prevent cigarette manufacturers from misrepresenting the facts. It would also allow the FDA to reduce or remove hazardous ingredients from cigarettes, when feasible, in order to help those who are addicted.

The FDA authorities provided by this amendment are critical to reducing smoking, particularly among our children. And the provision to assist tobacco farmers are critical to remedy a growing problem. This bipartisan amendment represents a true compromise and I urge my colleagues to support it.

Mr. HARKIN. Mr. President, we have a chance today to address one of the most significant public health threats of our lifetimes—tobacco use. For my entire tenure in Congress I have been working to protect our children from big tobacco and the horrendous health risks associated with the deadly habit. It was in 1977 that I first introduced legislation calling for repeal of the tax deductibility of tobacco advertising and marketing so taxpayers would not have to subsidize billions to promote smoking. Back in 1998, I introduced the KIDS Deserve Freedom Act to give FDA authority to regulate tobacco and more specifically set up a plan to cut the number of kids who start smoking in half. More recently, I introduced the HeLP America bill to reform our health care system to focus more on prevention and wellness. It would require tobacco companies to reduce teen smoking rates or instead face a stiff financial penalty.

Unfortunately, victories in the tobacco wars have come few and far between. But I am more hopeful now than ever that we can pass a comprehensive plan that would once and for all change how this Nation deals with tobacco and dramatically cut the number of our kids addicted to this deadly product. More than 400,000 Americans die of tobacco related illness at a cost of over \$100 billion. And the tobacco industry has been engaged in a systematic campaign of distortion and deceit to hook kids and hide the facts from the American people.

Our goal is to be on the Senate floor 3 years from now announcing that, indeed, child smoking has been cut in half.

The time is ripe for regulation. Every day, 4,000 children under age 18 start smoking, of which 1,000 will ultimately die of smoking-related diseases. Almost 90 percent of adult smokers started using tobacco at or before age 18; the average youth smoker begins at

age 13 and becomes a daily smoker by age 14½.

We cannot wait another day to end these senseless and preventable statistics. The Dewine-Kennedy-McConnell amendment will once and for all give the FDA the authority they need to regulate this industry while at the same time give tobacco farmers the ability to get out. I want to be clear, though, there has already been a tremendous amount of compromise to get to this deal and this FDA authority/buyout combination must be kept together for any FSC conference to occur. But the time has come for desperately needed regulation.

Five years after the multi-billion-dollar settlement with big tobacco, I think we can all agree that we still have a great deal of work to do to protect our Nation's children from tobacco. While the tobacco settlement prohibits television and billboard marketing of tobacco and direct advertising to children, the end result has been less than perfect.

The tobacco companies have perceived kids as young as 13 years of age as a key market. As an RJR Tobacco document put it, "Many manufacturers have 'studied' the 14-20 market in hopes of uncovering the 'secret' of the instant popularity some brands enjoy to the almost exclusion of others. . . . Creating a 'fad' in this market can be a great bonanza."

The tobacco industry spent an estimated \$10 billion on advertising and promotion in 2001. That is \$30 million every day. This number is more alarming in light of the fact that this \$11 billion is a 67 percent increase in spending from 1998 when the settlement took effect.

I suppose the tobacco industry can respond by saying that none of this spending was directed specifically at young people. But we do know that in 2000, \$60 million was spent on advertising in youth-oriented magazines. We know that, while promotional items such as t-shirts, backpacks, and CD players are ostensibly for smokers over 21 the end result is that 30 percent of kids 12 to 17 years old own at least one of these promotional items. This is frightening because students who own a promotional item are 4 times more likely to be smokers than kids who don't own these items. Even though we don't see tobacco packaging as blatant as Joe Camel, the industry has become more sophisticated in their approach. Let's take a look at some of these products. You tell me a hip-hop picture on Kool cigarettes is not directed at kids.

A package of Liquid Zoo cigarettes looks more like a candy package than anything.

And there is more. Big tobacco is using promotions and more creative marketing strategies but they are also using slicker tactics than that. Take for example a study that found 50 percent of tobacco retailers had tobacco ads at young kids' eye level. That is to-

bacco marketing at three feet or lower. Twenty-three percent of these tobacco retailers had cigarette product displays within 6 inches of candy. How can we say that this is not marketing directed at our kids? These are the kinds of tactics that are unconscionable and must be stopped. The FDA must be given the necessary authority to regulate tobacco.

And what about disclosing ingredients? Tobacco can make claims that their cigarette is safer, and we have no way of proving that.

Today, the Senate will consider an amendment that is critical to the health of both the kids and the adults in our country. This amendment would give the Food and Drug Administration the authority to protect ourselves from the dangers of starting smoking. This amendment would give the FDA the authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco in order to stop tobacco company marketing practices that target children and mislead the public. It would also give the FDA the authority to crack down on vendors who continue to sell cigarettes to kids.

HHS Secretary Tommy Thompson testified just this morning that over \$150 billion was spent on tobacco-related illness last year. That is only the monetary cost of this lethal product. Forty-seven million Americans smoke, and 400,000 people a year die because of it. Smokers have a one in three chance of dying from smoking-related conditions. This is not the future that we want to doom our children to. I hope my Senate colleagues will join me in protecting the health of our youth by supporting this important amendment.

