

The Department of Justice estimates that approximately 55 persons would take advantage of this amendment at an additional cost of \$330,000 per year. Neither the existing scholarship program nor the expansion are an entitlement, and the cost of the scholarships can be covered under the appropriation for the existing Public Safety Officers benefit program. What an incredible service this will provide.

Mr. President, I am pleased that the Senate has chosen Police Officers Memorial Day to pass these three bills. I believe that by passing this legislation, we can acknowledge a small measure of our tremendous gratitude and support for these heroes and their families. I thank my colleagues for their support of these bills.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. ALLARD). Under the previous order, there will now be a period for the transaction of morning business.

The able Senator from Ohio is recognized.

Mr. DEWINE. I thank the Chair.

DETERRING TEEN SMOKING: WHAT WORKS

Mr. DEWINE. Mr. President, this coming Monday, the Senate will begin historic debate on tobacco legislation. This debate represents a once-in-a-lifetime opportunity to reduce teenage smoking, a once-in-a-lifetime opportunity to save lives.

The window of opportunity opened by last year's tobacco settlement is closing fast, and that means we simply have to keep this process moving. We have to pass a comprehensive bill and we have to pass it now.

A comprehensive bill, Mr. President. That means we have to raise the price of tobacco. But it means much more than that alone. It means a public education campaign. It means limits on tobacco advertising. It means punishing tobacco companies if, in the future, we do not meet the goals we set for reducing teen smoking. Finally, it means enhanced enforcement so a black market does not develop.

There will be a great temptation as we go through this lengthy debate for us to get sidetracked over the coming weeks into debates on countless side issues. It is important that we not give in to that temptation. We need to keep our eyes firmly on a much larger goal, and that goal is saving the lives of America's children from tobacco and from illegal drugs. Frankly, the only way we can achieve this goal is to pass a comprehensive bill, a comprehensive bill that is focused on our one goal, reducing tobacco and drug use among our young people. For the reasons that I will outline in a moment, a piecemeal approach simply will not work. A piecemeal approach will fail.

I commend the majority leader, Senator LOTT, for his leadership in bring-

ing this matter to the Senate floor. Now it is up to all of us to make the most of that opportunity. That is what I want to talk about today.

When a problem generates this much attention, we have to be all the more vigilant to make sure we pay attention to the light rather than to the heat; the facts, not the rhetoric.

Fact: 3,000 children start to smoke every day.

Fact: 1,000 of them are going to die early as a result of that.

Fact: We now have a once-in-a-lifetime opportunity to save these lives, a once-in-a-lifetime opportunity to do this through comprehensive legislation to reduce teenage smoking.

Fact: The number of legislative days we have left in this session in which to do this is rapidly shrinking.

Fact: If we do not do this now, it may never happen. The opportunity may never come again.

Fact: 1,000 early deaths caused every day by smoking. We need to act and we need to act now.

These are the facts. We cannot allow tobacco companies to lie about these facts or to obscure the fact that tobacco and illegal drugs together pose America's greatest public health challenge to our children. This is a huge challenge to our future. And we need a truly comprehensive approach to meet this challenge of tobacco and of illegal drugs.

What I would like to do over the next few minutes is examine some of the elements of the proposed tobacco legislation in a serious, and maybe even clinical, manner in an effort to try to determine which approaches work best in reducing smoking among our young people.

What works, Mr. President? What works to reduce teenage smoking? That is the key question. In fact, it is the only question that we should focus on as we debate tobacco legislation.

Let me begin by discussing the most controversial element of the various proposed tobacco bills—a tax on cigarettes.

Mr. President, the question of whether tobacco taxes will work in reducing teen smoking comes down to the question of how sensitive teen smokers are to changes in price. The way the economists phrase this question is: How elastic is the demand? How responsive is it? Does it go down when prices go up?

Mr. President, writing tobacco legislation would be a very easy task if the demand were very sensitive and responsive to prices. Then all we would need to do is increase the cost of a pack of cigarettes, and kids would stop smoking and their lives would be saved, and that would be it.

Regrettably, it is not that simple. Reputable individuals and organizations in the field of public health have studied this very question and are certainly far from a consensus.

In 1991, a study published in the *Journal of Health Economics* concluded that there is no statistically signifi-

cant correlation between cigarette prices and youth smoking. However, a National Cancer Institute expert panel stated in 1993 that "a substantial increase in tobacco excise taxes may be the single most effective measure for decreasing tobacco consumption," and that "an excise tax reduces consumption by children and teenagers at least as much as it reduces consumption by adults."

Mr. President, the confusion continues. The Centers for Disease Control and Prevention have data indicating that in five of the six States that raised cigarette taxes between 1993 and 1995 that teen smoking actually increased.

