

## PRIVILEGE OF THE FLOOR

Mr. KYL. Mr. President, I ask unanimous consent that Jim Savage of my staff be accorded floor privileges during my remarks.

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

## THE TOBACCO LEGISLATION

Mr. KYL. Mr. President, I want to discuss today the matter pending before us, S. 1415, the tobacco legislation. It is, as we have been told by many people, one of the most expensive, complex, far-reaching legislative proposals ever considered by the U.S. Senate. The stated goal of the proposal is, of course, nonpartisan and universally recognized—the reduction of teenage smoking. We all agree on that.

What a parent wants is for his or her children to grow up healthy and strong. No parent really desires that their children become addicted to tobacco use. The issue is, what is the best way of achieving that goal, to go about discouraging teen smoking and highlighting the dangerous health risks associated with tobacco while also preserving individual adult liberties.

At the Federal level, I think we should also remind ourselves that underage smoking is, at this time, illegal in all 50 States by State law. I think that as the Senate considers this legislation, we should keep some fundamental principles in mind and they should be part of any legislation we should eventually adopt.

Specifically, I think our legislation should include the following components:

One, we should ensure that teen smoking is reduced. There are a variety of mechanisms for doing that, including making vending machines inaccessible to children, conducting an advertising campaign specifically directed toward children's tobacco use. I think we should ensure that any tobacco tax increase does not create a black market. It is very difficult to know the magic point at which you have raised the price enough to discourage its use without having, however, raised it so much that you create a black market. I think it is probably very difficult to do that, as testimony before the Senate Judiciary Committee has confirmed.

I think we need to ensure that proceeds raised by any tax increase are primarily used for health-related purposes, such as Medicare, research for NIH, reimbursement to the States for their Medicaid expenses, particularly associated with tobacco illnesses, and increasing the self-employed health care tax deduction to 100 percent. In that regard, incidentally, if there are excess moneys left over from a tax, I think we should return it to the people. We could do that, among other ways, by significantly reducing the marriage penalty which is currently built into the Tax Code, that proposal already having been made by Senator GRAMM.

I think another principle that should be embodied in this legislation is to ensure that proceeds not be used to create new, or expand existing, non-health-care-related Federal programs. One of the worst things this body could do is to impose a huge new tax ostensibly relating to tobacco use and curbing its effects but, in fact, generating money to serve totally unrelated purposes, as some of our colleagues suggest. That would be wrong.

I think another principle that should be embodied in any legislation we adopt is that attorneys involved in the litigation regarding tobacco not reap windfall profits at the expense of these education and smoking prevention programs, particularly when they are established for kids.

Finally, I think we should ensure that no provisions are included that are virtually certain to later be adjudged to violate the first amendment's protection to speech or other constitutional provisions.

Mr. President, the rest of the time I would like to address the link between tobacco use and drug use, especially by children, because while there has been much legitimate concern expressed about the dangers of teenage smoking—and about that, as I said, I think there is no disagreement—I think there has been insufficient attention paid to children's use of drugs and abuse of drugs and the Federal Government's responsibility to deal with that problem as well. There is an even greater danger of drug addiction, and the relationship between tobacco and drugs makes it clear that, in dealing with one, we can and should deal with the other. I think our outrage should have some perspective here, and if it does, we should all agree that drug use among children is much more dangerous than tobacco use, as bad as it is.

Now, I noted the connection between the two. Ironically, it appears to work both ways. For example, we have known for some time that cigarette smoking is often a precursor to drug addiction. So, obviously, this is another reason to deal with the problem of youth tobacco use. For example, a survey by the Substance Abuse and Mental Health Administration reported that almost 75 percent of teens surveyed had tried cigarettes before marijuana. Moreover, a 1996 national health survey on drug abuse showed that current smokers are more likely to be heavy drinkers and illicit drug users.

Equally disturbing is the apparent innovation by youth in combining tobacco and drugs. For example, some teens are now smoking cigarettes after they smoke marijuana in order to enhance their high. I learned last night that the reason for this is that apparently the methanol in some cigarettes physiologically allows greater absorption of the THC in marijuana and therefore does prolong or enhance the high. Others hollow out cigars and replace the tobacco with marijuana in order to maintain a better high. This

behavior illustrates the undeniable connection between tobacco and drugs. For this reason, I support linking our effort to reduce teen smoking with that expanded antidrug effort.

I believe we have to keep in mind recent polls which show that the parents of this country are much more concerned about drug use than tobacco use. Their No. 1 fear is their children will become involved in illegal drug use. By contrast, in the May 1998 survey published by The Polling Company, a very recent survey, parental concern about juvenile tobacco use ranks No. 6 on the list. Only 3 percent of the parents cited that, whereas with respect to the No. 1 concern, drug use, 39 percent of the parents mentioned that as their primary concern with respect to their children.