This quota buyout is far from perfect, but I can go along with it as long as it is inextricably bound together with the FDA authority. It is absolutely essential that these two components remain tied together in any final legislation that is sent to the President for signature.

The quota buyout has been sought by tobacco growers and by the tobacco companies. Basically, they say that the current system, begun in the Great Depression, is out of date. It cannot accommodate the present-day global market in tobacco and tobacco products.

A new system without quotas will be easier for tobacco growers and the tobacco companies to operate under. The buyout of quota will help farm families who face a bleak economic future in tobacco farming make the transition to other opportunities. Clearly, ending the quota and price support system will lower the cost to the tobacco companies of acquiring tobacco for manufacturing.

If we are giving the tobacco companies an easier system—a less costly system—in which to procure tobacco and conduct their business of manufacturing and selling tobacco products, then it is absolutely critical—even more critical—that the FDA have basic

authority to regulate the marketing of tobacco to the public—and to children most importantly.

It is also essential that the quota buyout be paid for through assessments on the tobacco companies, as it is in this amendment. That is so for several reasons. In essence, the funding approach in this amendment is a continuation of the principle that has been in effect for over two decades, called the No-Net-Cost Tobacco Program.

The No-Net-Cost principle—although it has not been followed 100 percent—is that the taxpayers do not bear the cost of operating the tobacco quota and price support loan program. By the same token, if we are ending the tobacco quota and price support loan program in this amendment then the taxpayers should not be forced to bear that cost. If the taxpayers pay for the quota buyout that would take our policy backwards and abandon the principle established, as I say, more than 20 years ago.

We have learned much in the intervening years since the No-Net-Cost principle was adopted in 1982 about the actions and behavior of the tobacco companies. In the face of the companies' infamous record, it would be a blatant travesty of justice to use taxpayer dollars now for the benefit of the tobacco companies through ending the quota and price support loan program.

In any case, the taxpayers don't have the money to fork over for a tobacco quota buyout. The House of Representatives has adopted a quota buyout spending \$9.6 billion of taxpayer money. In this time of record budget deficits, it would be irresponsible to saddle our children and grandchildren with another nearly \$10 billion in debt plus interest costs for years into the future. And it would be even more irresponsible to use taxpayer funds for that purpose when critically important farm bill programs for conservation, rural development, research and renewable energy have been cut.

One last point. This legislation should have been considered by the Committee on Agriculture, Nutrition and Forestry prior to floor action. It is unfortunate that something as significant as the elimination of an existing agricultural program and the creation of a new program did not benefit from consideration by the committee of jurisdiction.

I would like to turn my attention very briefly at this time to the issue of overtime. We are about to go to conference on the FSC/JOBS bill, and as we all know, our Senate version of that bill contains my overtime provision, which passed this body with 52 votes.

We voted in the Senate to ensure that any worker who currently has the right to earn overtime as a result of his or her job duties, would not lose that right under the Bush administration's new rules, due to take effect next month.

When we debated the new rules back in May, I and others argued that they

represented a shameful assault on the paychecks of millions of hard-working Americans. We were right. Earlier this week, three former Department of Labor, DOL, officials, who worked under Republican and Democratic administrations, released a report that detailed their assessment of the new rules. It states unequivocally that in every instance where DOL has made a change to existing rules, with the exception of the salary-level adjustment, it has weakened the criteria for overtime exemptions.

The portion of the rule that expands overtime eligibility for low-income workers by raising the minimum-salary threshold is a good step. My amendment allows that portion of the rule to go forward. I believe the salary threshold should be raised even higher than in DOL's proposal, to take inflation into account.

Also this week, the Economic Policy Institute, EPI, released its analysis of DOL's final rule, which found that 6 million workers will lose their right to overtime when the new regulations take effect. EPI's analysis of the administration's new rules include these findings:

Nearly 2 million administrative workers will lose overtime rights under a rule change that makes "team leaders" ineligible, even when they don't supervise others on the team.

A change in the definition of who is a "learned professional" will mean the end of overtime eligibility for about 920,000 workers without a college or graduate degree.

Overtime rights will end for about 1.4 million workers reclassified as executives under the new rules, even though they do little supervision and a great deal of manual or routine work, and they only recommend "changes in status" of other workers.

Others who will lose their current overtime rights under various provisions of the new law are: 130,000 chefs, sous chefs, and cooks (to be reclassified as "creative professionals"); 160,000 financial services workers; 117,000 teachers and computer programmers.

The stakes for workers—and for our economy—are high. Time-and-a-half pay accounts for about 25 percent of the total income of Americans who work overtime. I hope the conferees will retain our provision. Millions of American workers deserve an iron-clad guarantee that their overtime rights are safe.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. BAUCUS. Mr. President, I support the Kennedy-DeWine tobacco amendment to the JOBS bill. I believe that FDA authority must go hand-in-hand with any tobacco buy-out. I am pleased that we were able to reach this compromise. Although I was unable to cast my vote for this important amendment, I did want to be on the record in support of the amendment.●

Mr. INHOFE. Mr. President, we have repeatedly regulated tobacco consump-

tion because it is a real public health hazard and we need to make certain that people are aware of the risks they take in using it. Of course, that does not mean that any law that regulates tobacco is a good one. The amendment we are discussing would indeed not make good law. I would like to call your attention to troubling aspects of this current amendment that authorizes Food and Drug Administration, FDA, regulation of tobacco.

