

Finally, Mr. President, let me say a few words about the approach I see developing in Congress.

We have not covered ourselves with glory recently. We have not passed our IMF replenishment. We have not passed our UN dues. We have not passed the Comprehensive Test Ban Treaty. We have not passed fast track. And some have seen the recent satellite launch controversy as an opportunity to make points in domestic politics.

This is not the way a great power behaves. We have serious responsibilities in our foreign affairs—whether in peace and security, in economics and trade, human rights or environmental protection. And we diminish our institution at home, and our country abroad, if we do not take these responsibilities seriously.

We have time to fix our deficiencies. But it is not unlimited time, and as we see in South Asia; in Hong Kong; in Korea; events will not wait for us. So as the President makes this historic trip, let us reflect a little more deeply on ourselves, on our responsibilities, and on what we can do for our national, rather than political, interest.

Thank you, Mr. President, and I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE). The Senator from Texas.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2689

Mr. GRAMM. Mr. President, I know our dear colleague from Nebraska is here to speak, and I will try to be brief. I do not want to hold him up, knowing he has something we need to hear and I am eager to hear it. But I want to talk just a moment about the pending amendment.

Let me remind my colleagues that in this bill before us, one of the things the proponents of the bill say is good about the bill is that it transfers money to the States. While this bill allows attorneys to be paid \$92,000 an hour, while this bill provides \$18,615.55 per Native American who smokes for smoker abatement, while this bill pays farmers \$21,000 an acre who are currently under the tobacco program while allowing them to keep their land and to continue to farm tobacco, we are told that at least a good thing about the bill is that it gives money back to the States.

However, when you open up the bill to page 201, you find that we do give money back to the States, but only half the money can be spent by the States as they choose to spend it. Basically this bill dictates Federal mandates as to how the other half of the money has to be spent.

The bill requires that "a State shall use not less than 50 percent of the amount received" for the following kinds of programs: maternal and child

health services block grant, child care under section 418 of the Social Security Act, federally funded child welfare and abuse programs under title IV-B of the Social Security Act, programs administered within the State under the authority of the Substance Abuse and Mental Health Services Administration under title 19 part B of the Public Health Service Act, the Department of Education Dwight D. Eisenhower Professional Development Program under title II.

It is obvious that there is some lobbyist somewhere who has all these pet programs and is now having the Federal Government dictate to the State of Texas and to other States in the Union how they are supposed to spend the money that they are getting under this tobacco settlement.

If this weren't bad enough, if this weren't outrageous enough, now Senator KERRY and others come along and say, "Well, this is not enough. What we are going to do in addition to all these things is we are going to tell the States that they have to spend half of 50% on a specific program. "A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act."

In other words, not only are we making them do all these things, but now Senator KERRY and others want to say that 50 percent of the 50 percent that we are forcing the states to allocate has to go for this one particular use.

Yesterday and the day before, we went back and forth with amendments. Senator COVERDELL got to offer a real amendment to try to target drug use among teenagers, and those who were opposed to it got to offer their supposed alternative. Yesterday, I offered an amendment to give a third of the money back to moderate-income working people by repealing the marriage penalty, and those who were opposed to it got a chance to offer their alternative. I have an amendment that will eliminate all the restrictions in the bill related to the Federal Government telling the States how to spend this money.

I want to make it clear I don't intend to see this Kerry amendment voted on up or down until I have an opportunity to offer my alternative. My amendment takes all these earmarks out of the bill and gives the Members of the Senate the opportunity to decide if they want to serve in the State legislature and allocate State moneys, or do they want to be U.S. Senators? If I wanted to tell the State of Texas how to spend money, I would have run for the Texas Senate or for the Texas Legislature. I didn't run for the Texas Legislature. I never served in State government, and I don't want to get into State government now by trying to tell my State how they have to spend this money.

We can have a motion to table this Kerry amendment. But, if it is not ta-

bled, before this amendment is going to come to a final vote, I want to have the right to offer my alternative and give the Senate, as we did on drugs, as we did on taxes, two alternatives: One, do more to make the States spend the money they get under the bill the way Congress and all these special interest groups that have written this bill dictate it should be spent; or, two, rip out all the provisions of the bill relating to mandating how the States spend the money and let the States spend the money as they choose to spend the money.

I think the Senate ought to have that choice, not a choice between a bad provision and making it worse, but a choice between making it worse and getting rid of the whole process of telling the States how to spend their money.

I thank the Senator from Nebraska for his patience, and I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, first of all, let me say I appreciate the suggestion the Senator from Texas just made, because I intend to do approximately the same thing, only with the entire piece of legislation. Perhaps I am the only Member of the Senate who is becoming increasingly confused about what is in this bill. Perhaps everybody is crystal clear. I am not.

As I understand it, the tobacco companies will be required under law to pay into a trust fund, \$15 billion in the first year, growing to \$23 billion. If I were to make an inquiry, I suspect, of the managers of the bill right now as to what is in this bill, I am not sure I would like the answer.

What we have been doing since the bill was introduced is we have been deciding how we are going to allocate that money. As I understand it, the amendment of the Senator from Texas, which was accepted, will allocate a piece of that money for tax cuts, and the amendment of the Senator from Georgia will allocate a piece of that \$15 billion to \$23 billion for antidrug efforts, drugs other than nicotine.

What the Senator from Massachusetts and the Senator from Missouri, Senator BOND, have is an amendment before this body that will allocate an additional amount for child care. What the Senator from Texas is saying is he wants to have all that money undesignated. So do I, only I believe that a substantial portion of the \$15 billion to \$23 billion needs to be allocated in as unrestricted a fashion as possible to the States so that we can help people who choose to stop smoking stop smoking.

I appreciate that many Americans do not want to stop smoking. And if they have the freedom to choose, with full disclosure of what is in the substance, fine. Choose, and let the substance do to you what it is going to do.

However, I have approximately 350,000 Nebraskans who smoke, and

they spend about \$250 million a year on cigarettes alone, they smoke over 100 million packages of cigarettes a year. My belief is, if we organize this correctly, we can help those who choose to stop smoking stop.

We now know that nicotine is addictive. That is one of the reasons the tobacco industry was willing, on June 20, 1997, to say that, "We will pay in \$15 billion a year as well as a \$50 billion punitive damage payment." Indeed the 37 million documents in the Minnesota case showed far worse.

Yesterday, as we all know, a case in Florida was decided in the favor of an individual. I listened to a member of the jury this morning on television say he voted to give this individual damages because the tobacco industry is still saying that nicotine is not addictive, still saying it does not produce a powerful physical addiction.

Now, back when dinosaurs roamed the Earth, I was a pharmacist. That was 1961 to 1965. I went to the University of Nebraska and graduated with a degree in pharmacy. I was given a physical examination by the Government and served time in the Navy, so I did not have a chance to practice very much. But in those days we understood addiction. We were trained to study it.

So I am impressed with nicotine as a drug, because it crosses the blood-brain barrier and it is a powerful addictive substance. It is not just habit forming; it is as addictive, according to scientists, as cocaine, as heroin, and other drugs that produce such a strong physical pull on an individual that about a month ago a former mayor of Omaha, Gene Leahy, a wonderful human being, announced he is dying of lung cancer; and at the press conference he was smoking a cigarette because he can't stop. It isn't that he is choosing to smoke cigarettes; he has no choice; he is addicted to the nicotine.

So I have 350,000 people in Nebraska who smoke, who spend hundreds of millions of dollars a year on cigarettes. By my calculations, if they are spending all that money, and if we are asking them to pay all of this additional money to continue to smoke, we ought to at least offer to help those who want to quit, quit. And if we can help them stop smoking—not only are they going to become healthier as a result of that help they are going to be more prosperous because they are not spending money on tobacco anymore.

I have never been convinced by the arguments that simply raising the price of cigarettes is going to dramatically reduce smoking. Not if you are addicted. What does the price increase of cocaine do to an addict? They just steal the money and buy the substance. If it is an addictive substance, I do not care what the price is—a person is addicted to it—they are going to do what is necessary to buy the product. That is what we are dealing with.

What we are doing with this piece of legislation, as I see it, is we are nicking away at the money raised as a

result of this bill's increase in the price of cigarettes and thereby decreasing the chance we have to help those individuals who want to stop smoking not only become healthier but to become more prosperous. Again, the funds raised by this bill should be spent on reducing the number of people who are smoking in this country. In Nebraska, we should be concerned about reducing dollars spent on cigarettes from say \$250 to \$200 million—which is a relatively modest though difficult goal to achieve. And while it may not sound like an enormous decrease, it is a quarter of a billion dollars every 5 years into the pockets of those individuals.

So all the talk about this being a tax increase, to me, is misleading. It takes us in the wrong direction, puts us on the slippery slope of cutting taxes instead of reducing smoking. What we ought to be trying to do is cut people away from an addictive substance that, taken as directed, would decrease their chance of living a long and healthy life and decrease their chance, as well, of getting a shot at the American dream of having a little bit of prosperity.

One of my friends in life is an extremely conservative businessperson. He will not hire anybody who smokes. I understand that the U.S. Chamber of Commerce opposes this legislation. I am a member of the Chamber of Commerce in my business. I think they are wrong. I think they have looked at this thing only as a tax increase, because some are describing it as that, and they are not understanding that if their employees decrease their addiction to this substance, that they are healthier. And if they are healthier, the cost of their insurance goes down, their absentee rates go down.

Everybody who has employees working for them wants their employees to be as healthy as possible. The Chamber of Commerce, in my judgment, and the National Restaurant Association are missing the point. If there is cessation money in this bill, I can go to Nebraska and appeal to the business community, to the Nebraska restaurant association, to the Nebraska Chamber of Commerce, and say, "Let's get involved with this cause of helping the people in Nebraska who want to quit, quit." You say, "Well, that ought to be easy enough to stop." Mr. President, again, it is addictive, and to stop and to get off an addiction is not an easy thing to do. As a result, it is extremely hard for these people to not pay the price increase being imposed on them—they have a physical need for the product.

And it is made even more difficult—I have met, on a number of occasions now, with Nebraskans who smoke, especially with young people who smoke; and one of the interesting things that I acquire from those conversations is an answer to the question, "Why don't you just do smoking cessation if you want to stop?" And one of the answers is, it is not only easier, it is cheaper to smoke than to stop smoking.

Most places where you buy cigarettes, they are right there in the open. They are right there in the open. You can go and buy them for a current per pack price of about \$2.50.

But if you want to stop smoking—as we all know who have had friends who have either been addicted to this substance or addicted to alcohol or addicted to other sorts of substances, who are trying to get off the urge—the desire for this substance comes back. You need much more than just an opportunity to buy.

But go into a store, go into any store in your home State, and try to buy a smoking cessation kit. No. 1, you are going to find out that it is substantially more expensive than a pack of cigarettes. For lower-income people, who tend to smoke in higher percentages, it is a barrier. And it is especially a barrier as I have talked to young people who say they simply do not have the out-of-pocket money to be able to buy it. So it is easier for them to buy cigarettes. The physical environment for buying smoking cessation kits in stores is more difficult, oftentimes kept under lock and key.

So as I see this legislation, the original purpose of the legislation was to collect from the tobacco companies a fee, which started at \$15 billion, and increased to \$23 billion as a result of the Minnesota court decision, to help adults who want to quit, quit as well as to stop young people from smoking. That is a laudable goal—40 percent of my underage teenagers in Nebraska smoke; one out of three of them will die prematurely as a consequence. A very high percentage of them believe they are going to stop, even though all the statistics show that they do not stop because they are addicted. They do not understand the nature of addiction. They do not understand that nicotine is addictive. They have been told otherwise by the tobacco companies for all of these years.