Yet, two reports published by the Surgeon General in 1994 and 1998 reached the opposite conclusion—that young people are at least as sensitive to price increases as adults.

Take all of these different findings together and they raise very serious questions about a tobacco-fighting strategy that is anchored solely by tax increases, or by an increase in the cost of cigarettes.

Here is what I think, Mr. President, based on my experience in working over the years against illegal drugs, based on my experience in working against driving under the influence of alcohol, that crusade, that effort: There is no one single remedy. There is no one single solution. I believe that raising tobacco costs will have an impact, but will only have an impact if that is included as part of the comprehensive approach, if the increase in tobacco prices is accompanied by advertising, by counteradvertising, by pulling down the pro-tobacco advertising on TV, by strict law enforcement. All of these things, I believe, have to come together. You cannot succeed in this effort without that kind of comprehensive approach. Raising the cost of tobacco will help, but it is simply not enough. To meet this kind of challenge, we need a comprehensive approach, one that will harness many different elements in the common purpose of saving children's lives.

In addition to raising the price of cigarettes, what else must we include in that comprehensive package? I outlined that a moment ago, but I would like to talk now in a little more detail about some of the other things that I think are necessary to do in addition to increasing the price of cigarettes.

Public education. Let's start with public education. My own experience with public education on health issues, Mr. President, would indicate to me that it does, in fact, work. Let me give you and my other colleagues an example.

Over the last several decades, we in this country have made tremendous progress in making our streets safer from alcohol-impaired drivers. Back when I was in the Ohio State Senate, I wrote legislation toughening our State's law on driving under the influence. But even more important than

the laws we passed was the fact that we were able—all of us, collectively, working together—to begin to change public attitudes. This has been done by tough laws, but it has also been done by very effective advertising by groups such as the Mothers Against Drunk Driving.

It was a national campaign, and it made a difference. Talk to kids today and you will not find many who believe that driving while under the influence of alcohol is “cool” or a great thing to do. The people who do it today are treated with scorn, as they should be. See how often “designated drivers” are talked about today—a concept that 20 years ago nobody had ever heard about. Attitudes have been changed because of advertising. They have been changed because of what public officials—not just politicians, but people in the public sector—have been able to do and talk about. We have all, collectively, been able to change the culture. That is what we have done in regard to drinking and driving. That is what we have to do now in regard to teenage smoking.

I think we have to implement a similar strategy in regard to tobacco. We have to make a massive national investment in educating our young people and in changing attitudes. We should flood the airwaves with the truth—a positive advertising and education campaign to leave no doubt where America stands on this issue, to leave no doubt what the facts are. Tobacco and the use of it may be legal, but it still kills people. Our message must simply be: stay away from it.

Mr. President, we can do this. We have done it in other areas, and everything in our life and common sense indicates to us that it works. Those of us who are Members of the U.S. Senate, every single one of us, use a significant amount of TV advertising to get elected. Why did we do it? We did it because it works. Why do all the major products use advertising? Because it works. Why do all the national efforts in regard to drunken driving use this very creative type of advertising? Because it works. That is what we have to have in regard to this tobacco situation.

Let me talk further now about another element, a third element, in regard to this comprehensive package that I think has to be part of the bill that we finally approve. That has to do with limiting the type of tobacco advertising. The third proposal to reduce teenage smoking is to regulate the broadcast media in an effort to block the pro-tobacco message. We begin to run into some constitutional problems here, which I would like to discuss. The more constitutional lawyers look into this suggestion, the more problematic it becomes. Basically, it is going to be hard to achieve this objective without the agreement of the tobacco companies. I think we have to understand that.

In recent years, the Supreme Court has struck down as many as a dozen laws attempting to regulate commer-

cial speech. In effect, the Court is reminding those of us in the legislative branch that the first amendment's guarantee of freedom of speech is an important constitutional value. As we look for national solutions to the tobacco-spawned health crisis, we would do well to remember that Congress cannot unilaterally restrict speech.

Specifically, the Court would most likely apply to any of the proposed limits on tobacco advertising the four-pronged test established by the 1980 case of *Central Hudson Gas & Electric Corporation versus Public Service Commission*.

And it is more than likely, Mr. President, that the proposed limits would fail the tests laid out in that case—unless we had the agreement of those whose speech we seek to limit.

Those are the facts.

Under *Central Hudson Gas*, the first test to determine whether commercial speech is Constitutionally protected is: Is the speech false, misleading, or unlawful?

Mr. President, the days are long gone when tobacco could run ads saying that smoking is good for your health. Those old advertising campaigns may have failed this test. I think today's campaigns are clever enough—and empty enough—not to make any false claims, at least under that court decision.