This amendment would create more bureaucracy and increase the size of government by giving the FDA more control over the tobacco industry. This increased bureaucracy will lead to the need for more funding and personnel to enact the new regulations. This amendment would give the Secretary the power to impose "restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health." Here are some further examples of the increased FDA authority: It would allow the Secretary to require warning labels to cover half a pack of cigarettes, even requiring colors, graphics, and formats.

It would give the Secretary authority to require disclosure of any cigarette or other tobacco product constituent including any smoke constituent that he deems to benefit public health. This could very easily be an impossible burden levied at the Secretary's whim.

When it comes to record keeping, this bill simply says that the Secretary of the FDA will take into account the size of businesses when putting the regulations into place. This new authority is too vague, and it could be interpreted as giving the FDA the ability to discriminate based on arbitrary ideas of what size a business should be. This amendment would give the FDA wholesale authority to regulate every aspect of construction, ingredients, components or properties, including the sale, distribution, access, marketing and labeling, through the application of "product standards."

I am also troubled by the fact that we do not have the option to make amendments to such an expansive bill since it is being rushed through the Senate attached to the FSC/ETI bill instead of following traditional committee procedures such as hearings and markup and floor amendment.

This amendment cites underage tobacco use as a reason for increased regulation. Underage use is troubling, but the fact is that there are already decisive laws in place to prevent minors from purchasing tobacco. There is a need for better enforcement, not more FDA regulation. The authority given to the FDA in this amendment no longer focuses on reducing youth usage, but rather, on adult consumption by stating that the new restrictions focus on protecting the public health.

Another problem is that this amendment holds retailers accountable for labeling when it is the manufacturer's responsibility. "This paragraph shall not relieve a retailer of liability if the retailer sells or distributes tobacco products that are not labeled in accordance with this subsection."

These FDA regulations would reduce competition by increasing regulatory costs and restricting the ability to communicate with adult smokers.

These proposals place so many barriers to the introduction of new conventional products, those making no health claims and potentially reduced risk, that it discourages their development.

It increases black market attractiveness. The numerous restrictions and regulations provide ample incentives to illegal operators.

I ask unanimous consent that the text of several statements made by the National Association of Convenience Stores, the American Conservative Union, the Association of National Advertisers, the American Association of Advertising Agencies, the American Advertising Federation, the American Wholesale Marketers Association, and many on the HELP Committee, be printed in the RECORD.

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

NATIONAL ASSOCIATION  
OF CONVENIENCE STORES,  
Alexandria, VA, June 17, 2004.

Re KEY VOTE ALERT.

Hon. Senator FRIST,  
Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR FRIST: I am writing on behalf of the National Association of Convenience Stores (NACS) to inform you that as drafted, and without significant changes, the Kennedy-DeWine amendment to the FSC/ETI bill, regarding FDA's authority to regulate the sale of tobacco products has a significant negative impact to the retailing community and therefore, NACS urges you to oppose this effort.

NACS is an international trade association that represents the over 130,000 convenience stores across the United States whom employ over 1.4 million hard working Americans. Small family-owned operations predominant in the convenience store industry, and in fact, 70 percent of NACS members own and operate 10 or less stores.

This legislation, introduced by Senators TED KENNEDY and MIKE DEWINE and Representatives HENRY WAXMAN, TOM DAVIS and MARTY MEEHAN, has several fundamental problems.

Convenience Stores Receive Unequal Treatment: Under this legislation, all tobacco retailers are NOT treated equally. To be comprehensive, all retailers of tobacco, including those selling over the internet, through the mail, through adult-only locations, and on Indian reservations, must abide by the same regulations, however, these bill fall far short. Further the bill does not specify how the law will be enforced (state, local or federal authorities), thereby neglecting the issue of Native American sovereignty and enforcement on tribal lands (to which all consumers have access through the internet).

Responsible Retailers Treated Unfairly: Authors of this legislation continue to hold

retailers liable for actions out of their control. For example: If a company trains its associates in an agreed-upon age-verification course, that company should not lose its tobacco license if a trained associate makes a mistake (knowingly or accidentally). If the company is irresponsible and does not prepare its associates properly, only then should the store have its tobacco license suspended. Additionally, retailers should not be held responsible for the numerous warning labels being required on product delivered to them.

Missing Penalties on Minors: Minors, not retailers, initiate attempted illegal transactions. There should be adequate penalties to discourage both supply and demand of underage tobacco consumption. These bills have no such provision.

Lacking Key Provision: Retailers need tools to help continue to crack down on illegal sales. Another provision missing would allow for easier electronic age verification for retailers choosing to use this tool.

Unconstitutional Provisions Included: There are also advertising restrictions, which the U.S. Supreme Court has already struck down as unconstitutional. Moreover, these restrictions could negatively impact signage inside a store since it may be visible from outside the store.