According to Centers for Disease Control research, recently speaking to the New York Times, some kids maintain an illegal drug high by using tobacco, the same point that I had made earlier. And, obviously, what this means is for these kids illegal drugs are the gateway to tobacco use, and not the reverse, as I indicated earlier.

Drugs should be taken at least as seriously as tobacco. The two are undeniably linked. In dealing with one, we should deal with the other. I believe, therefore, that our effort to reduce teen smoking has to be tied to a renewed Federal commitment to reduce marijuana, cocaine, heroin, and methamphetamine use among both youth and adults. Incidentally, if we do that by a comparable amount, we will be reflecting the purpose of the Ashcroft proposal that has been presented to the Senate.

Let us look at some of the disturbing statistics. Prior to 1992, illegal drug use by high school seniors had fallen sharply, from 30 percent in 1985 to 14 percent in 1992. This is a very important statistic, because today people say we are losing the war on drugs, we can't win it, and therefore we ought to give up. Obviously, if we had said the same thing about tobacco use, we wouldn't be engaged in this important effort today to try to reduce tobacco use. But the people who say we have lost the war on drugs are wrong because of the statistic that I just cited. Once this country became engaged in the war on drugs, particularly trying to reduce the use of drugs in schools, the use by schoolkids of drugs dropped dramatically. It was cut in half.

Again, remember the statistics I am talking about. When we began this effort in about 1985, remember we created a drug czar's office, and Bill Bennett and others went out and campaigned fervently against drug use by kids. From 1985 to 1992, illegal drug use by high school seniors fell from 30 percent to 14 percent. So we were clearly making progress. We had made substantial progress. We were doing good.

What happened after 1992? The process reversed. And, frankly, the reason for that is inattention, and in some

cases downright hostility to the effort by the Clinton administration, and only recently reversed by the appointment of Gen. Barry McCaffrey as the drug czar. I think we can see that once we began to reassert our effort, we have begun to just barely see a little bit of progress.

During the first Clinton administration, illegal drug use among high school students doubled. Heroin use for 8th and 12th graders has more than doubled in the last 5 years. By 1996, one in four high school seniors and sophomores reported using drugs in the previous 30 days; 15 percent of 8th graders reported using drugs in the previous 30 days.

So the point of these statistics is that once we became engaged in the war on drugs, we dramatically reduced their use by kids. We cut it in half. What happened when we stopped? It went right back to where it had been.

Equally disturbing about our inattention to this problem over the last 5 years is the fact that, as a result, drug users are getting younger and younger. A survey last year by the Center for Addiction and Substance Abuse at Columbia University showed that 500,000 eighth graders began using marijuana in sixth and seventh grades. As we all know, there are more victims, incidentally, in this drug use than just the user because, of course, drugs are linked to crime. According to the Bureau of Justice Statistics, 36 percent of convicted jail inmates said that they were using drugs at the time of their offense in 1996. That was compared to 27 percent in 1989.

So by a third we found more drug use among those people committing crimes. Moreover, 16 percent of convicted jail inmates said they had committed their offense to get money for drugs. We believe the statistics are much higher. But at least it is astonishing that that number would admit that they committed their crimes in order to get drugs. We know one in four property and drug offenders had committed their crimes to get money for drugs. And in a place like Arizona, where you have such high property crime rates, we know the strong connection between the two. In my hometown of Phoenix, for example, we lead the country in another kind of theft—postal theft by addicts in order to get money.

According to the postal inspector, 90 percent of these thefts are committed by meth addicts. It is their preferred method of maintaining their high.

I also note, Mr. President, that in reminding ourselves of the connection between drug use and crime, to make the point that drug use is not a victimless crime, we should also think of the individual drug user and his or her family.

I recently held a field hearing in Phoenix primarily on the subject of methamphetamine use and the costs to society of having to clean up the meth laboratories and the environmental

concerns and the dangers to people as a result of these toxic substances in their midst. But one of the witnesses was a young woman named Heather, a student, who told us about her beginning the use of drugs, starting with a free offer of drugs when she was in grade school, and working on up through the use of harder and harder drugs until, by her own words, she was a "mess" by the time she was in high school. She noted the fact that she wasn't the only person who was affected by her drug use. Her friends, her family, and, in particular, her mother were deeply affected by what she went through and what they had to bear as a result of her drug use. Fortunately, she was one of the ones who decided to try to kick the habit, and, after several difficult tries, appears now to be on a path of recovery and abstinence and of getting her life turned around.