The second test is: Does the limit on speech serve a substantial government interest? This is closely related to the third test: Does the limit on speech directly advance that substantial interest?

And on these tests, Mr. President, the weight of Constitutional opinion is against unilateral limits on tobacco advertising. Two of America's foremost Constitutional scholars have testified in Senate hearings on this issue.

Floyd Abrams—America's leading expert on First Amendment law—told the Commerce Committee, and I quote:

Any legislation of Congress which would purport to do by law what the proposed settlement would do by agreement in terms of restricting constitutionally protected commercial speech is, in my estimation, destined to be held unconstitutional. * * * It is a basic tenet of First Amendment law that * * * the interest in protecting children from harmful materials “does not justify an unnecessarily broad suppression of speech directed at adults.” * * * The sweep of the proposed settlement's restrictions on speech are simply not tailored to its supposed aim of protecting children.

And Harvard's Laurence Tribe—author of one of America's most influential Constitutional law textbooks—testified before the Judiciary Committee that, quote, “the proposed restrictions on tobacco advertising would raise very serious First Amendment questions if they were to be enacted into law by Congress.”

The fourth and final test under this case asks: Is the limit on speech no more extensive than necessary to achieve the goal? On this too, the critics will note that if the same goal of reducing smoking can be achieved with-

out recourse to speech limits, then the Constitutional claims of the speech regulators would fail.

Let me stress, Mr. President, that I am not talking about my own opinion of the Constitutionality of these measures. That would be a subject for another speech, another day. What I am talking about is the immense practical problem posed for us, by the likely opinion of the U.S. Supreme Court based on those previous decisions.

It's likely that the Supreme Court would find these unilateral measures unconstitutional.

The tobacco companies would love that. They would love to change the subject. We must not allow them to do that.

Remember the goal: We are trying to save children's lives. We are driving toward the end zone in the fight against these tobacco companies. We must not—must not—let ourselves get trapped into incurring useless penalties on the way.

This fight is too important—we cannot let it be reduced to passing legislation that will never be enforced. Our goal is to pass effective legislation—not legislation that will tie up our anti-smoking measures in court for years and years.

It's about results. It's about saving lives. We have to remember that.

Let me now turn to a fourth and final element in proposed tobacco legislation—the lookback provision. In my view, Mr. President, the lookback provision is a key component of any solid and effective antitobacco bill. It's a way to hold the tobacco companies liable for the bottom line on this effort to reduce teen smoking.

Put simply, Mr. President, the lookback provision says to the tobacco companies: If we fail to achieve our goal of substantial reductions in teen smoking, you—the tobacco companies—will pay. You will pay. You will pay a lot. We think that will serve as a deterrent. We think, Mr. President, that will affect the future conduct of tobacco companies.

Now, on this one too, Mr. President, the constitutional lawyers are raining on our parade. They point out that the kind of lookback provision we need may well run afoul of Constitutional guarantees of substantive due process. They could hold the tobacco industry liable for actions and results not strictly under the industry's control—and thus be Constitutionally inadmissible.

But I think the solution to this problem—and indeed to that of the First Amendment problem with ad limits—is relatively clear. The government may not be able to do these things by itself. But it can do them, if the industry agrees to them voluntarily.

This, Mr. President, gives us—public officials who are concerned with public health—an incentive to insist on a comprehensive solution, and not a piecemeal approach.

Acting unilaterally, we can punish the tobacco industry. And let me make

clear—there's a great deal to be said for that. Their product has destroyed lives.

But if we act not unilaterally, but instead approve a comprehensive solution, then we can harness all our efforts in the interest of the public good. And we can hold the tobacco companies accountable for helping reduce teen smoking.

CONCLUSION

Mr. President, America's attention is engaged by a children's health crisis caused by tobacco and illegal drugs. This is a rare and unique opportunity for us here in the Congress to create some positive change—change that will save lives. We owe it to the American people to write tobacco legislation that represents the best thinking on what will really work to get kids to turn away from tobacco and illegal drugs, and toward a more promising future. I will continue to work throughout our legislative process to make sure the bill we pass lives up to what the American people deserve.

I hope the President of the United States will become more involved in this struggle. This, frankly, is an issue of great national importance—one that cries out for Presidential leadership.

Mr. President, even after we pass a bill in the Senate, there will still be a lot of work left to be done on this legislation—and frankly and candidly, it won't get done until everybody sits at the table and gets ready for some heavy lifting.

This includes the leadership of the Senate and the House, of course, and also the President of the United States. The President can make a huge difference in this process once he becomes fully engaged.