Although the authors indicated that retailers' concerns were addressed in this legislation bill, they fell short in several areas and failed to address several major points of contention. Without significant changes to the Family Smoking Prevention and Tobacco Control Act (S. 2461 and H.R. 4433), NACS urges Members to oppose this legislation and will KEY VOTE AGAINST any similar amendment that negatively impacts the retailing industry.

Sincerely,

ALLISON R. SHULMAN,  
Director, Government Affairs.

AMERICAN CONSERVATIVE UNION,  
Alexandria, VA, July 15, 2004.

DEAR SENATOR: The American Conservative Union has learned that anti-smoking and public health advocates are dropping their support of the proposed FDA legislation which is scheduled for consideration on the Senate floor today. Members of these groups have concluded that no evidence exists that links established performance standards by the FDA to safer products and fewer deaths, as argued by Philip Morris.

In fact, public health advocates are convinced that the basic regulatory framework established by the FDA bill will make it virtually impossible for reduced-risk products to enter the marketplace. When the economic incentive for companies to fund comprehensive and meaningful research into significantly safer products is taken away, the economic enticement of profit ceases to exist.

FDA regulation could potentially be used to encourage research, develop and market actual reduced risk products, but the proposed legislation does the opposite. It acts as a roadblock preventing development and marketing of these constantly evolving products.

The passage of FDA regulation is good for only one thing: padding Philip Morris' bottom line.

This new information further reinforces ACU's opposition to the current FDA regulation legislation. On behalf of our one-million members and supporters, the American Conservative Union strongly urges you to oppose and vote against FDA regulation of American tobacco, an industry that already is sufficiently regulated by the federal government. This harmful prospect is bad for American business, and more importantly, curbs

the incentive for continuing the research and development of safer products, as public health experts have concluded.

JUNE 1, 2004.

Hon. JUDD GREGG,  
Chairman, Committee on Health, Education,  
Labor and Pensions, U.S. Senate, Russell  
Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA) and the American Advertising Federation (AAF), we are writing to express our opposition to several of the marketing provisions of S. 2461, the "Family Smoking Prevention and Tobacco Control Act."

We oppose section 102 of the bill, which would direct the Secretary of Health and Human Services to publish an interim final rule that is "identical in its provisions" to the proposed rule promulgated by the FDA in 1996. Legal experts from across the political spectrum agree that the sweeping and unprecedented restrictions in that proposal, which would result in a de facto ban on tobacco advertising, would violate the First Amendment. In fact, the U.S. Supreme Court held in the Lorillard case in 2001 that a Massachusetts tobacco regulation that was virtually identical to one part of the FDA proposal was unconstitutional.

Section 201 of the bill would add new disclosure requirements for all tobacco advertising on top of those contained in the FDA's 1996 proposed rule. In addition, the bill would require the FDA to conduct a rulemaking to determine whether it should mandate the inclusion of tar and nicotine yields in all labels and advertising. All of the various disclosure requirements of S. 2461 place the government in the role of copywriter. By "seizing" a substantial portion of every tobacco ad for government-mandated disclosures, the bill raises First Amendment concerns about "compelled speech" and could result in an unconstitutional "taking" of a company's commercial property in violation of the First Amendment.

We also oppose section 203 of S. 2461, which would grant new authority to state and local governments to impose "specific bans or restrictions on the time, place and manner" of tobacco advertisements. Much of the advertising for tobacco products occurs in interstate commerce. Allowing individual states and local governments to impose their own bans or restrictions would result in a crazy-quilt of inconsistent laws, making tobacco advertising virtually impossible.

We take no position on the provisions of the bill that would generally grant the Food and Drug Administration (FDA) the authority to regulate tobacco products.

*Enacting the FDA's 1996 Tobacco Advertising Restrictions Would Violate the First Amendment*

We believe that the sweeping tobacco advertising restrictions promulgated by the FDA in 1996 violate the First Amendment rights of tobacco companies to communicate with adults. The FDA's proposal would impose the following restrictions on tobacco advertising:

Ban all outdoor advertising for tobacco products within 1,000 feet of any elementary or secondary school or playground;

Require all permitted tobacco advertising, including direct mail, to be black text on a white background, except in magazines, newspapers or other periodicals with adult readership of 85% or more, or fewer than 2 million readers under the age of 18;

Require all advertisements and labels to identify the tobacco product as a "nicotine delivery device";

Require all advertisements to contain a government-dictated "brief statement" (in

addition to the current Surgeon General's warning) to serve as a warning about possible dangers associated with the use of tobacco products;

Ban the use of promotional items such as hats or T-shirts containing the name or logo of a tobacco product, and prohibit other promotional techniques such as product giveaways, rebates or refunds;

Require sponsorship of athletic, musical, social or other cultural events in corporate name only;

Require all advertisers of tobacco products to fund and participate in a national public education campaign designed to discourage the use of tobacco products by minors. The FDA would require the annual fund established for this campaign to total \$150 million;

Require compliance with more stringent requirements as enacted by state and local governments; and

Authorize the enactment of additional restrictions seven years after implementation of a final rule if the number of minors who use tobacco products has not decreased by 50% from 1994 levels.