So, Mr. President, I have heard the distinguished Senator from Texas say that before he will allow a vote on this amendment by Senator KERRY and Senator BOND, which seems like an altogether reasonable amendment to me—at least it puts money into children; he wants an agreement that he is going to get a vote on his amendment.

Well, I want the same. I am here to say that I will insist on the same, an amendment that allows us to say that this legislation will give each of our States a designated amount of money, that we will know what that amount of money is going to be, for a block grant that will go for smoking prevention and cessation. Let the States decide. I do not believe any of us really understands what it is going to take to get people to stop smoking. I think the people at the community level understand it an awful lot better.

It is not going to be easy to get the job done. My amendment would create a single block grant, not only to help young people not to smoke, but also to

help those who currently smoke to stop. I believe it will make our people not only healthier, as a consequence of getting off an addiction that causes them to have significant health care problems, but it will also make them more prosperous by decreasing the amount of money they are spending on a substance that, taken as directed, will make them unhealthy.

So the Senator from Texas gave me an excellent idea. I had not intended on doing that when I came to the floor. One of the things I am trying to get to is—as I said earlier, I am confused about what is left in this bill. I understood it in the beginning that it was a \$15 billion fee from the tobacco companies, growing to \$23 billion; that 26 percent of it was going to be allocated to research; that 16 percent of it was going to be allocated to farmers; that 40 percent of it was going to be allocated to States; and the balance was going to be allocated to public health for education, cessation. As I understand it, of the total amount only 6 percent would go to smoking cessation programs.

As I said, I had drafted an amendment that would have taken a significant portion—46 percent—of the funds raised by this legislation and given it to the States in a single smoking cessation and prevention block grant.

I have prepared numbers that show what every single State would get under this block grant designed to work to reduce those people who are addicted to smoking, reduce their health care costs, and increase their prosperity by helping them kick the habit and get off of an addiction that is not only costing them their health but also costing them a great deal of money.

I will insist on my amendment that will restore the money that was taken out of the \$23 billion in the Gramm amendment, that will restore the money that was taken out with the Coverdell amendment, that will restore any other money that is taken out.

I believe if this bill is going to be effective, if it is going to help us organize the coalitions at the community level to help Americans become healthier and more prosperous, we have to help especially those adults who are addicted to a substance that is extremely difficult to kick.

One of the most frustrating things I am dealing with right now on this piece of legislation is I don't know what is in it. I believe before we proceed further with any additional amendments we need to know how that \$15 to \$23 billion is allocated. I heard some who are arguing in favor of the amendment of the distinguished Senator from Texas having to do with the marriage penalty, that we would still have 40 percent going to the States. It is 40 percent of a much smaller number. Forty percent of the people on the floor of this chamber is a much smaller number than forty percent of the people in this country.

My math tells me the best way to look at this is to start off and say, \$15 billion coming from the tobacco companies, growing to \$23 billion, how much is going to be designated under this law for various items? At this stage of the game, I am not able to get an answer. I understand that the managers of the bill are going to try to crunch the numbers and give us an answer, but I don't think we can seriously consider it unless we presume we will accept every single amendment and write the bill in conference, which I think is a bad way of doing things.

Our most distinguished Senator, George Norris, served in this body for a number years. He went back to Nebraska, hating the conference committee—hating the process by which House and Senate differences are resolved. We keep hearing that the problems with this bill can be fixed in conference, that a conference committee will take care of them. That is undemocratic. We should not be writing a piece of legislation as important as this one in a conference committee. I think it is a very bad thing to do, and I think we need to consider every single amendment that is brought down here as seriously as possible, based upon an understanding of what is in the bill.

I do not know what is in this bill right now. I do not know how the \$15 to \$23 billion is being allocated. I know every single amendment that has been passed has changed that allocation, but I don't know what we are left with. I knew prior but I don't know now. I am hopeful we are able to get that.

I will declare, as the Senator from Texas did, that before we have a vote on the Kerry-Bond amendment, which I support, I want to vote on my amendment which will take this bill back to what I think it was originally intended to do, which is to reduce addiction in the United States of America on a substance called nicotine, that we discovered on the 20th of June, 1997, is addictive.

For those who understand the nature of addiction, it is a very serious public health problem. I thought we were going to try to solve a very serious public health problem. I thought we were going to try to empower our citizens to participate in solving that problem, as well. I hope that at some point in this debate we are able to get back to that.

As I said, I appreciate very much that there is a lot of enthusiasm to move this thing along. I read in the paper we have dealt with this controversial tax issue and all that is left is the controversial farm provision—we just deal with that thing and this thing will move out and put pressure on the House then to pass it. All of that legislative process confuses me, let alone confuses the people I represent. What they are not confused about is their desire to have an opportunity to improve their health and improve their prosperity through this legislation. As I see it, we decrease the chances of that hap-

pening with the amendments that have been agreed to thus far.

I have come to the floor to ask for two things, and I hope at some point I can get them. One, what is in the bill? How is that \$15 to \$23 billion allocated? How much goes to the reduction in tax in the marriage penalty and whatever else was in the Gramm amendment? How much of it goes now to fight the war on drugs? For gosh sakes, we don't have the political courage to put enough money in the drug war on our own without taking it from this bill—I don't understand that, frankly. How much is now going to the war on drugs? How much will be going to child care under the Kerry-Bond amendment? I want to know what the lay of the land is.

Second, I will insist, as the Senator from Texas has just done, that my amendment be considered as well, that we convert this bill into what it was intended to do in the first place, and that is to give our people at the community level the opportunity to fight this war against nicotine addiction. I believe when we win this war, this piece of legislation is going to be seen as a very important piece of legislation. But if we don't win this war, if all we do is go home and issue press releases saying I cut your taxes, I gave you some more money for this and some more money for that, then it seems to me, Mr. President, that whatever else it is that we get done through those peripheral efforts, we will have not empowered the people in our States and our communities to be able to fight a battle that we now know—and, indeed, I argue one of the problems we are having is we don't know the full ramifications and details of all of the new information that we have since the 20th of June, 1997—about the seriousness of this health care problem.

I am hopeful, as I said, that not only can I get the information about what is in the bill right now, but I will hopefully not offend too many by insisting, as the Senator from Texas has, that my amendment be given an opportunity to be voted on at the same time that the Kerry-Bond amendment is considered.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I ask unanimous consent to address the Senator for 15 minutes on the bill and the underlying amendment.

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

Mr. JOHNSON. Mr. President, I take this opportunity to talk about the underlying bill and the Kerry amendment that is pending. This is, obviously, the most serious effort ever by any Congress to address the critical public health issue of smoking.

Now, what has brought us to this point? Obviously, the historic settlement negotiated last year by the States and the tobacco industry provided the most incentive for this, but

the tremendous success of several States—and I particularly note the State of Minnesota and their attorney general, Skip Humphrey, in aggressively pursuing their claims against the tobacco industry—has revealed what has been the massive deception that underlies the tobacco industry's traditional position.

It has been now conclusively demonstrated that tobacco is, in fact, addictive. That is a claim which the tobacco industry had consistently denied and, frankly, covered up. We have learned that the tobacco industry has targeted children to addict them to tobacco products, another claim that the tobacco industry has lied and covered up. We have also learned if you do not start smoking when you are underage, it is unlikely that you will ever become addicted to tobacco. All the more reason, then, all the more incentive, then, for some to try to addict children to this product.

I support adult choices and adult responsibility, but when an industry targets kids, knowing full well the children are vulnerable to addiction, and then argues for adult choice, it is time for this Congress to step up and protect our kids.

I don't need to recite the statistics that everyone in this Chamber has heard the past couple of weeks now. Let me just say this: 3,000 children start smoking every day; 1,000 of them will die prematurely due to this addiction. Every day we delay this process, we sentence another 1,000 children in America to die early.

There are many critical amendments to be reviewed and debated, but let us not lose sight of the fact that we have to act now. There is an urgency to act now. Any further delay would be unconscionable. The lives of our children are at stake, literally. We must protect them from the predatory industry that views youth as "our replacement smokers" good for many decades of addiction to their deadly product.

Cigarettes are one of the most heavily marketed consumer products in our country. Tobacco companies currently spend almost \$6 billion a year to promote and advertise products, and they have increased their spending by more than 12 times since 1971, when advertising on radio and television was banned.

Children are, obviously, the most vulnerable to tobacco company tactics. They have targeted kids because of this vulnerability to nicotine addiction, and they are the most easily affected by slick advertising and promotional ploys. The evidence is overwhelming that smoking is a pediatric disease. I support a comprehensive approach to ensure success in our efforts to protect kids. For every 10 cents added to the price of cigarettes, approximately 700,000 fewer teens will begin smoking.

To further promote public health, I have supported investment in public health and research. We must maintain and support FDA authority to restrict advertising directed at teens. Finally,

we have to strengthen the look-back provisions and, ultimately, hold tobacco companies responsible for their efforts to addict kids. These important decisions will influence companies to stop marketing to children with advertising and promotional techniques.

I commend my colleagues on both sides of the aisle who have supported our efforts to address this critically important issue.

My own State of South Dakota holds the dubious distinction of having the second-highest rate of underage tobacco use in America. Now, I am committed to doing what I can to see these rates reduced.

Almost one out of every nine high school boys in my State will die prematurely from tobacco use. Of the teenagers in our State, we can now expect 15,000 South Dakota teenagers to die early because of their tobacco use. These odds are way too high to be permitted or to be tolerated by this body. The expeditious passage of this tobacco bill will have a real and immediate impact on releasing those rates. We cannot delay any longer. I am also pleased that as we debate this issue, Senator KERRY, Senator BOND, and others, have joined in an effort, which I have joined in as well, to direct a modest portion of the revenue generated for child care purposes.

I appreciate that there has been a significant debate on the floor of this body on the use of revenue generated by this legislation. I think it is correct that this legislation ought to be directed at cessation of smoking and tobacco use and not as a revenue generator. However, the reality is that any realistic bill that has a chance of reducing tobacco usage will generate revenue, and this body has a responsibility of determining how best, then, to use that amount of revenue generated—some \$62 billion over the first 5 years.

It makes sense to me the first emphasis ought to be on health care, reimbursing the States, clearly, for the health care expenses they have incurred. It makes sense to me that there ought to be a high emphasis on medical research, on cancer, lung cancer, heart disease, and other diseases that are smoking-related. There ought to be a huge effort in that direction. There ought to be an effort and a priority for smoking cessation programs. But it also seems to me that some of these dollars ought to roll back to families and to children through some tax relief. No doubt, that will be a part of the package. But I think it is a mistake to include a tax package that is so enormous that it drains, overall, the revenue, or a large share of the revenue that could otherwise have been utilized for medical research, help for the States, smoking cessation, or for child care. I think there needs to be a balance in that regard.

I am particularly troubled by the amendment that was passed yesterday, which would, in fact, not only drain these resources away, but would ultimately

dip into the budget surpluses and, in fact, Social Security surpluses to make good on its obligation. But I believe that if we can use the revenue that Senators KERRY and DODD have proposed, it would go a long way toward promoting at least a portion of the goals of our Early Childhood Development Act, which I have cosponsored with them.