Finally, Mr. President, I remain optimistic that we can pass a strong and comprehensive bill, not just to reduce teen smoking but also teen drug use. Last year's settlement through the States' attorneys general and tobacco companies has given us a once-in-a-lifetime opportunity.

As this legislation moves through Congress, I believe we have to stay focused. We have to stay focused on the issue of saving children's lives. Let's vow to put together comprehensive legislation that really works. Let's do it now. And let's get it done. Mr. President, it will not be easy.

I again congratulate the majority leader for his leadership and for his courage in bringing this bill to the floor.

I congratulate all who have worked on this bill and other bills—Senator McCAIN, who has worked on this bill and brings this bill to the floor; Senator HATCH and others who have worked on other bills and other approaches. We are all going to have the opportunity next week to have our shot. We are all going to have our opportunity to work to try to fashion a good bill.

The main thing, however, is that we keep the process moving, that we keep

it moving in the Senate, that we pass a bill that is comprehensive, that is practical, that we send it on to the House of Representatives, and ultimately then get it into a conference committee and to the President of the United States.

Frankly, it is only going to be at that time that tough, tough decisions are ultimately going to be made and that the package will finally be put together. But if we do not do our work in the Senate, if we do not keep the process moving, then we will have missed this historic opportunity. So the ball is in our court beginning next week. I fully expect the Senate to take up the bill, and I expect us to do what is in the best interests of our children and in the best interests of the future of this country.

I thank the Chair and I yield the floor.

Mr. President, at this point I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, might I inquire as to the nature of the proceedings of the Senate.

The PRESIDING OFFICER. The Senate is conducting morning business. Senators are recognized for 5 minutes each.

Mr. ASHCROFT. Mr. President, I ask unanimous consent I be allowed to speak for up to 20 minutes.

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

TOBACCO

Mr. ASHCROFT. Mr. President, I rise today to have the opportunity of commenting on a matter which is a matter of great discussion in Washington and around the country. It is the so-called tobacco settlement. I say "so-called" because I think this is more about taxes than it is about tobacco. It is more about big government than it is about teen smoking. This is a measure of the magnitude of which obscures most of the things we have considered for a long time, at least those things considered in my time in the U.S. Senate.

Now, Washington may be entering a new era of surplus politics, but its inhabitants have yet to reject the sentiment that was expressed by King Henry IV nearly 600 years ago. He put it this way: You have gold and I want gold. Where is it? Well, that may be something that really describes America right now because this measure which is flying under the flag of the tobacco settlement is really a massive tax increase on the people of this great country.

This tax increase would total about \$860-some billion—that is the original

bill before it went to the Finance Committee. I don't know whether the increase from \$1.10 to \$1.50 a pack added in the Finance Committee is even reflected in those figures. We are talking about an \$800 billion increase in taxes and it will be focused on people who make less than \$30,000 a year. These are hard-working families, generally families with small children, at the beginning of their earning potential in life. To focus \$860 billion in new taxes on those individuals is a very serious question.

As a matter of fact, that kind of serious question of \$860 billion in new taxes and then about 17 new boards, agencies, commissions, et cetera, in government to spend the money is so obvious a question that I objected to moving to this bill very expeditiously, very rapidly. It looked to me like there was going to be a rush to try and get into this bill, and we would somehow be asked to have consideration of this bill which was not thorough and did not have the kind of complete debate and dialog which I think the Senate of the United States ought to have, and which I think we were created to have.

The founders of this great country said that the Senate of the United States was like the saucer; the cup was the House, and it was supposed to be a place where there were hot passions and emotions, but you spill things over into the saucer. It is a place where things cool. You should have the time to look at things carefully in the U.S. Senate. You should have the capacity to thoroughly discuss things. There should be open discussion. We have had a policy and a heritage in this great body of making sure that all the anticipatable consequences and results and affects of a particular proposed policy could be understood and debated and discussed here.

If I have the assurance that that is the strategy which we will pursue, that it will be a Senate strategy of complete discussion, that we will not unduly or inappropriately limit the kinds of amendments which are offered, that we are going to have an open discussion, that we are not going to rush in and impose cloture to stampede the Senate to a conclusion in what is a pretty highly charged and emotional area, then I have no objection to proceeding. I wouldn't object to proceeding to this bill unless I thought it was going to be something that was a must-do project and that the definition of "discussion" would be someone's time objective rather than a quality objective. The ultimate objective that we should have when we are discussing things in the U.S. Senate should be the quality of our output, not whether or not we want to get home for a vacation or take a break.

My own view is that I really do not want to stand in the way of this particular measure being considered, but I don't want anything to stand in the way of this measure being considered thoroughly, and that there be a full opportunity to provide debate, and that