The net effect of the FDA proposal would be a *de facto* ban on advertising tobacco products. This regulatory package violates the First Amendment protections for commercial speech.

The U.S. Supreme Court has made it clear that truthful, nondeceptive commercial speech cannot be banned or restricted unless the restriction "directly and materially advances" a "substantial governmental interest" and is "narrowly tailored" to "reasonably fit" that interest. See *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980).

In *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996), a unanimous Supreme Court reaffirmed that all truthful, nondeceptive advertising about a legal product is entitled to the same level of First Amendment protection, regardless of the product.

In the *Lorillard* case, the Supreme Court struck down a regulation promulgated by the Attorney General of Massachusetts that was similar in many respects to the FDA's proposed rule. The Massachusetts regulation banned outdoor ads within 1,000-feet of schools, parks and playgrounds and also restricted point-of-sale advertising for tobacco products. See *Lorillard Tobacco Company v. Thomas Reilly, Attorney General of Massachusetts*, 533 U.S. 525 (2001).

In finding that the Massachusetts regulation was not narrowly tailored, Justice O'Connor actually noted a similar problem with the FDA regulation: "First, the Attorney General did not seem to consider the impact of the 1,000-foot restriction on commercial speech in major metropolitan areas. The Attorney General apparently selected the 1,000-foot distance based on the FDA's decision to impose an identical 1,000-foot restriction when it attempted to regulate cigarette and smokeless tobacco advertising. (Citations omitted) But the FDA's 1,000-foot regulation was not an adequate basis for the Attorney General to tailor the Massachusetts regulations. The degree to which speech is suppressed—or alternative avenues for speech remain available—under a particular regulatory scheme tends to be case specific. (Citations omitted) And a case specific analysis makes sense, for although a State or locality may have common interests and concerns about underage smoking and the effects of tobacco advertisements, the impact of a restriction on speech will undoubtedly vary from place to place. *The FDA's regulations would have had widely disparate effects nationwide. Even in Massachusetts, the effect of the Attorney General's speech regulations will vary based on whether a locale*

*is rural, suburban, or urban. The uniformly broad sweep of the geographical limitation demonstrates a lack of tailoring.*" (Emphasis added)

Thus, the Supreme Court has already examined one provision of the FDA proposal—the 1,000-foot ban on outdoor ads—and suggested that it violates the First Amendment because it is not narrowly tailored.

The Supreme Court rejected the efforts of the Massachusetts Attorney General to "childproof the flow of information in our society. Children deserve to be protected from inappropriate or harmful material, but the government may not use the guise of protecting children to impose sweeping restrictions on information intended for adults. In *Bolger v. Youngs Drug Products Corporation*, 463 U.S. 60 (1980), the Court stated that efforts to restrict advertising cannot lower discourse in society "to the level of the sandbox" and citing *Butler v. Michigan*, 353 U.S. 383 (1957), that "Government may not reduce the adult population . . . to reading only that which is fit for children." 463 U.S. at 73.

One of the most vocal critics of the tobacco industry, Harvard Law School Professor Laurence Tribe, argued that the tobacco advertising bans included in the master settlement agreement between the tobacco companies and the states, if legislated, would raise serious First Amendment concerns. So have a broad range of public policy groups, from the Washington Legal Foundation to the American Civil Liberties Union (ACLU). In testimony to the Senate Judiciary Committee on February 20, 1998, the ACLU stated: "The ACLU believes that . . . both legislation and proposed regulation by the Food and Drug Administration (FDA) . . . on tobacco advertisements . . . is wholly unprecedented and, if enacted, will most likely fail to withstand constitutional challenge. Moreover, we believe that the enactment of the proposed tobacco advertising restrictions would impose a drastic curtailment of commercial speech and could have a chilling effect on the right of the public and businesses to engage in free speech about controversial subjects."

A number of legal scholars, including Judge Robert Bork; Burt Neuborne, Professor of Law at New York University School of Law; Rodney Smolla, Professor of Law at the College of William & Mary; and First Amendment expert Floyd Abrams have all publicly testified regarding the constitutional problems with legislating this type of speech restriction. In a Washington Legal Foundation publication in 1996, Judge Bork stated: "[T]he recent proposal of the Food and Drug Administration (FDA) to restrict severely the First Amendment rights of American companies and individuals who, in one way or another, have any connection with tobacco products [is] patently unconstitutional under the Supreme Court's current doctrine concerning commercial speech as well as under the original understanding of the First Amendment."

While the government has a legitimate interest in fighting the use of tobacco products by minors, the FDA's proposed regulations sweep far too broadly and result in massive censorship of truthful speech aimed at adults.

#### *New Disclosure Requirements Would Overload Advertisements*

As noted above, the FDA's proposed rule from 1996 would require that all ads identify the tobacco product as a "nicotine delivery device" and contain a government-dictated "brief statement," in addition to the current Surgeon General's warnings. Section 201 of S. 2461 would add another layer of disclosures to all ads. It would require the "label

statement" to comprise at least 20% of the area of the ad, to be placed at the top of each ad with specific type-sizes. Further, section 206 of the bill requires an FDA rulemaking to determine whether the agency should also mandate the inclusion of tar and nicotine yields in all labels and advertising.