This amendment, if adopted, would go a significant way toward assisting working families, recognizing the reality that more and more families now have both parents in the workforce, and in the case of single-parent families, quality child care is all the more essential. Each day, an estimated 13 million children younger than 6 years old, including 6 million toddlers, spend all or part of their day in child care of some form, and child care experts tell us it easily costs between \$4,000 and \$10,000 a year for a child.

Now, augmenting the block grants to the States where we do not create a Federal bureaucracy, we do not federalize child care, we do not run things from Washington, but we give the resources necessary for States to devise their own innovative, strong child care strategies, makes all the sense in the world, particularly given the fact that, as I have held child care meetings all around the State of South Dakota, it has become obvious to me that not only do people have too few choices—quality choices—but all too often the child care providers themselves find themselves on the economic edge, with good people leaving that particular profession because of the low salaries and the high stress of that particular occupation. So we have children at the most vulnerable point in their lives, where the greatest share of brain development is taking place in the course of their lives, with a patchwork system that has simply not received the national attention it deserves. This amendment would go a long way toward augmenting the child care options, the affordable quality options that working parents in our country deserve to have.

I appreciate that there are people in this body and around the country on the far political right who seem to lie awake nights worrying that somehow this legislation may generate the resources essential for the Government to actually do something for kids. I don't lie awake nights worrying about that. I worry about how can we work on a partnership basis with States, local governments, and private organizations to provide more affordable and quality options for child care and improve the health of the next generation of Americans. I think that is the underlying concern. For that reason, I am very supportive of this amendment and the underlying bill.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, my understanding is that we may have a vote soon on the amendment, so I will take a couple of minutes. My colleague from Massachusetts is here and others are here on the floor. Let me just say that I am honored to be a part of this effort and to join with Senators KERRY and BOND. And I appreciate the words spoken by my colleague from South Dakota.

Mr. President, I will try to be succinct. The focus of this legislation is children. The focus of this legislation is, of course, to go after the addiction of children to tobacco, to focus on cessation programs, to focus on the goal of making sure that we don't have children addicted to this very lethal drug any longer, and to make sure that we, in fact, focus on the overall health of children in our country, and that we focus on ways in which children cannot only be healthy, but have hope and can do well in school and do well in their lives.

In that respect, I think this amendment is right on point, right on target. We are talking about at least trying to make sure that about \$6 billion-plus over the next 5 years would go to early childhood development, both for children before they go to kindergarten and also for afterschool care.

I will just raise two questions in 2 minutes. No. 1, to tell you the truth—that is an interesting expression; it is not like everything else I have said has not been the truth—but to tell you the truth, I don't even know why it is that for some reason, somebody decided the only way we are going to have funding for child care in this country is out of a tobacco bill. I think if we really care about this, we are going to make the investment. But I also believe this is a very appropriate vehicle on which to have this focus. As my colleague from South Dakota said—and I know my colleague from Massachusetts will focus on this—we have all this research, and the Federal evidence is irrefutable, irreducible. We have to make sure that children by the age of 3 are ready for school and ready for life. If they are not, they may never do well in school; they may never do well in their lives.

What more important investment, what more important feature of this legislation could we support than to make sure we invest in the health, skills, intellect, and character of our children? That is what this is about. It is related to how they feel about themselves, their confidence—both early childhood development before kindergarten and afterschool care. That is also related to the question of whether or not they care enough about themselves and feel good enough about themselves that they don't get addicted to tobacco and that they think about a positive life, about a healthy life, and about what they are going to do in their lives.

This is an extremely important amendment which goes to the heart of

what this legislation is supposed to be all about—public health, focusing on the improvement and the betterment of our children's lives, and all of these children are God's children.

This amendment should pass. It is a bipartisan effort. I am very pleased to be on the floor supporting it.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I strongly support the Kerry/Bond Youth Smoking Reduction Amendment. This year has featured hearings, press conferences, and legislation from both sides of the aisle promoting children's programs. Over 50 bills have been introduced to improve childhood development and after school programs. Headlines have focused the nation's attention on the difficulties that many parents face in finding quality care for their children. The struggle for decent child care is a daily fact of life that all working families understand, regardless of their income. Yet millions of families today cannot afford the child care they need in order to raise, and protect their children.

Both Republicans and Democrats agree that the number one goal of this tobacco bill ought to be protecting our children and reducing teenage smoking. Rightly, so. Millions of young lives hang in the balance. Every piece of tobacco legislation that has been introduced is intended to help children. Republicans have called their bills "Placing Restraints on Tobacco's Endangerment of Children and Teens Act" and the "Kids Deserve Freedom from Tobacco Act." Democrats have introduced the "Healthy Kids Act." It's time to make this legislation reflect the rhetoric about children.

Senator GRAMS was right when he recently explained why he will not support the tobacco settlement—"It's not about protecting kids from tobacco, because if it were, the dollars the federal government collects would go to the kids."

I agree that these funds should be used for early childhood development, child care and after school programs—programs that directly help kids. These programs are effective ways to curb teen smoking and promote a healthy future for our children. It's time to stand up for the nation's children, and stand against the tobacco industry.

During this debate, there has been a great deal of discussion about restricting tobacco advertising and increasing the price of cigarettes. Both steps are intended to curb teenage smoking, and both will help to do just that. But there are other steps we can take as well to deal with realities that make children vulnerable to the lure of tobacco. By investing in essential early childhood development and care that can really help us save children from the dangers of smoking.

The purpose of this tobacco legislation is to help children and to stop teenage smoking. For more than a gen-

eration, the tobacco industry has been profiteering by abusing the nation's children, stunting their growth and stealing their futures. The full dimension of this cynical tobacco industry strategy is finally becoming clear. The avalanche of secret industry documents disclosed in recent months reveals a blatant nationwide scheme to target children and addict them to tobacco in order to maximize industry profits.

For a quarter century the R.J. Reynolds Company has referred to children as "tomorrow's cigarette business." Newly released documents show that Philip Morris provided money to movie makers to add smoking scenes to popular movies, such as the Muppets, in order to observe attitudes toward smoking by children as young as 5 years old. As a result of the tobacco industry's tactics, 93 percent of 6 year olds can identify Joe Camel as a symbol of smoking.

Investing in child development is sensible "public health" strategy. It is based on sound science and common sense. Doctors and public health officials who are on the front lines, working tirelessly to help children grow and develop into productive citizens, know all too well the dangers of tobacco. They have seen all too frequently its tight grip on our young people. They have called upon us to do all we can to reduce teen smoking, including an essential investment in early childhood development and after school programs. Forty-two doctors, public health officials, business leaders, and child development experts including Dr. T. Berry Brazelton, America's foremost pediatrician, have strongly supported this strategy, and have asked Congress to invest in child care and after school programs to prevent youth smoking addiction.

Recent research reminds us that brain development in the first three years of life is critical to laying the foundation for positive self esteem, effective decision-making and the ability to resist destructive habits such as smoking. If we want children to grow up healthy and tobacco free, we must ensure that they receive the stimulation and nurturing they need early. If we wait until adolescence to help them develop the will and the skill to say no to smoking—what we do will be too little and too late.

After school and summer programs also make a large difference. Over 5 million children are left home alone after school each day. They are more vulnerable to negative peer pressure and pressure from the tobacco industry. These are precisely the teenagers targeted and manipulated by the industry's marketing schemes. After school programs help keep young people off the streets and engaged in constructive activities that do not jeopardize their futures. Many of these after school programs specifically incorporate anti-smoking initiatives to teach participants about the dangers to tobacco and

equip them with the skills to make important life and death decisions.

Teenagers left home alone are significantly more likely to smoke cigarettes, drink alcohol, and experiment with drugs. In stark contrast, children who participate in productive after school activities are far less likely, to smoke, drink alcohol, or use drugs. We also know that cigarettes are a "starter drug" and often lead to hard drug use and substance abuse.

High quality child care and after school programs can help children develop the skills they need to avoid unhealthy habits such as smoking. But, every day across America, millions of low-income working families face the daunting task of finding affordable child care on their limited budgets. The reality is that far too many children are at risk. Ten million low-income children today theoretically qualify for services under current federal child care programs. But because of the lack of funding, only 1 in 10 actually receive it. The cost of decent child care often ranges from \$4,000 to \$10,000 per year—yet a minimum wage job pays only \$10,700 a year. Low-income parents need support to ensure that their children are safe and well cared for. Unfortunately, far too few of them receive the help they need and deserve. Sadly, they are the one group that has been deliberately targeted by the tobacco industry for addiction and early death. That is why I support the Kerry-Bond Amendment, which will ensure that at least half of the federal share of the state funds received under this legislation will be spent by states on after school care and early childhood development by increasing the Child Care Development Block Grant.

The American people understand the importance of funding these child development programs. They agree that tobacco settlement revenues should be invested in child care and child development programs. I have received numerous letters from groups, experts, and parents from across the country urging Congress to do so.

If we want children to say no to tobacco, then Congress needs to say yes to making children's programs part of our national strategy for keeping children healthy and tobacco free.

Mr. President, I join in commending my friend and colleagues, Senator KERRY and Senator BOND, for bringing up this amendment. I think it is very consistent with the central thrust of this legislation which is addressed to reducing the number of young people in this country—the children of this country—from becoming involved in smoking.

What we all find out in listening to those who have thought about this, studied it, and reviewed the various real-life experiences that we have seen in different communities, countries, and States is that there are some very, very powerful conclusions. There is no one single answer, but there are a series of answers.

I believe that this amendment addresses one of the very important conclusions that have been drawn on the basis of sound science and common sense. We have learned that if you see a significant increase in the cost of a pack of cigarettes, that it provides a significant disincentive to children to involve themselves in smoking. We find out that if you provide counteradvertising in making young people aware of the dangers, that it can have a powerful impact in offsetting the \$5 billion a year that is out there to try to draw young children into smoking by presenting the case that, if they start to smoke, their life will be more exciting, more pleasurable, and more successful. You don't need to match the tobacco industry dollar for dollar, but you do need to have an effective counteradvertising campaign. That reduces youth smoking. We have seen it in Massachusetts. We have seen it in California. I have referred to those studies at other times in the course of this debate.

Cessation programs to help young people to stop smoking have had some important success.

Support for school-based programs, which I see in my own State of Massachusetts, where young people involve themselves in working with law enforcement to discourage retailers from violating the law, has had some success.

We have a number of young people now in my State of Massachusetts who are involved in programs to have the various malls around Massachusetts smoke free. They are doing it as volunteers. The young people are doing it. They are also educating the public and their colleagues about the dangers of smoking.

There are a number of things that can be done. But the importance of providing early child development to equip young children with the confidence-building tools so that they have the ability to resist various peer pressures and develop those skills of competence is absolutely imperative and essential if we are expecting the children in the future to resist dangerous types of behavior. That has been demonstrated time in and time out. The various Carnegie studies have amply demonstrated that.

This legislation is focused on early child development, building those confidence-building skills, helping and assisting in augmenting and supporting children at the earliest ages. We find as the study goes on and on that the earlier, really, the better.

Then by providing an atmosphere where these children are going to be able to be challenged intellectually and socially in child care settings provides the kind of supporting atmosphere and climate, again, for building their confidence-building skills.