But it is a terrible, terrible struggle for anyone, but certainly including kids who have become addicted to drugs, to try to get off of the drugs and turn their life around. In the context of the tobacco debate, I just ask everyone to think about this for a minute. We all get used to doing certain things that we know aren't good for us. It is hard to change our habits. We all, most of us at least when you get to our age, would like to lose a little more weight. We don't like the fact that gravity has its inevitable impact on our bodies, and we begin to not quite look like we did when we were 20 years old. We would like to eat a little less and have more self-discipline about our weight. It is hard to do. We would like to discipline ourselves to do other things. It is hard to do. We get to tobacco use, and we know it really becomes hard because there are physiological addictive qualities to nicotine that makes us crave tobacco. For many people, it is very, very hard to stop using tobacco as a result of that addictive quality. But as hard as that is, it is orders of magnitude more difficult for hard drug users and even soft drug users to stop their behavior to get over their addiction. It is much, much harder.

When you hear the story of a young woman like Heather and what she has gone through and how difficult it was for her, I think it makes it crystal clear to us that as we are focused on tobacco and because of the connection between tobacco and drugs it is also very important for us to take this opportunity at this time to also recommit ourselves to fight this war on drugs for the sake of the people who are becoming addicted to drugs every day, for the sake of their friends and the sake of their families, as well as the rest of us in society who end up bearing the costs of their addiction.

Because of the seriousness of this increase in drug use by our youth, I am very troubled that the goal of the administration in its 1998 National Drug Control Strategy is not more ambitious. What is its goal? Its goal is to get us back, a couple of years after the

turn of the century, to where we were when President Clinton took office. That is not only not very ambitious, but I think we could say it does not even begin to express the degree of commitment that we ought to be making.

For the sake of the kids who at least are of junior high age today, we have to do better than that. That is why I am an original cosponsor of the Gramm-Domenici-Kyl Teenage Health Preservation Act. Let me just tell you a little bit about what the Teenage Health Preservation Act will do and why we think it is so important to be included within this tobacco legislation.

Because of the link between underage tobacco use, illegal drugs, and crime, as I indicated earlier, we have established several important provisions in this legislation that I think get to each of those problems.

First, we would establish a \$5 billion antismoking, antidrug advertising campaign. We know that kids watch a lot of television. We know that they are susceptible to advertising. We know that there can be some very effective, good advertising telling them why they should not take on drugs or tobacco use. We would establish a five-member commission, with members nominated by the President, confirmed by the Senate, responsible for developing a comprehensive antidrug and antismoking advertising campaign. This \$5 billion over 5 years would be funded out of the National Teenage Health Security Trust Fund established under the legislation.

We also establish some antidrug and antismoking provisions and penalties, increasing, for example, by 50 percent the drug interdiction budgets of the Customs Service, Coast Guard, and the Department of Defense for activities along the U.S.-Mexican border and the Caribbean region; doubling the number of Border Patrol agents to achieve a level of 15,000 over the next 5 years; increasing the law enforcement budgets of the DEA and FBI by 25 percent; adopting the McCain antismuggling language which directs the Treasury Department to require the placement of a unique serial number on each pack of cigarettes to assist in determining the location and date of production. It would impose penalties of not less than 10 years of imprisonment for any adult who sells drugs to a minor, and a second offense would be life in prison.

We would establish a Federal penalty of not less than 20 years for any person convicted of smuggling illegal drugs into the United States and, again, for a second offense, a penalty of life imprisonment. We would impose a fine of up to \$100,000 and a term of imprisonment of up to 5 years for smuggling cigarettes into the United States. Those who would knowingly sell smuggled cigarettes to teenagers would face up to a year in prison and up to a \$10,000 fine.

Mr. President, let me just note, some of these fines may sound very drastic,

but if we are going to get serious about this problem we have to do some very different kinds of things. I don't think it is too much to say that a fine up to \$10,000 and up to a year in prison is too much for people who are smuggling cigarettes and selling them to teenagers, if we are really serious about this problem.

We would suspend Federal student loan eligibility for teenagers who use drugs or purchase cigarettes. The penalty for drug convictions would be a year's suspension of eligibility for Federal student loans, and a second offense would be a permanent loss of eligibility for student loans. For teen cigarette purchase, it would be a warning the first time around, a 6-months suspension of eligibility for the second offense, and a year's suspension for the third offense. So there would be important penalties attached to all of these.

We would establish a Teenage Health Security block grant program to the States. The distribution of the funds is linked to State adoption of sanctions for teenage tobacco use. The States themselves need to do more to enforce their already existing laws against youth smoking.

We would adopt the McCain requirement that warning statements on cigarette packages take up not less than 25 percent of the upper space on the pack on the front and back of each package. Importantly, as I said before, vending machine sale of cigarettes would be restricted to areas that are not accessible to children or teenagers.

The payment that would be called for here, we think, should be capped at a per-pack amount that is estimated to be below the trigger point of significantly increased black market activity. After financing the tax reductions—in other words, the self-employed health insurance deduction that we talked about earlier—all of the remaining amounts would be deposited in a new National Teenage Health Security Trust Fund. We think the total amount of the tax that would be required in this case would be on the order of 75 cents per pack.