These various disclosure requirements would result in information overload for all tobacco product ads. By mandating these disclosures and requiring specific type sizes, the bill would place the government in the role of copywriter. It raises serious First Amendment concerns about "compelled speech." It could ultimately result in an unconstitutional "taking" of the company's commercial message in violation of the Fifth Amendment. Advertising is not free. When a tobacco company purchases advertising space, it acquires an important property interest. The multiple disclosure requirements of S. 2461 would literally "seize" a substantial portion of the company's space and conscript it for government-mandated messages. This would be an interference with both free speech and property rights.

#### *New State/Local Ad Restrictions Would Make Tobacco Advertising Impossible*

We are strongly opposed to section 203 of S. 2461. That provision would authorize states and thousands of local governments to impose "specific bans or restrictions on the time, place and manner, but not content," of tobacco advertising. This could result in a crazy quilt of inconsistent advertising restrictions, both intra-state and inter-state. For example, tobacco advertising is often placed in publications with regional or national distribution. How could a tobacco company place an ad in a popular magazine that complies with hundreds or potentially thousands of inconsistent restrictions on the "time, place and manner" of tobacco ads?

This provision would make tobacco advertising impossible on a regional or national basis and result in a *de facto* ban on this category. It would authorize state and local governments to engage in censorship of one form of speech based solely on its content.

#### *Conclusion*

Some claim that tobacco products are unique, so that it is permissible to ignore the First Amendment just for those products. The Supreme Court has rejected this theory in a series of cases, including *Lorillard* and the *44 Liquormart* case. What you do to tobacco advertising today, you will be urged to do to advertising for many other "controversial" products tomorrow. Justice Thomas recognized this in his concurring opinion in the *Lorillard* case: "Nevertheless, it seems appropriate to point out that to uphold the Massachusetts tobacco regulations would be to accept a line of reasoning that would permit restrictions on advertising for a host of other products."

Don't start down this road to content-based censorship of advertising. We urge you to remove these marketing provisions from S. 2461. The government can take strong, effective steps to restrict tobacco sales and access to minors without trampling on the First Amendment.

Thank you for your consideration of our views.

Sincerely,

Daniel L. Jaffe, Executive Vice President, Association of National Advertisers, Washington, DC.

Richard F. O'Brien, Executive Vice President, American Association of Advertising Agencies, Washington, DC 20036.

Jeffrey L. Perlman, Executive Vice President, American Advertising Federation, Washington, DC 20005.

The Association of National Advertisers (ANA) is the industry's premier trade association dedicated exclusively to marketing

and brand building. We represent more than 340 companies with over 8,000 brands that collectively spend more than \$100 billion annually in marketing communications and advertising. Our members market products and services to both consumers and businesses. More information is available at [www.ana.net](http://www.ana.net).

The American Association of Advertising Agencies (AAAA), founded in 1917, is the national trade association representing the American advertising agency business. Its nearly 500 members, comprised of large multinational agencies and hundreds of small and mid-sized agencies, maintain 2,000 offices throughout the country. Together, AAAA member advertising agencies account for nearly 80 percent of all national, regional and local advertising placed by agencies in newspapers, magazines, radio and television in the United States. AAAA is dedicated to the preservation of a robust free market in the communication of commercial and non-commercial ideas. More information is available at [www.aaaa.org](http://www.aaaa.org).

As the "Unifying Voice for Advertising," the American Advertising Federation (AAF), headquartered in Washington, D.C., with a Western Region office in Newport Beach, California, is the trade association that represents 50,000 professionals in the advertising industry. AAF's 130 corporate members are advertisers, agencies and media companies that comprise the nation's leading brands and corporations. AAF has a national network of 210 ad clubs and connects the industry with an academic base through its 210 college chapters. More information is available at [www.aaf.org](http://www.aaf.org).

DEAR SENATOR: I am taking this opportunity to write to urge your opposition to the Kennedy-DeWine amendment to the FSC/ETI bill, regarding FDA's authority to regulate the sale of tobacco products.

As President of the American Wholesale Marketers Association (AWMA), I represent convenience distributors nationwide and our distributor members represent more than \$85 billion in US Convenience product sales. Many of our members are your constituents. On behalf of my AWMA members, I am writing to let you know of our deep concerns over the devastating impact this legislation would have upon our industry.

Tobacco products are among the many goods distributed by our members and many of these businesses are small, family-owned operations. The burdensome recordkeeping requirements and the onerous regulations resulting from this legislation would work a tremendous hardship on these business owners. In addition, there are concerns that this legislation could be "the camel's nose under the tent" and create a back door ban on tobacco products through additional restrictions on the approval, sale, distribution and advertising of these products. And, the costly layer of regulation to be imposed by this legislation would cause problems for these family-owned businesses while providing no real benefit to the public.

Our AWMA members consider this issue to be of vital importance and, therefore, I urge you to vote against any legislation that would provide for FDA regulatory authority over tobacco products. Thank you in advance for your kind consideration of these concerns.