Also, providing some after-school programs, whether it is in the day when the children are attending school, or whether it is at a time when the

children are not in school, such as during vacations and also the summer-time, considered together, have a very powerful impact in strengthening the willingness of children to resist the negative behavior patterns that start out with smoking, then yield to smoking and drinking, and then, as the law enforcement experts provide, smoking and drinking lead their way to significant substance abuse. That empirical evidence has been included during the period of these last couple of weeks and has been amply justified over a period of time.

The benefit of this particular amendment, I think, primarily rests with helping the children at their most vulnerable time, as they are developing their own kinds of confidence-building skills—giving them the kind of help, support, and the power to resist abnormal, negative, and destructive behavior.

Second, it provides an important investment in terms of the children so they will have a more useful, constructive, happier, and productive life.

All we have to do is consider the Beethoven studies that have been done in Chicago and the Ypsilanti studies that have been done, which have demonstrated this kind of investment in terms of children's attitude and support pays off in just the way that has been represented by those who have advanced this amendment.

This is right on target in helping to reduce children's smoking. It is right on target in ensuring that children who are the most vulnerable will be able to develop the kind of skills to resist smoking.

It is right on target and consistent with the public health drive, which is the central purpose of this bill, and cannot be distorted and cannot be misrepresented by those who are opposed to any kind of legislation. As hard as they try, this legislation is moving forward.

But with this particular amendment, it will be a more effective bill in helping the children in this country. It is an amendment that should be accepted, supported, approved, and made a part of this bill.

Mr. President, I hope that the amendment will be accepted.

Mr. ROTH. Mr. President, the Kerry amendment once again raises the fundamental questions as to why the United States Senate is considering this tobacco settlement bill. Is its purpose to reduce the number of children who will become addicted to nicotine, or it is cover for another Washington power grab?

In recent days, the Senate has debated various amendments which affect the agreement Senator MCCAIN reached with the nations' governors to secure their support for this legislation. Members have voiced opposition to amendments on the grounds that it violates the agreement reached between the governors and the White House.

There can be no doubt that the Kerry Amendment fractures that agreement.

On a bipartisan basis, Governor Voinovich of Ohio and Governor Carper of Delaware have issued a letter opposing the Kerry amendment. Their May 19 letter states, "the National Governors' Association strongly opposes the Kerry amendment which dictates state funding choices."

Governor Carper and Governor Voinovich go on to state, "This fundamentally undercuts the agreement included in the manager's amendment and would make it impossible for Governors to continue to support this agreement."

"In addition, by locking states into a specific child care requirement, the Kerry amendment would prevent states from meeting other compelling needs as their particular circumstances dictate."

Mr. President, the Kerry amendment is the old broken record that Washington knows best. Only Washington can set the priorities.

Mr. President, by imposing this restriction on the states, the Kerry amendment has changed the rules of welfare reform. The effect of the Kerry amendment is to increase the state matching requirement for receiving funds out of the child care and development block grant. Why are we imposing such a policy on a tobacco bill?

If the Kerry amendment is adopted, the tobacco bill will contain two completely contradictory policies. The McCain May 18 modification already establishes new rules for claiming additional federal dollars for child care. Under section 452, "Grants to States," the bill now changes the federal match rate for new child care dollars to 80 percent. This is a higher match rate than any state receives for the Medicaid Program.

Why must the federal government bribe the states to claim federal dollars for child care by lowering the cost to the states? Simple. Because the states are not spending all of the child care dollars already available to them.

In fiscal year 1997, the states spent only 72 percent of what they could have spent out of the child care and development block grant. The tobacco bill includes this higher match rate at insistence of the White House. The Clinton administration fully understands it must change the rules in order to pump more dollars into child care.

Mr. President, this administration proposal is so troublesome to me because the White House is blowing hot and cold air at the same time on the issue of child care. The White House proposed cutting funds for child care under the title XX program. The President's budget requested a reduction in this important program for fiscal year 1999 and in the years beyond.

Under the Clinton administration's budget, the SSBG would receive \$1 billion less than what is authorized under welfare reform in 2003.

Mr. President, you cannot profess to be for child care when you propose to

reduce the social services block grant. The two ideas are mutually exclusive. Every state uses SSBG funds to provide day care for children.

Mr. President, the Kerry amendment does not define who is for child care or who is against child care. The Clinton administration has acted in a contradictory way and those who voted to cut the social services block grant have acted in a contradictory manner. If we are serious about child care, the first priority should be to restore the social services block grant.

If the Kerry amendment is adopted, the U.S. Senate will be saying that the state match for child care funds is both too high and too low.

Mr. President, this simply does not make sense.

The Kerry amendment is not needed. The states are free to spend their entire amount of unrestricted funds on child care if they so choose. Of the 50 percent of funds which are restricted, child care is one of the options the states can spend their tobacco funds on.

Mr. President, Delaware is considering using its tobacco funds for expanding health insurance to low-income families. The Kerry amendment would substitute the judgment of the U.S. Senate about what priorities should be funded for the judgment of the elected men and women of Delaware.

That is a mistake we should not make.

Mr. MCCAIN. Mr. President, as we had agreed earlier, I will in a few seconds propose to table the Kerry amendment. Following that, under a previous agreement, Senator FAIRCLOTH and Senator SESSIONS will be recognized for their amendment, which I understand has to do with attorneys' fees, and I hope we can complete that in a reasonable length of time. This issue has been fairly well ventilated in the past and is well known now.

I think it is well known that the amount of money attorneys would receive under this settlement and are receiving or scheduled to receive under State settlements is inordinately high, to make one of the grossest understatements of this debate. I think it is important Senator FAIRCLOTH and Senator SESSIONS intend to debate this.

Mr. President, at this time I move to table the Kerry amendment.

Mr. NICKLES. Will the Senator yield for just a moment?

Mr. MCCAIN. Mr. President, I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. SMITH of New Hampshire). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank my colleague from Arizona for not moving to table just yet because I would like to make a couple of comments concerning the amendment that is pending.

The amendment that is pending deals with section 452 of this bill. Section 452 deals with how the money is going to

be spent, or at least how it applies to the States. It has a couple of different sections. It states: "Restricted Funds." That is, 50 percent that States could spend any way they wish. That is under title (b).

Under the funding for child care, under section 418 of the Social Security Act, it has some new language that was put in. I don't know what the purpose of it is, but it states that notwithstanding subsection (b)(2) of that section—we looked that up and basically it means we eliminate the means testing for this program. The program that we are dealing with in child care is supposed to be for low income, and now we find this tobacco bill coming in and saying, well, we are going to eliminate means testing. So millionaires' kids will qualify for this.

That is not the purpose of the child care block grant program. And then the child care block grant program was supposed to be on a State share identical to Medicaid. In some States, that is 50-50, 50 percent Federal, 50 percent State. We put in a little change in this bill that says it is 80-20, 80 percent Federal, 20 percent State.

Now, I am bothered by that. I am bothered by it for two or three different reasons. One, I have stated all along I have felt this entire bill was a tax-spend bill. We raise a lot of taxes. We are transferring about \$102 billion from consumers over the first 5 years—I think over 25 years probably well in excess of \$8- or \$900 billion but just for the first 5 years alone, \$102 billion. Half of that money we allocate and we say to the States, you are going to get your fair share, you are going to get part of it, and now we dictate how the States have to do it. But now we find out there is a little language change to say, well, we are going to allocate this new money; we are going to take child care development block grants, which right now total about \$3 billion, and we are going to make it \$5 billion. This is \$2 billion on top of what we already have. That is a 66-percent increase per year.

Then we change the eligibility and say it is not means tested. Then we change the ratio where the States don't have to put up their matching share in Medicaid. We just say the Federal Government is going to pay 4 to 1—80 percent Federal Government, 20 percent by the State. So we have a massive expansion of an entitlement program, a massive expansion of who is eligible. We make higher income people eligible. It is just another way to see, can't we funnel more money? Can't we spend more money? This is living proof this amendment is not about curbing smoking. It has nothing to do with curbing smoking—nothing, not one thing. It is not going to reduce consumption by teenagers one iota, but it will spend \$50 billion.

The amendment that we have before us says to the States, you will spend 50 percent, or basically \$49.25 billion, over the next 25 years in child care, basically \$2 billion a year—\$2 billion a year

for a program in which we are already spending \$3 billion. So we spend \$3 billion now. We increase that \$2 billion per year, a 66-percent increase in spending on child care development block grants. Then we change the rules and say, well, we don't have means testing on the new money. And we won't use the old Federal match of Medicaid. We are going to come up with a new match that says, Federal Government, you have to pay four times as much as the States. I think that is a serious mistake.

Mr. President, I hope that our colleagues will say, wait a minute, this is not about reducing smoking. This amendment has nothing to do with reducing smoking. It does have to do with increasing social spending. It is something that some people maybe have wanted to do. It is something we have had an increase on in the last couple of years. But I would just urge my colleagues, this is not the right way to spend this money. This is people saying, wait a minute, there is money available. Let's take it and use it for what we deem is right. It has nothing whatsoever to do with curbing teenage consumption or addiction to tobacco or drugs, and so I would urge my colleagues to vote in favor of the McCain tabling motion.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Kerry amendment, No. 2689. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 33, nays 66, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—33

Allard	Grams	McConnell
Ashcroft	Gregg	Nickles
Brownback	Hagel	Roberts
Coats	Helms	Roth
Cochran	Hutchinson	Santorum
Craig	Inhofe	Sessions
DeWine	Kempthorne	Smith (NH)
Enzi	Kyl	Stevens
Frist	Lott	Thomas
Gorton	Lugar	Thompson
Gramm	Mack	Thurmond

NAYS—66

Abraham	Collins	Harkin
Akaka	Conrad	Hatch
Baucus	Coverdell	Hollings
Bennett	D'Amato	Hutchinson
Biden	Daschle	Inouye
Bingaman	Dodd	Jeffords
Bond	Domenici	Johnson
Boxer	Dorgan	Kennedy
Breaux	Durbin	Kerrey
Bryan	Faircloth	Kerry
Bumpers	Feingold	Kohl
Burns	Feinstein	Landrieu
Byrd	Ford	Lautenberg
Campbell	Glenn	Leahy
Chafee	Graham	Levin
Cleland	Grassley	Lieberman

McCain	Reid	Smith (OR)
Mikulski	Reid	Snowe
Moseley-Braun	Robb	Torricelli
Moynihan	Rockefeller	Warner
Murkowski	Sarbanes	Wellstone
Murray	Shelby	Wyden

NOT VOTING—1

Specter

The motion to lay on the table the amendment (No. 2689) was rejected.

The PRESIDING OFFICER. The question is on the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. THURMOND. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

The Senator from South Carolina.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 2163 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, we are working on a unanimous consent agreement so we can make the Gramm amendment in order after a Democrat amendment. As we had previously agreed amongst all parties, I ask that Senator FAIRCLOTH be recognized to propose his amendment while we work out this unanimous consent—that he be allowed to start debate on his amendment.

Mr. KERRY. Mr. President, reserving the right to object, it is my understanding that no amendment will be sent to the desk at this point.

The PRESIDING OFFICER. No amendment can be sent to the desk because there is a pending amendment.

Mr. KERRY. Mr. President, I ask the cooperation of our colleague that once we have the unanimous consent request worked out, that the Senator would yield back to us for the purposes of propounding that request, and allow that interruption in the debate.

Mr. FAIRCLOTH. I plan to start the debate on my amendment, and shortly the amendment will be made germane.

Mr. KERRY. Do I understand from the Senator from North Carolina that he will allow us to interrupt him in order to propound the unanimous consent request?

