

FAMILY SMOKING PREVENTION
AND TOBACCO CONTROL ACT

Mr. REID. Madam President, there are a number of amendments that have been filed that are at the desk. They haven't been offered as yet. Amendments on both sides in agreement should be considered. We were very close on working out an agreement to do just that. The vast majority of the amendments will be germane postcloture. I have indicated that for those that are arguably germane, I would be willing to work with the person who offered the amendment to have a vote on it. But one Senator has held this up. That is the way things can happen around here. It is unfortunate, but it does happen. We worked for a couple of days trying to arrive at the point we are. The sad part about it is the Senator who has held all this up has an amendment that isn't remotely germane to this bill, but he has lodged an objection to this agreement that is agreeable by all other Senators. I would hope that the Senator would reconsider this objection over the next few days.

In the meantime, I have had conversations with the managers of the bill. I have spent a lot of time with Senator DODD. It is an important piece of legislation. I watched the Presiding Officer offer her speech today. What a sad thing, the man she spoke about. A picture is worth a thousand words. The picture that she had when she was talking about this bill and how important it is was worth more than a thousand words.

I will have more to say about this on Monday, but everyone in my family smokes. Sadly, my parents are dead. My dad's miner's consumption was terribly exacerbated by his smoking. So when did he start smoking? He was a kid. He started smoking as a little boy. The same with my mother. The same with my brothers. One brother started when he was in the Air Force. He was I guess 20 years old or something like that. He wasn't very old. But the others, all of my other family members, started smoking as kids. One of my brothers chewed tobacco. I can remember I had a friend who learned that my brother chewed tobacco. He was a lobbyist for the tobacco industry and he said, Oh, I will send him a case of—what kind does he chew? I didn't think that was a good idea.

In Los Angeles last week I met the first lawyer who filed litigation, serious litigation against the tobacco industry—a wonderful man. He got terribly upset with the Joe Camel advertisements, when they placed that little comic strip character on lunch boxes for kids. He also was upset because at that time the tobacco industry went through another one of their ideas to get kids to start smoking in stores, like a 7-Eleven store. They would have bins of cigarettes out there. You are supposed to pay for them, but they were there. Kids could steal them so easily. So he filed this lawsuit. He had

the confidence to tell me he lost that lawsuit. But when all the lawyers got together to go after the tobacco companies big time, they pooled their money and went after the tobacco companies, and they used all of his pleadings. He said even the misspelled words they used. They didn't change anything. Ultimately, that led to the favorable ruling by the courts that tobacco companies were liable for the damages in the billions of dollars.

It is important that we move forward. I hope that cloture would be invoked on this Monday afternoon. It is one of the most popular pieces of legislation we could do. I am sorry we weren't able to work anything out on the amendments, but we simply were not able to do so. No one can complain this entire Congress that we haven't had the ability to offer amendments. We were concerned for a lot of reasons. One is we have the supplemental appropriations bill floating around here and we didn't want a lot of nongermane amendments on this, but there were no restrictions whatsoever on even nongermane amendments. We just wanted—every Republican wanted to look at ours; we wanted to look at theirs. We used to do that a lot. We can still do that. But no one can complain and use it as an excuse to not vote for this bill, that we haven't given them a chance to offer amendments.

So I hope Senators will take a look at this to move forward. Let us invoke cloture and complete this legislation. I have already indicated I would be happy to work out something that would be fair to dispose of the amendments that are germane to this bill that have been filed.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I wanted to begin by thanking the majority leader for his efforts and those of others, and to agree with him. We are prepared to debate these germane amendments, or amendments that are arguably germane, and it is regrettable we couldn't do that. This bill has enjoyed overwhelming support in both Chambers in previous Congresses. Our colleague from Massachusetts has been the leading champion of this effort for more than a decade, if not longer. As I pointed out, every single day we fail to act on this legislation, the statistics are that 3,000 to 4,000 children will begin to smoke every day; 400,000 of our fellow citizens will die this year, not to mention thousands who will live very, very debilitated lives as a result of being contaminated by cigarette smoke and tobacco products. Here we are on the eve of a national health care debate where a major part of that will be about prevention, and what better way to begin that debate than the Congress taking a step in this area which could make such a difference.

So I thank the majority leader for his efforts. I am still hopeful we can get this done. I believe we can. People such as Senator BURR and Senator

HAGAN who have legitimate interests and concerns about the legislation before us deserve to have their amendments considered, debated, and discussed. In fairness to other Members, it is regrettable that one single Member of this body, on a totally nongermane proposal, can cause us to delay or avoid meeting the obligation of the issues and concerns about tobacco and the effects on our citizenry.

So I thank the majority leader for his efforts. We will be here next week to debate those amendments and hopefully our colleagues will invoke cloture so we can get to this matter.

Mr. REID. Madam President, let me say, while the distinguished Senator from Connecticut is on the floor, the chairman of the Banking Committee and the manager of this bill, Senator ENZI has been a real partner in what we have done here. He asked that we do a committee hearing on this bill. We could have brought it to the floor under rule XIV. This bill has had lots of hearings in the past, but because Senator ENZI is such a gentleman and he thought it would be the right thing to do, we went ahead, in spite of a very difficult schedule that we had and the schedule that especially Senator DODD had, of all of the things that we were doing under the jurisdiction of that Banking Committee, but with Senator KENNEDY's help, he was the one who was obligated to do this legislation. So we have done that. We have jumped through all the hoops. I repeat, I hope no one will use as an excuse to not vote for cloture that we have been unfair in moving forward on this bill, because it would be unfair for them to say that we have been unfair.