We think that full deductibility of health insurance and smoking cessation programs is called for, and therefore under this legislation we would provide for an accelerated phase-in of a 100-percent deductibility of health care insurance for the self-employed, to be effective January 1, 1999. We would allow all workers not covered by an employer-provided insurance to deduct fully the cost of health insurance. This is the Roth proposal on the above-the-line deduction, so to speak.

In addition, low-income working taxpayers who are eligible for the earned-income tax credit could take advantage of the health insurance deduction. Specifically, the cost of health insurance premiums would be excluded from their modified adjusted gross income for purposes of the earned-income tax credit. This would not apply to an individual covered by employer-provided

health insurance or by Medicaid. The cost of an FDA-approved smoking cessation program would be deductible and treated as an above-the-line deduction as well.

I mentioned the National Teenage Health Security Trust Fund in this proposal. It would finance all the programs and initiatives which are created by the legislation. The Department of the Treasury would establish an accounting mechanism necessary to ensure that the trust fund deposits and outlays are credited properly, and all expenditures from the fund would be outside the spending caps, but all would have to be appropriated on an annual basis. There would be no new entitlement or mandatory spending programs.

No distributions or expenditures from the fund would be permitted for any purpose other than a specific authorization provided in the Teenage Health Preservation Act. Any moneys remaining in the Trust Fund after the annual appropriations process has concluded would be transferred to Medicare.

I mention the increased funds for the National Institutes of Health. This legislation would earmark an additional \$5 billion over the next 5 years from the trust fund to the NIH in addition to—in addition to—the \$15.5 billion increases over 5 years already provided in our budget resolution of this year.

With regard to the State settlements with tobacco companies, we would guarantee the right of tobacco companies and the individual States to enter into legally binding—within the border of each State—settlement agreements, including limiting liability if that is what the States negotiated.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KYL. Mr. President, I ask unanimous consent for 3 additional minutes to conclude my remarks.

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

Mr. KYL. Thank you. I will conclude with this brief description.

The windfall profits tax on lawyers' fees that I mentioned earlier would provide, for States where there have been tobacco settlements reached, lawyer fees above \$1,000 per hour but below \$1,500 an hour would be subject to a surtax of 20 percent, and fees in excess of \$1,500 an hour would be subject to a surtax of 40 percent.

Bear in mind the level of fees I am talking about. While a good lawyer today might charge up to \$200, \$250 an hour—you know, the really superstars, maybe even \$300 or \$400 an hour—we are talking about \$1,500 an hour here before this would kick in. But, amazingly, there are some lawyers who are getting far more than that in these tobacco settlements.

There are some other provisions in here, but I will not go into the details in the interests of time. Also pending before us right now is the Coverdell-Craig-Abraham Drug Free Neighbor-

hoods Act. I also strongly support that legislation. That legislation has been adequately described by Senator COVERDELL a little bit earlier this afternoon. It has the drug-free teen drivers provision, the drug-free schools provision, which is very important. It emphasizes drug-free workplaces. I think it is very important for us to recognize that we are not going to be able to have drug-free workplaces if it is possible for people in this country to use drugs legally. Finally, there are key provisions for drug-free communities support.

I might just note, too, a couple of the very specific provisions of the bill that I particularly like. It bans free needles for drug addicts and has a very important money laundering provision and a registration of convicted drug dealers.

These are some important things that we can be doing to enhance the tobacco legislation before us to apply to the drug problem that also faces our youth today.

We can't let this opportunity slip to address the national drug problem at the same time that we are addressing the important tobacco issue. Underage smoking is a serious problem, but smoking doesn't result in the crimes against the person and property that illegal drug use does. We have to focus at least as much attention on the problem of illegal drug use as on the problem of underage smoking. It is important to remember, Mr. President, that underage smoking represents only 2 percent of all smoking occurring in the United States. Teenage drug addiction is a critical and growing problem within this country.

Thank you, Mr. President.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, will the Senator from West Virginia be speaking in morning business?

The PRESIDING OFFICER. The Senate is in a period of morning business with speakers allowed to speak up to 10 minutes.

Mr. ROCKEFELLER. I thank the Presiding Officer.

#### VETERANS AND HIGHWAY TECHNICAL CORRECTIONS BILL

Mr. ROCKEFELLER. Mr. President, I will address two subjects, primarily veterans and the highway technical corrections bill. But in this morning's Congressional Daily, the majority leader, when referring to the question of the matter of the treatment of disabled veterans who have been addicted to smoking and have become disabled because of that, said, "Where was ROCKEFELLER when we passed this bill?" And that is a quote.

The majority leader has publicly questioned my record on the issue of veterans' smoking-related disability rights, and I really thought I had a duty to set the record straight.