Mr. FAIRCLOTH. Absolutely, yes.

Mr. KERRY. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, I rise to offer an amendment to limit attorneys' fees in this tobacco settlement to \$1000 per hour, and I am joined by the Senator from Alabama, Mr. SESSIONS, and the Senator from Kentucky, Mr. McCONNELL.

The tobacco legislation is about public health—not the enrichment of trial lawyers—and I believe that this is more than ample compensation for these lawyers.

I offered a fee limitation amendment last month at \$250 per hour, and I considered that excessive, but I was reluctant to lose votes from those inclined to believe otherwise. I believe that passage of a fees limitation amendment is a legislative imperative, Mr. President, but I am a realist. It is the obligation of this Senator to set aside personal reservations and sentiments and to offer an amendment that will pass the Senate and restrain the trial lawyers from their plunder of the Treasury.

I thought that \$250 per hour was an inordinate reward for these trial lawyers and favored a far lower limitation, but I can count votes, and I regret that passage requires a higher cap. The trial lawyers are the ultimate Washington special interest, Mr. President, and these courtroom predators marshaled all their forces against the Faircloth cap and indeed forced another vote on this issue.

The Federal government cannot put its imprimatur on legislation that diverts billions from the taxpayers to pay trial lawyers. Mr. President, this is the legislative process of the Senate, not "Wheel of Fortune" for trial lawyers.

If the Congress fails to enact fee limitations, Mr. President, trial lawyers will collect from \$3 billion to \$15 billion per year in fees. The state Medicaid suits will yield \$1 billion to \$3 billion per year, and, the lawyers will be further enriched through their contingency fees from individual smoker cases, from which they will reap between \$2 billion and \$12 billion per year.

In fact, if the Congress fails to enact fee limitations, trial lawyers stand to collect at least \$100 billion over the next 25 years. This \$100 billion sum exceeds the annual gross domestic product of 24 States and 98 foreign countries.

The failure to replace the arbitration provision in the McCain bill with a fees limitation provision, if the Senate were so blind, would constitute acquiescence to the most blatant and insidious special interest legislation since the Senate convened in 1789.

This is a \$100 billion payoff for the ultimate special interest. This is the Washington special interest that leads the pack in its passion for personal interest over national interest.

The trial lawyers, Mr. President, will not bloat their stock portfolios at the

expense of taxpayers across this nation. This tobacco legislation is, in essence, the fruit of an extortion pact. The Congress cannot reward this legal vigilantism. The Senate is not for sale.

The four state cases that settled portend a dreadful abuse of the taxpayers and underscore the imperative of federal fee limitations. Judge Harold Cohen of the Florida circuit court estimated that their fees of \$2.8 billion were, in fact, equivalent to \$185,186 per hour. The five trial lawyers about to share \$2.3 billion in Texas will collect, in effect, close to \$92,000 per hour.

Who are these modern Sir William Blackstones?

Who are these latter day Clarence Darrows and William Jennings Bryans?

I discovered that Hugh Rodham, the President's brother in law, is amongst their ranks. It is estimated that he will collect \$50 million as a Castano group lawyer. Mr. President, permit me to read two newspaper reports of his contributions to these lawsuits.

And just for good measure, the state of Florida has hired Hugh Rodham (Hillary Clinton's brother) to be a part of their litigation team, despite his complete lack of experience in these types of cases." Knoxville News-Sentinel, July 20, 1997.

Hugh Rodham "spen[t] the last hours of the talks in a corner reading a paperback by Jack Higgins, 'Drink with the Devil.'" Washington Post, June 23, 1997.

Mr. President, I also wish to address some misinformation about the Faircloth cap, and I believe that I can rebut all the arguments made against the amendment last month.

Mr. President, it was said on this floor last month that my amendment was unprecedented, but this is not the case. The Federal government often sets professional fees.

Medicare and Medicaid, for example, limit physicians' fees for professional services. These doctors contribute far more to public health than the trial lawyers, but the Congress decided to limit their fees, so I find it remarkable that Senators will argue to exempt lawyers from policies intended to protect the taxpayers.

There are numerous federal laws that set attorneys' fees. The Equal Access to Justice Act sets fees at \$125 per hour in civil rights cases. The Internal Revenue Code sets fees at \$110 per hour in successful taxpayer cases. The Criminal Justice Act sets fees at \$75 per hour. Certainly, Mr. President, these are not uncharted waters.

These statutes restrict fees awards against the United States to protect the taxpayers. The taxpayers, after all, pay the expenses of the United States. Dan Morales, the Attorney General of Texas, admitted that the taxpayers will pay part of the attorneys' \$2.3 billion share of the Texas settlement. The principle is the same, Mr. President, and these fee limitations protect the taxpayers.

There are countless other federal provisions that limit attorneys' fees—from the Veterans' Benefits Act to the Trademark with the Enemy Act—and preempt

contingency fee contracts to impose restrictions on the lawyers' share of the recovery.

These statutes serve, in effect, to protect clients from their lawyers.

The taxpayers deserve the same protections, Mr. President, and these arguments about an unprecedented fees limitation are specious and unfounded. The McCain bill addresses attorneys' fees provisions through its flawed arbitration clause, so, clearly, reasonable limitations on fees are within the scope of this legislation.

Mr. President, several members pointed to the arbitration clause in the bill as an alternative to the fees cap, but the arbitration clause is really a "trial lawyers' bill of rights" rather than a protection for American taxpayers. Their argument that the arbitration clause will alleviate concerns about excessive attorneys' fees is, in fact, a concession that the fee contracts are excessive and merit review.

The Congress of the United States cannot shunt that obligation to a panel of unnamed arbitrators.

The arbitration clause in this bill is a one-way street that permits lawyers—but not their clients—to compel arbitration of attorneys' fees disputes. In effect, the lawyers can compel the States to participate in binding arbitration, and the outcome cannot be appealed.

If arbitration is indeed the exclusive remedy for fee disputes, it locks in these fees because the lawyers will not object to the billion dollar contingent fee arrangements, and the States are not empowered to challenge the fees under the arbitration clause in the bill. The lawyers can just file court papers to pursue enforcement of their contract.

If arbitration is an exclusive remedy, however, it is a clear violation of both the Seventh Amendment right to a jury trial and state sovereign immunity provisions. These are serious and indeed insurmountable constitutional hurdles.

If arbitration is not an exclusive remedy, the clause purports to let trial lawyers choose between arbitration and litigation, but it forces their clients—taxpayers and tobacco users—into expensive and protracted litigation battles.

The language in the bill authorizes the arbitration panel to award attorneys' fees and expenses for "legal services" that "in whole or in part resulted in or created a model for programs" in the bill. The bill thus appears to authorize fees for attorneys who played no role in the underlying litigation that gave rise to the bill.

This bill incorporates elements of many—if not most—of the tobacco control programs that the public health groups advocated in recent years. The panel thus stands to draw fee and expense applications from the armies of lawyers and legal assistants that provided public agencies and private organizations with advice about tobacco control measures over the years.

Mr. President, let us not underestimate the creative spirit of the plaintiffs' bar, because I assure you that this flood of fee petitions will indeed materialize under this provision.

Finally, the arbitration mechanism applies to fee and expense disputes related to litigation "affected by" this Act. In light of the broad scope of this bill, it is possible that this mechanism will be invoked not only in tobacco and health cases, but in other cases that involve tobacco manufacturers.

It is not impossible that pure commercial cases will come within the scope of the arbitration mechanism to the extent that these cases are "affected by" the tobacco legislation. Certainly, Mr. President, billboard owners with abrogated contracts and other parties "affected by" the settlement appear to fall within the broad scope of this provision.

I heard a lot of rhetoric last month about the constitutionality of this fee limitation. However, despite the specious arguments of the plaintiffs' bar, the Faircloth cap is constitutional. The Supreme Court precedents are clear that Congress can upset economic expectations as part of a comprehensive regulatory scheme. In fact, I heard members praise the bill last month because its regulations are so pervasive and its reach so broad, so the legislative history will support my arguments.

Mr. President, Federal courts have routinely upheld laws that abrogate past contracts, so long as those laws possess a rational basis. It is certainly rational to regulate fees as part of a broad regulatory package to ensure that an equitable amount of finite resources will be available to protect the national public health and welfare and to compensate those who suffer from tobacco-related diseases.

This bill will force tobacco companies to abrogate contracts with a range of parties—from retailers to advertisers—but, curiously, I do not see hand-wringing about the abrogation of those contracts.

It is a ludicrous constitutional proposition to suggest that private parties can enter into contracts in order to preempt congressional actions.

Further, Mr. President, this bill minimizes the risks in tobacco litigation. The McCain bill makes it far easier for the lawyers to win their cases against the tobacco companies. This new courtroom landscape compels the Congress to revisit these fee arrangements that date to a different and distant era of tobacco litigation.

The McCain bill establishes unprecedented evidentiary presumptions that reverse the traditional burdens of proof on two critical issues—nicotine addiction and disease causation—and thus relieve trial lawyers of litigation expenses for these complex issues.

The McCain bill also establishes a tobacco document repository, which will curtail—if not eliminate—the need for the discovery process. The discovery

process is long and intensive, so the McCain bill, in effect, relieves lawyers of the most expensive element of the litigation, which is often cited as the justification for their enormous fees.

Indeed, the Chairman of the Senate Judiciary Committee stated that, "[O]nce we establish this document repository, it should be easier to prove cases that can go to jury and, I think, increase the chances of jury awards * * *. It would be easier to recover * * *. [A]ttorneys today will have everything going for them because of the tobacco settlement."

It is manifest that this bill will ease their burden in the courtroom, Mr. President, so it defies common sense to assume that the Congress will permit fees predicated upon a dramatically different legal position.

These lawyers are officers of the court, Mr. President, so they are fiduciaries. These arguments about the sanctity of contract are thus specious because there are different rules applicable to attorneys' fees. Mr. President, to argue otherwise is, in effect, to advocate the repeal of the canons of ethics.

The common law tradition, which we uphold today, enshrines a quid pro quo that offers lawyers monopolistic access to the courts but that requires reasonable fees to preclude exploitation of clients.

The old rules of the Model Code stated that "clearly excessive" fees were unethical and unenforceable. The old rules imposed a standing obligation—from the execution of the fee agreement to the remittance of the fee—to conform to the fee to fiduciary principles. The more recent Model Rules, in fact, strengthened this limitation and replaced the prohibition on "clearly excessive" fees with a ban on "unreasonable fees." Mr. President, if there is some semblance of ontological certitude to the definition of "reasonable," then the Senate will enact this amendment to amend these contingent fee contracts.

These lawyers stand to collect unimaginable rewards—billions of dollars—without commensurate risk. These fees and the underlying contingency fee contracts are thus unreasonable under any appropriate standard.

The most logical standard, of course, is to look to comparable work. The payments to the defense lawyers—those lawyers who analyzed and contested the same issues—are thus the most appropriate standard. It is clear that the proposed caps in this amendment far exceeds the fees for defense lawyers.

I summarize my position as comparable pay for comparable work.

The contingency fee structure of these contracts further deepens this ethical morass. The contingency fee arrangement earmarks a percentage of the judgment to the lawyer without limitation. These funds are, quite simply, diverted from the victim to the lawyer.

Consequently, ethicists point out that contingency fees compel a heightened scrutiny because these arrangements thus benefit the lawyer at the expense of his client. Indeed, reductions of the lawyers' fees accrue to the benefit of the client, and that balance compels the Congress to weigh in on behalf of the clients. Mr. President, those clients are injured smokers and the taxpayers of the United States, and they deserve our support.