Madam President, I ask unanimous consent to terminate morning business and have the bill reported.

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1256) to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Pending:

Dodd amendment No. 1247, in the nature of a substitute.

Burr/Hagan amendment No. 1246 to amendment No. 1247, in the nature of a substitute.

Schumer for Lieberman amendment No. 1256 to amendment No. 1247, to modify provisions relating to Federal employees retirement.

The PRESIDING OFFICER. The majority leader is recognized.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion on the Dodd substitute amendment to the desk.

The PRESIDING OFFICER. The closure motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 1247 to Calendar No. 47, H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Benjamin L. Cardin, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Tom Harkin, Sherrod Brown, Debbie Stabenow, Richard Durbin, Mark Udall, Edward E. Kaufman.

CLOTURE MOTION

Mr. REID. Madam President, I send a cloture motion to the desk. This is on the bill itself.

The PRESIDING OFFICER. The closure motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on Calendar No. 47, H.R. 1256, Family Smoking Prevention and Tobacco Control Act.

Harry Reid, Christopher J. Dodd, Robert P. Casey, Jr., Debbie Stabenow, Blanche L. Lincoln, Patty Murray, Ron Wyden, Jack Reed, Sheldon Whitehouse, Maria Cantwell, Roland W. Burris, Richard Durbin, Mark Udall, Edward E. Kaufman, Tom Harkin, Benjamin L. Cardin, Bill Nelson.

Mr. REID. Madam President, I now ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. REID. Madam President, I ask unanimous consent to go into a period of morning business, with Senators permitted to speak for up to 10 minutes each.

Mr. MCCAIN. Reserving the right to object, what did we do?

Mr. REID. We just went into morning business. We would like to go into morning business.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Madam President, I have an amendment that I have been trying to get a vote on, I would say to the distinguished majority leader, and it certainly is important to the American people.

It is certainly important on this bill and the function of the FDA concerning the importation of prescription

drugs into this country. I believe the Senator from North Dakota has an amendment. I would agree to a time agreement of an hour to be equally divided, or half hour, and then vote on it.

I think the American people ought to know whether we are going to be able to import prescription drugs into this country so we can save them billions of dollars every year, rather than taking so much of their hard-earned money, especially retirees.

Mr. REID. Madam President, I am happy to respond to my friend. We have been trying for 2 days to move forward on germane amendments. I have had several conversations with Senator DORGAN. I know how important it is to him. I voted with him, and I do every time this matter comes up. As I indicated earlier, I would be happy to work out some kind of agreement.

At this time, until we get some ability to vote on the germane amendments, it doesn't seem like the right thing to do. I am willing, as I have indicated to my friend, Senator DORGAN, to work out an arrangement for him to offer this amendment. This is something that should have been done, I am sorry to say, years ago, not weeks ago. I will work with the Senator from Arizona on this drug reimportation issue, which is important. At this stage, we simply cannot do it; I know of no way to get from here to there.

As I said—and the manager of the bill is here—if we can work something out by Monday, I will be happy to try to work something out. Nobody is trying to stop the Senator from offering that amendment. We have to have an agreement to move forward on the other stuff first because it is germane.

Mr. MCCAIN. Will the Senator yield?

Mr. REID. Yes, without losing my right to the floor.

Mr. MCCAIN. Mr. President, I am very appreciative of the difficulties the majority leader faces on a bill of this nature, the challenges of amendments being nongermane, and also the difficulties he faces in managing legislation. This issue has been around for a long time, I say to my friend from Nevada. We should address it. It is important to the American people. It does have a lot to do with pharmaceuticals in this country and the availability.

Again, I point out to the majority leader that there should not be a lot of debate on this. People have taken their positions.

I have an e-mail that was sent to us by mistake by the lobby for PhRMA, regarding how important it is to stop this amendment and not have a vote on it. If my friend will indulge me, this is urgent. This is from, as I understand it, one of the lobbyists for PhRMA:

The Senate is on the tobacco bill today. Unless we get some significant movement, the full-blown Dorgan or Vitter bill will pass as an amendment and a Cochran or Brownback safety amendment will fail.

(1) We need to locate a Democratic lead co-sponsor for the second degree amendment—which will be either BROWNBACK or COCHRAN. Can the J&J, Merck, Novartis, Pfizer and the

other New Jersey companies coordinate and contact Senator MENENDEZ's office and ask him to take the lead?

(2) We are trying to get Senator DORGAN to back down—calling the White House and Senator REID. Our understanding is that at least Senator MCCAIN has said he will offer regardless, so even if DORGAN withdraws, he may still go forward.

We believe we have 39 'yes' votes for a safety second degree amendment and 25 members in the 'undecided' column. KENNEDY—who whipped this for us last time—is not here.

We are scheduling a call for later this morning to follow up on our targets from yesterday's whip call. Please make sure your staff is fully engaged in this process. This is real. We only had six companies participate in the last call.

My friends, that is a little insight as to how the special interests in Washington work. I would like to have a vote on this amendment, I say to my friend from Nevada, with a full appreciation of the difficulties he has in getting this legislation through—a very important piece of legislation.

I thank my friend from Nevada for his indulgence and allowing me to read that e-mail.

Mr. REID. Madam President, that is kind of an insight—I don't know who is on first, but that is pretty interesting.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

UNANIMOUS CONSENT REQUESTS—EXECUTIVE CALENDAR

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 132, the nomination of William Sessions to be Chair of the U.S. Sentencing Commission.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, we have not had an opportunity to get that cleared on this side. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider the nomination of Robert Groves to be Director of the Census.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Madam President, I make the same observation with regard to this nominee. We have not yet