Sincerely,

SCOTT RAMMINGER,

*President,*

*American Wholesale Marketers Association.*

STATEMENT BY MEMBERS OF THE HEALTH, EDUCATION, LABOR AND PENSIONS COMMITTEE

Many on the HELP Committee have concerns with the FDA aspect of the amendment

based on the following reasons, "In our view it does not represent principles of good government. It does not produce a strong uniform FDA. For example, we are concerned about the preemption provisions—we are concerned about the lack of due process in the reissuance of a Clinton era tobacco rule—also we are concerned about the claims of the provisions of the bill."

Mr. INHOFE. These groups are all concerned about the bill. I echo their concern. This proposal will greatly increase Federal mandates and regulations on tobacco that lead to more Government control. I find it troubling that Congress is willing to grant so much authority to an executive agency while not allowing us adequate time to evaluate and possibly amend this legislation.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. I ask unanimous consent to proceed for 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that whoever is in opposition have an equal amount of time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, as we close debate, I thank Jeff Tites, Senator KENNEDY's very able assistant, who has worked on this legislation, and I also want to thank my assistants, Abby Kral, Paul Callogi, Mike Dawson, and Carla Carpenter, who could not be here because she had a baby. We miss Carla, and we welcome into the world Ravis Mathew, her son who was just born. We are very glad about that.

Let me respond very briefly to my friend from Oklahoma and his comments about the FDA bill not having seen the light of day. The amendment that is in front of us is the DeWine-Kennedy bill, which is now an amendment. The DeWine-Kennedy bill was actually introduced in May of this year. It is the only FDA regulation of tobacco bill that was introduced, so it has been out here for people to look at for a long time. It was the product of lengthy negotiations between health groups and others. We went back and forth for a long time. It is not really dissimilar to other bills that have been talked about before in other negotiations. It has evolved over a long period of time. It is the work product of Senator KENNEDY and myself, but it is the second generation or third generation of what others have done.

So the concepts in this bill are not fundamentally new. There is nothing in this bill that should come as a surprise to anyone.

As I said, this has been on the floor for a long time. People have had an opportunity to look at it. Interested parties have had a chance to examine it.

Mr. President, I ask for the yeas and nays. I think we are getting close to closing this down.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DEWINE. Mr. President, Senator KENNEDY would like to close at this point. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take a moment to once again thank Senator DEWINE for his strong leadership in our Health, Education, Labor, and Pensions Committee on this issue. I thank our leaders for bringing us to where we are. I thank Senator MCCONNELL for the opportunity to work with him on this issue. And I thank our colleagues for the strong support we have seen during the course of this discussion.

This health issue is the most important health issue we are facing on which we can make serious progress, progress that is almost the equivalent of conquering cancer—it is that important—because we have an epidemic of smoking that is affecting the children of this Nation. It is enormously adverse to their health conditions, and it is a source of premature death to them as they grow and develop in the future, causing all kinds of health ailments.

This is a children's issue, a health issue, a family issue because with this legislation, there are going to be more children who are going to be able to see their parents when they grow older and there are more children who will see their grandparents when they grow older. We have an opportunity to make a major downpayment and major progress in the quality of health for these children.

I thank those who have spoken in favor of the legislation. Hopefully, we will get strong support for it when the votes are cast.

Mr. President, I ask unanimous consent that a list of supporters be printed in the RECORD.

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

LIST OF SUPPORTERS OF DEWINE-KENNEDY  
FDA BILL

American Academy of Family Physicians, American Academy of Nurse Practitioners, American Academy of Pediatrics, American Cancer Society, American College of Cardiology, American College of Chest Physicians, American College of Physicians, American College of Preventive Medicine, American Dental Association, American Heart Association, American Lung Association, American Medical Association, American Public Health Association, American Psychological Association, American School Health Association, American Society of Addiction Medicine, American Society of Clinical Oncology, American Thoracic Society, Association of Maternal and Child Health Programs, Association of Schools of Public Health.

Campaign for Tobacco-Free Kids, Center for Parish Nursing & Health Ministries, Center for Tobacco Cessation, Children's Defense Fund, Church of the Brethren Witness/Washington Office, Church Women United, Evangelical Lutheran Church in America, General Board of Church and Society of the United Methodist Church, General Board of Global Ministries The United Methodist Church, Special Program on Substance Abuse and Related Violence (SPSARV), Health Ministries Association, Interreligious Coalition

on Smoking or Health, Islamic Society of North America, National Latino Council on Alcohol and Tobacco Prevention, National Association of County and City Health Officials (NACCHO), National Association of Local Boards of Health, National Center for Policy Research for Women & Families, National Education Association, National Woman's Christian Temperance Union, National Women's Law Center, Oncology Nursing Society.

Office of Family and Children's Ministries of Disciples Home Missions of the Disciples, Praxis Project, Presbyterian Church (USA), Washington Office, Seventh-day Adventist Church, Society for Public Health Education, Tobacco Program, Interfaith Center on Corporate Responsibility, United Church of Christ.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I have a couple comments. Again, I compliment my colleagues, Senator KENNEDY and Senator DEWINE. They have been steadfast in their advocacy. Senator DEWINE is right, he and Senator KENNEDY introduced this a long time ago. If I am correct, it did not pass out of a committee, it is not on the calendar, and all of a sudden it appears on the floor.