Mr. President, this amendment is fair, and it is consistent with the rest of this bill. The trial bar argues that a fees cap violates free market principles. It was, however, their submission of the proposed tobacco settlement to Congress for review and approval that removed the agreement from the free market and brought it into the legislative process.

The Congress cannot condone billion-dollar payments to a small band of trial lawyers for minimal efforts. Some of these lawyers copied court papers from other state lawsuits and filed these documents in elaborate productions choreographed for the television news. This is the essence of "jackpot justice."

The trial bar cannot expect Congress to enact broad and detailed legislation to regulate tobacco and, yet, believe that their component of the bill is sacrosanct and above congressional review.

Mr. President, despite vehement protestations last month, it is incontrovertible that this bill uses taxpayer dollars to pay off trial lawyers. This use of taxpayer dollars is an unacceptable diversion of public funds. The Attorney General of Texas conceded to the New York Times on May 27, 1998 that federal funds will be used for part of the \$2.3 billion payment for lawyers' fees.

Indeed, Mr. President, the bill permits the use of revenues from the National Tobacco Trust Fund to pay trial lawyers' fees. In fact, 40 percent of Trust Fund revenues are sent to the States for Medicare expenses, but half of this sum is untethered. There is a finite pot of resources from the tobacco companies, so the billions of dollars that will flow to trial lawyers under the McCain bill will be available for state public health initiatives if Congress passes the Faircloth Cap.

In response to some of the other concerns voiced on the floor last month, I made some changes, which I am confident will alleviate the concerns of some Senators.

This version of my amendment eliminates the reports to the Judiciary Committees, and it simply permits the judge assigned to the tobacco case to determine fees. Judges routinely review petitions for attorneys' fees and expenses, so this will not present any difficulties, and I am confident that it is the most prudent route for resolution of these fee disputes.

Mr. President, a spokesman for Public Citizen, the group founded by Ralph

Nader, conceded that, "My gut feeling is that these fees are very, very difficult to justify."

The United States Senate represents the taxpayers, not the trial lawyers, and this amendment is a litmus test of our commitment to the taxpayers. The breadth of support for this amendment reaches across the spectrum because these jackpot fees offend our sense of justice.

The Congress cannot permit the ultimate Washington special interest—the trial lawyers—to dictate this legislation and to reap unimaginable rewards and riches. The Congress cannot endorse an extortion pact foisted upon the American public—and the Congress—by a pack of legal predators. The Congress cannot tax the poorest Americans—those least able to shoulder additional taxes—in order to shower golden dragoons upon trial lawyers.

I want to touch on one quick thing because I am ready to close.

If this bill passes, 70 percent of the largest tax in history is going to be paid by people making less than \$35,000 a year. If anybody can tell me that it is unfair to restrict the attorneys to \$1,000 an hour when the people who are paying this tax make less than \$35,000 a year, 70 percent of it is going to be paid by people making less than \$35,000 a year. No one can tell me that it is not right to restrict the attorney fees to \$1,000 an hour.

The Congress cannot tax the poorest Americans, those least able to shoulder additional taxes, in order to shower this tremendous amount of money upon the trial lawyers of the Nation.

I thank the Chair.

Mr. President, I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Thank you, Mr. President. I appreciate very much the conviction and hard work done by the Senator from North Carolina on this important issue. It is not a political issue, although I think it could become one as time goes along. It is a question of right and wrong. It is a question of just how rich persons can get with the money that should be available to benefit children and the health care of Americans.

So I think we have an issue of great importance. I think the Senator from North Carolina is also correct when he says that we came here a few days ago and we talked about a \$250 per hour containment of attorney fees and they said that was not enough. So we have attempted, again, to come up with a bill that will pass muster in this body, that will have support from both sides of the aisle, Democrats and Republicans, with the kind of fees that nobody can object to, that are rational and just and fair and quite generous, and will, in fact, make multimillionaires out of many, many lawyers.

I do not believe and I resist the suggestion that this capping of these fees in this litigation is somehow an attack

on attorneys and an attack on the contingent fee contracting in general. It has nothing to do with that. It involves only tobacco litigation—tobacco litigation and legislation that was brought to the U.S. Senate. And we were asked to pass legislation on it. It spun out of litigation. It certainly has not been completed. None of the verdicts have been affirmed on appeal. Other cases have just gotten started. And we in the Federal Government are about to pass legislation that could, in fact, terminate all of that and bring it all to a conclusion. The trial lawyers who had contracts, some of whom have done little work, on a contingent basis, now want to be paid billions of dollars in fees. Perhaps 20 or more attorneys will receive \$1 billion in fees.

I would just like to point out how much \$1 billion is. This Nation spent \$450 million last year on diabetes research. The Alabama general fund budget for the entire State, apart from education, is less than \$1 billion.

So we are talking about huge sums of money by any standard, the kind of money that we have never seen before. These are the largest fees ever awarded in America, many of them for litigation only a few months old. It is "unconscionable," as a judge in Florida has said, and it cannot be allowed to continue.

I hope this very generous legislation that allows the lawyers to state their case for up to \$1,000 an hour in fees will be the kind of amendment in which everybody in this body could join.

I want to note why someone could not feel comfortable with that.

Let me share with this body a report from "20/20" that was done recently involving the Florida litigation. This will explain how that litigation prevails, just how much was involved, and how much the attorney gets out of it. It began with Hugh Downs. This is what he said.

What is your time worth? How does \$7,000 an hour sound? That's what some lawyers want to be paid for their work on Florida's suit against the tobacco industry. Each and every one of them could become a millionaire many times over just from this one case. So did they really earn their fee?

John Stossel tells us about it.

John Stossel: "The children are supposed to benefit * * *

You know that we have heard a lot of talk about children and helping children. Let me ask this question: Will allowing an attorney to become a billionaire help children? Could that money be used for other antismoking programs, or tax reductions for the American people? It certainly could.

John Stossel: "The children are supposed to benefit from new money from antismoking programs. And later the Governor invited in some children and dummied up a check to celebrate the first \$750 million payment. But now it turns out that the Florida taxpayers may not get as much of that money as they thought because Florida's lawyers are in a legal battle over how much money they should get. Montgomery says they deserve \$2.8 billion. That's right, bil-

lion. He doesn't exactly need money. This is his multimillion-dollar house in luxurious Palm Beach right next to the ocean. The house is so huge, it looks more like a palace. Even his Rolls Royce and his Bentley live in a garage that's bigger than many houses. Montgomery got this rich suing car makers and hospitals and insurance companies."

The interview with Bob Montgomery was right there at his house. He describes his lawn.

So this is my putting green, and this is my sand trap. And what I do is I have these balls, and this is where I drive them:

JOHN STOSSEL: "Out into the water."

BOB MONTGOMERY: "Out into the water."

JOHN STOSSEL: "The inside of the house is even more grand. Montgomery has a vast art collection."

Ladies and gentleman, we are talking about a lot of money. We are talking about hundreds of millions of dollars, not just \$1 million. One million dollars is a lot of money. A million dollars. It is an American dream to be a millionaire. We are talking billions, a billionaire.

Mr. Stossel goes on. He talks about how they were selected. How do people get selected to file these lawsuits? Did they bid on it? Did they go out and say what lawyer will take this lawsuit and what kind of rate will you give us and let's evaluate the best bid?

STOSSEL. Friendship starts to explain how some of these private lawyers were selected and ended up with a contract that says each is now entitled to hundreds of millions of dollars. It began four years ago when Levin came up with a scheme to use Florida's legislature to make it easier to win a suit against big tobacco.

They interviewed Mr. Levin, a fine lawyer. I had occasion to meet the man, a skilled attorney, and he was very, very frank about what happened.

Mr. LEVIN: I took a little known statute called a Florida Medicaid recovery statute—

This is his exact quote—

changed a few words here and a few words there, which allowed the State of Florida to sue the tobacco companies without ever mentioning the words "tobacco" or cigarettes. The statute passed in both the House and the Senate. No one voted against it.

JOHN STOSSEL. Well, did people know what they were voting for?

LEVIN: No. And if I had told them, they'd have stood up and made a—you know, they'd have been able to keep me from passing the bill.

JOHN STOSSEL. This made the suit much more winnable?

Mr. LEVIN. Oh, God, it meant it was almost a slam dunk . . .

Oh, this is tough litigation. The chief plaintiff lawyer who wrote the bill to make the suit possible in Florida said it wasn't tough litigation; it was a slam-dunk because he changed the law in a way that nobody knew what he was doing to create a lawsuit that had not been possible before.

Here, Mr. Stossel goes on.

Am I missing something here? The controversy's become should the dream team—

That is talking about the lawyers—get billions from the 25-percent deal?

They had a contract, you see. We will sue these people for the State of Flor-

ida. We will take 25 percent of whatever we recover. And then they go in and change the law and it becomes a slam-dunk lawsuit and they want 25 percent of it. Then they come to Congress and say, well, we have some problems with just suing. We need the Congress to pass global legislation to control this whole area of the law but don't control our fees. You can control everything else. Tell the tobacco companies they are violating their contract, but you can't violate our contract, not ours, because ours is sacrosanct because we are lawyers. We are lawyers. That is our business and you can't violate our contract.

Stossel. This is his quote.

Why do private lawyers gets so much of the State's money in the first place? When this construction company got the contract to replace this Florida bridge, they had to compete against other construction companies. There was competitive bidding. To win the job, they had to show they were qualified and submit the lowest bid. All States have such rules to prevent politicians from funneling projects to friends. But that's not what happened with the lawyers. Here, Fred Levin called some friends. You picked the dream team.

Then they interviewed Professor Lester Brickman, a law professor at Cardozo School of Law, an outstanding professional who studied legal fees and how they are awarded for a number of years, and asked Mr. Brickman about it.

Mr. BRICKMAN: It's an outrage. It's more than greed. It's a scam.

Those are strong words: "It's more than greed. It's a scam."

JOHN STOSSEL. Law Professor Lester Brickman, who's an expert on legal fees, says it's not right for a Governor to hand over such a potentially lucrative case to a friend.

BRICKMAN. There are politicians involved who are stroking the backs of lawyers because lawyers have stroked their backs before and may yet stroke their backs again. So I think the public perception here, which is probably pretty accurate, is that this smells.

STOSSEL. However it smells, the deal is now mostly done. Its main accomplishment is a huge transfer of wealth from not tobacco companies—they'll just raise the price—but from today's smokers, who will give it to State treasuries with a huge cut going to lawyers like Bob Montgomery. It's like an old boys' scam. You and your buddy, the Governor who sleeps in your house, do your little deal together. You get rich.

John Stossel says:

The taxpayers get burned. The smokers get burned.

Finally, Mr. Stossel points out—I am quoting him now—

Finally, another clever twist you might have missed in the tobacco deal is that usually when Americans want to tax something—

This is very important, and I will share with you my personal experience less than 2 years ago when I was attorney general of Alabama—

we vote on that. The legislature decides on behalf of the people, but not here. Here, a Governor—

Sometimes in other States the attorney general—

and some lawyers decided, in secret, that smokers should pay the State and lawyers a lot of money.

And then Mr. Levin explains why it is such a cool political deal and why many of the people in this body like it, those fellows and ladies who favor tax increases and tax and spend and tax and spend. And people are getting mad about it. They are getting alert to it. They are objecting to it. They are seeing how taxes get slipped in through this backdoor and that backdoor. It is not popular, and many of them are losing their places in Congress and in the State legislatures because they are voting for too many taxes. That is not good.

So Mr. Levin tells why this is such a good deal.

The tobacco companies don't care. They can either pass it on as a tax, or they can pass it on as an increase in price, and tobacco companies settle with the Government. Beautiful.

JOHN STOSSEL. What's the difference? You're still paying 60 cents more for your cigarette?

LEVIN. But it's the tobacco company they can get mad at. You don't hold that against the Governor.

You see, make the public get mad at the tobacco company for raising the price, and the politician says, We didn't raise taxes. It was the tobacco company that raised the price of the cigarette. You get the deal? Good politics. Mr. Levin just flat said it.

John Stossel concludes:

So everybody wins. Well, not the smokers, but the politicians win, the tobacco companies win, the State and certainly the lawyers.

Hugh Downs concludes the report:

That's really outrageous, isn't it? And Bob Montgomery may well get his way because last week an appellate court judge reopened the door for what could be a big payday for these guys.

And Barbara Walters concluded.

As Mr. Montgomery said, "Oh, yeah." But you know Senator Crist is trying to have a bill that caps the amount they get paid at \$250,000. But even that's not bad money.

Two-hundred-fifty thousand dollars is not bad money either. I say that to you.

I went through that report because, Mr. President, it shows how this thing has developed and that there is a sense and a tinge of corruption in the way this was done.

Another thing that was very unhealthy is how did the settlements occur and how were they justified? Well, the lawyers said for the taxpayers and public citizens not to worry about it, how we got this case settled and where it leads, because these fees are not paid by the State; they are paid by the tobacco companies. They agreed to pay our fee, see. I agreed with my tobacco company and they pay my fee. And it is not coming from the taxpayers.

Now, I have been a lawyer for a good while. I have litigated a lot, and most business people understand money and they know that the tobacco companies,

when they settle a case, don't care whether the money they pay is called tobacco fees, lawyer fees or anything else. There is so much money, they are willing to pay. And so they are perfectly happy if they can pay off the lawyer and give him a lot of money for their fee to get them to agree to the whole settlement. It doesn't bother them in that circumstance.

So there is an unhealthy relationship there, and it is something good lawyers have to guard against at all times. You have to guard against that because it can even corrupt your judgment because your money may be paid from the person you are supposed to be suing and your fidelity, your loyalty, your integrity is due to the people you are representing.

That is an unhealthy relationship. I just say to you this money absolutely available to be paid to the Government to be used for tax reduction and the child smoking reduction effort and health care and health research, it will not be used for that; it will be sent to the attorneys.

Let's talk about something else. In Mississippi, the case there was an interesting case. In Mississippi, the case was brought before a single judge in Mississippi, and the case was filed in equity. It was not a jury trial, it was in equity. Many States still have a distinction between law courts, legal courts, and equity. Historically, in England, equity courts were run by the church and the law courts were run by the king. In matters of divorce and family, relief of that kind was done in equity. They came out with an equitable doctrine of unjust enrichment and pursued this case for a number of years, and under a theory that the tobacco companies were unjustly enriched, they made their recovery. So, hundreds of millions of dollars will be paid out of that Mississippi case, based on that.

In Texas, the fee came down to be \$2.3 billion for the attorneys involved in that case. I believe the firm that was involved in that had four partners, five attorneys in that firm, who will split \$2.3 billion—quite a lot of money.

Professor Brickman of the Cardozo Law School has testified, I believe—as Governor George Bush of Texas is furiously and aggressively doing everything he can to undermine and defeat these claims for this huge amount of money—Professor Brickman has testified that he figures the trial lawyers were asking for at least \$92,000 per hour. I didn't make that up. This is a Cardozo Law School professor saying these lawyers were asking \$92,000 per hour.

Stewart Taylor, writing for the *Legal Times*—he also is a senior writer for the *National Journal*—estimates that the total attorneys' fees will amount to \$5 billion per year and quotes Professor Brickman as saying it will create 20 to 25 billionaire attorneys. I am talking about a billionaire. I had my staff pull up—I think it is *Fortune*

magazine that lists the richest people in America. We counted 60 billionaires in America. We are talking about creating numerous new billionaires out of this one lawsuit—some of them have not filed a case this past year—will be making \$1 billion. That is just not acceptable. That just cannot be.

So I appeal to all the Members of this body, whether you are Democrat or Republican, to look out for justice, to look out for fairness, to look out for decency. This is beyond making a good fee. I am quite willing to have these attorneys make a good fee. We will let them make \$1,000 an hour and double their expenses that they have invested in it. I am willing to let them. But I am telling you, that is more than I really feel is necessary. But I want to gain support for this legislation. I think it is absolutely critical that we contain these fees.

Where is the money coming from? Is it from the waitress? the construction person? the businessman? the gas station owner? the secretary who smokes—that is who is paying it—to give it to a lawyer who already has a garage with his Bentley in it, bigger than somebody's house, and who practices golf by driving golf balls out into the Atlantic Ocean? That is what we are talking about—a wealth transfer from decent Americans who trust their Government. They trust us to treat them fairly, to pass legislation that gives them a fair chance. We are taxing them to pay for this kind of thing? Wrong. It is unjustifiable, unconscionable, as a judge in Florida has said.

How did it happen? How did this all happen? I want to tell you how it happened. I will tell you exactly how it happened because I was, in a way, there. I was attorney general of Alabama less than 2 years ago, and I was approached by a group of attorneys. They said, "Well, Jeff, we would like to talk to you about hiring us to sue these tobacco companies. We are working with a group of lawyers around the country, and we have this theory, and you can pay us 25 percent and we will just file this lawsuit for you. I know your attorney general's office doesn't have a lot of money, and we'll just fund that for you. You just give us 25 percent of whatever we recover."

And I said, "What's your legal theory? I don't think I can file a lawsuit, according to the ethical rules of law, if I don't believe it's a good lawsuit." So we spent a good bit of time talking about that first. When they got through, I said, "What you are telling me is, this is not an established principle of law but you want to expand the law and go further."

And they said, "Yes, that's correct. It hasn't been a proven theory. But we have this new theory. We think we maybe can prevail on this. It is very popular today. Nobody likes tobacco. We believe we might just win."

So I told them, "No, I don't think so. I think I'd rather have you go ahead with your suits, and I'm not going to

spend 25 percent of the recovery. If you prevail in Mississippi or Florida or other States and you establish a cause of action, I may consider joining it. But I won't need you then, because I have lawyers on my own staff and they can handle the litigation, thank you."

They didn't want to do that. They persisted and told me certain names of attorneys that they wanted to participate. One of the best known attorneys in Alabama, Jere Beasley, was a name they suggested to me—that he would be part of it. And the person making the proposal to me, it wasn't Hugh Rodham, but he was the Lieutenant Governor of Alabama who was a part-time Lieutenant Governor and a lawyer. He was coming in as a private attorney, and he was going to make part of the fee out of the case.

I objected to all of this—by the way, the Lieutenant Governor has great power on legislation. We have had a lot of efforts to reform tort laws and lawsuits in Alabama, and they have died in the State Senate, where he presides over the State Senate in committees that he set up and established. He was popular with the trial lawyers, and he asked me to file the suit, and I said no, I didn't think that we ought to do that.

And he said to me, "Well, you can hire some of your law firms. You can hire some of your buddies, your Republican law firms—cut them in on the deal. Why don't you do that, Jeff? That will be fair, won't it?"

I am telling you, this is not good business that we are involved in here. There is an element of greed that goes beyond what is normal.

So, anyway, that is the way that went. They go around the States, then, approaching attorneys general with this kind of pitch. As it turns out, one attorney is apparently involved in litigation in 30 States and another attorney group is involved in litigation in 28 States. What does that mean? What they do is, they have this theory. They have come up with a theory of litigation that can make billions of dollars in recoveries. They go into a State and get a group of local people, and they also bring in the President's brother-in-law, Hugh Rodham, make him a \$50-million man because he sits in the room and reads a novel while they are settling the case. Let him have a little bit, too. Make him happy. Maybe it will make the President happy. Maybe he will be supportive of us when we come in with the legislation. We cut in the Attorney General of Alabama; maybe he will continue to be friendly to us in the State legislature. What would his fee have been? I don't know.

They go around and they get investors. People, basically, as I would understand it, buy shares. They go out to a number of the big name plaintiff firms in this town, community or State, and they get them to agree to put up so much of the money. They put the money in. Each one of them has a share. These major law firms that are doing most of the work, they do all the

brainwork, and the local guys file the pleadings and handle the PR and the political stuff and take care of the attorney general, and make him look good. That is how it happens.

And then, boom, after Mississippi—they had that unique single judge in Mississippi—you had the change of law in Florida, the tobacco companies lost those big settlements, and they just collapsed and they agreed to pay everybody. Listen to me. In some States, the attorneys had done little more than file the lawsuit and they are now claiming 25 percent, 15 percent, of billions of dollars in recovery.

Why? Because they had a contract. They signed a contract with the attorney general of Alabama, Georgia, whatever State. That is not good. That is not a good process. I will tell you with absolute certainty and conviction that money paid to those lawyers is money not available to children, to antismoking programs in America. It was simply allowed to go to the attorneys.

Why would not my brethren on the other side of the aisle, who profess to be so concerned about children, be involved in this? They have accused those who have opposed this tobacco legislation consistently of being tools of big tobacco—"Oh, they're just bought and paid for by big tobacco."

I will say this, I took not a dime from tobacco. I rejected tobacco money. I have not taken it and will not take it. I don't think at this stage of the game we ought to be taking money from tobacco. I realized we were going to have a contested issue concerning tobacco, and I wanted to keep my record clear, so I have not taken any. A lot of other Senators on both sides of the aisle don't take tobacco money.

Mr. GRAMM. Will the Senator yield on that point?

Mr. SESSIONS. Yes, I yield to the Senator from Texas.

Mr. GRAMM. I wonder if those on the other side of the issue are taking money from plaintiffs' attorneys?

Mr. SESSIONS. Well, you have asked an absolutely important question. Those who have been opposed to this legislation have had their integrity questioned and it was suggested that they are bought by tobacco. I have somewhere in this stack a little chart that indicates something about political donations.

From the years 1990 to 1994—I want the Senator from Texas to understand this—plaintiffs' lawyers in three States—my State and your State being two of the three—Alabama, California and Texas, spent \$17.3 million on political contributions. During that time, the Democratic National Committee, in all 50 States, spent \$12.4 million. During that time, the Republican National Committee, in all 50 States, spent \$10 million. During that time, big oil in Alabama, California and Texas spent \$1.7 million. I know oil is a big industry in Texas. They only spent \$1.7 million in Alabama, California and

Texas, whereas the trial lawyers spent \$17.3 million. The automobile companies in Alabama, California and Texas spent \$3,500.

That shows you what has happened here. I suggest that we need to rise above special interests. I believe every Member of this body has an obligation to his constituents—to that secretary, to that waitress, to that gas station operator, to that farm equipment dealer—if he takes their money and increases taxes, to not give it away to people who live in mansions who practice golf by driving their golf balls out into the ocean, and that is what we are talking about.