These are two bills combined, and my biggest objection is with the buyout. The buyout is \$12 billion. How often do we spend \$12 billion around here without having any hearing on it? The buyout did not pass out of a committee. It did not pass out of the Agriculture Committee. It certainly was not considered by the Budget Committee.

There is no payment limitation, I say to Senator GRASSLEY. In the House bill, with the \$9.6 billion, it is estimated by one group to be 480 millionaires. Some estimates are 85 percent of the quota owners are not farmers. I do not know how many of those will be made millionaires.

The Senate bill we are going to vote on does not even eliminate the tobacco program. A lot of people are thinking we will spend this money, we will buy the quotas back, and then be done with it. No, there will be a Federal board set up by the Secretary. The Secretary will establish a permanent advisory board for the purpose of setting what kind of tobacco shall be in the Acreage Limitation Program, I tell my colleague from Nevada, where they limit acres, make recommendations on acres.

The Secretary, with the Tobacco Quality Board, shall establish and maintain the Acreage Limitation Program for each crop, each kind of tobacco. If we have an acreage limitation program, that is a price support program. That is a continuation of the tobacco program.

So we are going to throw away \$12 billion and maybe benefit one tobacco company versus all the other tobacco companies, spend a whole lot more money, have another 100 some-odd pages of regulations, some of which were so intrusive—I have not had a chance to review these regulations in

detail, but in past years, some of these regulations dealt with convenience stores. If a convenience store did not check IDs of people up to age 21 or age 25, they could be penalized and fined and successively with higher penalties. If they did not check IDs three or four times of somebody who is 24 years old—they are military and obviously old enough to smoke—if they did not check their ID, the fines could be in the thousands of dollars.

That was in previous regulations. I am not sure if it is in these regulations because I have not had enough time to decide. I know there is a blank check for the Secretary to outlaw tobacco if he so desires, to ban advertising if he so desires.

I don't like tobacco consumption. I don't want people to smoke. If Congress wants to ban tobacco, let's do it. Let Congress do it. Let the elected officials do it, not the Secretary of HHS. These regulations are too broad. I know Senator GREGG had a proposal that was not quite as aggressive. I would like to vote on it. I would like to consider the two. We don't even have the option. The option is take these regulations, 155 pages—and my guess is most were promulgated by the Clinton administration which we rejected earlier—and then let's add a \$12 billion buyout program that almost guarantees we will have a buyout program that comes out of conference on the FSC/ETI bill.

My final comment is, two wrongs do not make a right. The House was wrong to put in a tobacco buyout in the FSC/ETI bill. Now we are going to double that wrong and almost ensure it is going to come back from conference with a multibillion-dollar buyout, where some people are going to make millions of dollars. We are going to pay people a whole lot of money and maybe even continue the program. That is absurd. That is a waste of money. That is paying people for the privilege—frankly, if they had a quota, the Government gave them a quota; they had a special benefit over all other landowners in the United States. Oklahoma did not have a quota. We could not grow tobacco if we wanted to. We could not get the higher prices. Now we give a special reward to people who have a quota. We buy them out, and we are going to have a price support program in addition if we pass the Senate language.

That is bad legislation. I hope our colleagues will recognize if they vote for this today and if it comes back from conference in any way resembling this, they are going to be embarrassed because a year or so from now, somebody is going to do a report saying XYZ tobacco quota owner—and there are several in the District of Columbia. I don't know how much tobacco is grown in the District of Columbia, but quotaholders in the District of Columbia get millions of dollars. They are going to be reading about this and be upset, and they are going to say: Con-

gress, how could you do this? Then they are going to go back and say: Congress didn't debate this much.

I compliment my colleague from Ohio. Most of the debate has been on the FDA regulations, not the buyout.

I hope my colleagues reject the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, this has been a very good debate. In closing the debate, I thank all those who have participated. I ask my colleagues to vote yes. Ultimately, this is a question about common sense, having the FDA regulate this product, and it is a question of saving lives. That is what we will do.

I thank the Chair, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

#### UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION ACT

Mr. GRASSLEY. I now ask unanimous consent that the FSC bill be temporarily set aside and I now move to proceed to H.R. 4759, the Australia Free Trade Agreement. I further ask consent that there be 6 hours equally divided between the chairman and ranking member or their designees; provided further that all other provisions of the statute remain applicable to the bill.

Further, I ask unanimous consent that following the use or yielding back of the time the Senate proceed to a vote on the passage of H.R. 4759, and immediately following that vote the Senate resume consideration of the FSC bill and proceed to a vote in relation to the DeWine amendment as provided under the order.

Finally, I ask unanimous consent that there be 2 minutes equally divided for debate prior to the second vote.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding that we would have 2 minutes on each side, if there is opposition to this, which I think there will be. Is that right?

Mr. GRASSLEY. Yes. That would be on the DeWine amendment?

Mr. REID. Yes.

The PRESIDING OFFICER. Does the Senator modify his request?

Mr. GRASSLEY. Yes.

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

Mr. REID. Before the distinguished chairman makes his statement, for the