There are a number of other things that I can mention, but I see the Senator from Texas is here. I am pleased to yield the floor, Mr. President.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, let me first say that our dear colleague from Alabama, Senator SESSIONS, is a freshman Member of the U.S. Senate, and I am very proud of the leadership that he has provided on this issue and on other issues. I think he is a testament to the fact that we have good people in the U.S. Senate, and I am very proud of him.

Mr. President, when we tell people that we are debating a bill that is going to set in place a procedure whereby attorneys are going to receive \$92,000 an hour, they find it hard to believe. But let me just read from an article by Robert J. Samuelson in the Washington Post:

The hourly rates strains belief. Lester Brickman of the Cardozo School of Law, an expert in fees, estimates that the Texas lawyers spent, at most, 25,000 hours on their case which never went to trial. A \$2.3 billion settlement values their time at \$92,000 an hour.

This is absolutely predatory. It is totally unfair to be taxing my 85-year-old mother, because she started smoking 65 years ago, \$1,015 a year, which is what she will pay under this bill because she is not going to quit smoking cigarettes. It is unfair to tax her to pay a plaintiff's attorney \$92,000 an hour. It is predatory and it is outrageous, and something needs to be done about it.

The Senator from Alabama is not proposing that we be tightfisted with plaintiffs' attorneys. In fact, he is proposing that they be paid \$1,000 an hour. How many people in America would figure that they were being cheated if they were getting \$1,000 an hour in a fee for work that they had done? I don't think many people in America would think that we are cheating lawyers by requiring that they be compensated no more than \$1,000 an hour for work that he had done on these cases.

But when asked about \$1,000 an hour, a prominent attorney, who was quoted in the Washington Times, scoffed and said, "That would hardly pay for tips for my house staff."

"Hardly pay for tips for my house staff."

Our colleagues on the left are very fond of talking about how they are trying to protect average citizens. Our President is always talking about his position as champion of the average person. But yet what is happening here is our President is supporting provisions that allow attorneys to be paid \$92,000 an hour. Many of the Members of the minority here, the great majority of them, are supporting provisions where attorneys will be paid \$92,000 an hour. And our colleague from Alabama is saying, let's set a cap in this bill that says that attorneys on these cases will be paid no more than \$1,000 an hour. I believe that it is totally outrageous that we cannot see this amendment adopted by 100 votes in the U.S. Senate.

I do not see how anybody can go back home and say we are going to tax Joe and Sarah Brown—a waitress and a truck driver. Seventy-five percent of the money we are going to collect in these taxes on cigarettes come from Americans and families that make less than \$50,000 a year. We are going to reach in their pockets and take their money, and we are going to pay \$92,000 an hour to plaintiffs' attorneys. It is predatory. It is outrageous. And something has to be done about it.

Is there no shame in this whole process? Is no one embarrassed by the fact that we are allowing this piracy to go on? I believe it is imperative that this amendment be adopted. I want to pledge that if this amendment is rejected, that we are going to come back and raise this figure and do it again and again and again and again until we cut these fees off at something less than \$92,000 an hour.

If that is not enough, or if that is no more than enough to tip your house staff, then I want people to explain to people back in their States about how we are imposing a tax to raise \$600 billion and turn around and let plaintiffs' attorneys make \$92,000 an hour on the deal. I would be embarrassed to say that I was for allowing that to happen. I do not understand how anybody—anybody—could oppose this amendment and go back home and explain to people what they are doing.

Let me also say—this is something I do not do, but I want to respond to people who do it—one of the games that is played now in Washington is that when people cannot debate the issue, they try to attack your integrity.

We have all these little groups around town that try to find somebody who maybe runs a store that sells tobacco products—a 7-Eleven store for example—who contributed to Senator SESSIONS' campaign or contributed to Senator MCCONNELL's campaign or my campaign or to the campaigns of other of our colleagues who are here on the floor, and they say, "That was a tobacco contribution." But it is very interesting to me that when we are debating \$92,000 an hour for plaintiffs' attorney fees, where are these groups?

Why are they so silent? Who took away their tongues and their pens to not write about the millions, tens of millions, perhaps hundreds of millions of dollars that plaintiffs' attorneys contribute to the Democratic National Committee, and who contribute to candidates who oppose this amendment and who support this bill?

Now look, I don't get into the business of trying to question people's motives. But the point I want to make is this: If these groups are going to run around trying to tag Senators as being the spokesmen for some interest, I think that is perfectly legitimate. It is a tactic that I do not agree with, but it is perfectly legitimate. But why are they silent on this issue? Why are they silent on the source of the contributions going to some of those who support the bill?

What we have here is a bill that has but one constituency. And that constituency reminds me of a large group of vultures who want to bring down this industry and then feed on the carcass. And the biggest appetite, in this case, belongs to the plaintiffs' attorneys who are going to make \$92,000 an hour on this bill.

So I hope my colleagues will not stand up and say, "We can't give a tax cut and eliminate the marriage penalty. We don't have enough money to do that." Well, we have enough money for attorneys to make \$92,000 an hour. As long as we have enough money to do that, we have enough money for tax cuts.

We are going to see an amendment offered in a couple of days to try to do something about teenagers drinking. I hope it is going to be a bipartisan amendment. I want to predict right now that the proponents of this bill will stand up and say, "We don't have enough money to do anything about teenage alcohol use. We are spending our money on teenage smoking," which is, in terms of public concern, a much less concern than teenage drinking. But they are going to say, "We don't have the money for it."

Let me suggest that we begin with \$92,000 an hour legal fees. There is a source for money. Let us take the money from that, and let us use that money on programs designed to reduce teenage drinking, drunk driving, things of that nature.

I know my colleague from Kentucky wants to speak. Let me sum up and stop.

I am proud of our colleague from Alabama. He speaks with passion and with clarity, and he is absolutely right. There are no other terms for these kind of settlements other than predator and clear abuse of the system. We have in this bill a provision that sets out a commission made up of lawyers to review lawyer fees. It is not an issue over whether we are going to have the Federal Government involved. There is a provision in the bill that guarantees that.

But rather than letting lawyers over-see fees for lawyers so they get the

\$92,000 an hour, let us have a provision that simply says you cannot get more than \$1,000 an hour in these cases.

Let me offer right now, if any of my colleagues want to come to my State and go with me into a local restaurant in the morning or go to McDonalds—and let us try to gather up a crowd—I would like them to explain why those folks ought to be taxed on their cigarettes or their chewing tobacco so that we can pay attorneys \$92,000 an hour. If they can do that in Lubbock, for example, if they can sell that in Lubbock, TX, then I would come back and review my position on this issue.

But let me predict there will not be anybody to take me up on this because anybody who would vote for this would be ashamed for people to know it. But we are going to vote on it. And we are going to vote on it over and over and over and over until we do something about this predator behavior and this clear abuse of ordinary working people in America.

I thank the Chair and I thank my colleague.

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Before the Senator from Texas leaves the floor—if that is the direction in which he is headed—I want to thank him for his important contribution to this. This bill is, more than anything else, I say to my friend from Texas, about lawyers, about raising taxes on working-class Americans and about unjustly enriching a bunch of soon-to-be billionaire lawyers.

I think we ought to call them the "sultans of smoke," because they are going to be as rich as sultans if we do not pass the amendment offered by Senator FAIRCLOTH, and spoken so eloquently on behalf of by the Senator from Alabama, Senator SESSIONS, and Senator GRAMM.

Mr. President, we have had a lot of debate over the past few weeks about what provisions of this bill are most outrageous. And there is a lot about this bill that is outrageous. I ask my colleagues—which provision is the most outrageous? Some say it is the terribly regressive tax on low- to middle-income Americans that is the most outrageous. And that certainly is outrageous. Others say it is the unconstitutional backdoor tax known as the look-back penalties. Still others say it is the unconstitutional advertising restrictions.

Here we spend 3 weeks on the floor of the Senate raising taxes on working-class Americans and taking away the constitutional rights of legal companies.

I thought long and hard about which provisions of the bill truly deserve the trophy for the biggest outrage, in a bill replete with outrages. The hands down, slam-dunk, home run winner has to be the lawyers' fees—the lawyers' fees. The national tobacco settlement has now turned into the national trial lawyer enrichment deal. Other speakers

have referred to Robert Samuelson's article in the Washington Post of June 3. Senator GRAMM referred to it extensively, and I think this article sums up much of what is wrong with the lawyer fees authorized by this bill.

More than anything else, what has become the hallmark of this bill—full of outrages—is the enrichment of the plaintiffs' lawyers of America. We are going to give a self-interested bunch of plaintiffs' lawyers \$4 billion a year for the next 25 years—\$4 billion a year for the next quarter century! This is an outrage. No bill ought to leave the Senate—not now, not tomorrow, not ever—that does not address this issue.

Senator GRAMM called it piracy. Maybe that is even too kind of a word.

Four billion dollars a year. The only person in the world I can think of that has that kind of annual take, Mr. President, may be the Sultan of Brunei, the wealthiest monarch in the world.

So what we are doing here is using the power of the State and the Federal Government to transfer private wealth and public dollars to create a bunch of little trial lawyer sultans, the "Sultans of Smoke." We are going to create the sultan of Mississippi, the sultan of Texas, the sultan of Florida, just to name a few.

Let's take a little trip around our currently upside-down world and preview our future "Sultans of Smoke." First, let's go to Minnesota where a few lawyers are reportedly seeking to rake in approximately \$450 million. The lawyers in Minnesota actually took the case to trial, so it is reasonable to assume they employed more attorneys and put in more hours than lawyers in other States.

So let's assume that 50 lawyers worked a total of 100,000 hours. These 50 lawyers would each take home \$9 million for his or her labors—\$9 million. What is the hourly fee for the future sultans of Minnesota? That works out to about \$4,500 an hour—not bad when you consider the minimum wage in America is \$5.15. So the plaintiff's lawyers in Minnesota will make \$4,500 an hour.

Now, let's stop off in Mississippi. The latest reports out of Mississippi are that the lawyers are seeking \$250 million. The reports indicate that the \$250 million will go to a handful of future "Sultans of Smoke." Assuming that 25 lawyers worked on these cases for 25,000 hours, the Congress would be authorizing each lawyer to receive \$10 million apiece as a result of congressional action.

So let's break that down on an hourly basis. If each of these lawyers worked 1,000 hours exclusively on the tobacco litigation, that would enable the future "Sultans of Smoke" in Mississippi to earn \$10,000 an hour. Now, that is a good day's wage, especially when you consider that the average lawyer in America only makes \$48 an hour.

Now, let's stop off in Florida where a little band of trial lawyers are trying

to take us for the ride of our lives. These soon-to-be "Sultans of Smoke" are looking to receive as much as \$2.8 billion. One of the more eager Florida sultans has already sued for his \$750 million share of the pot.

We don't even have to make assumptions in Florida because a judge has already done the math for us. The judge looked at the greedy grab by the lawyers and concluded that the demands for attorney fees, as the judge put it, "Simply shock[ed] the conscience of the court." The judge concluded that, even if the lawyers worked 24 hours a day, 7 days a week, including holidays, for over 3 years, they would earn over \$7,000 an hour.

In fact, we know the actual hourly wage of the Florida lawyers is immensely higher because no one can seriously contend that any lawyer, much less every lawyer, worked 24 hours a day, 7 days a week, on tobacco litigation for 3½ years.

But it gets better, Mr. President. The final stop on our sultan preview tour is Texas. Senator GRAMM referred to Texas. A handful of lawyers in Texas are going after \$2.2 billion. Let's see what kind of hourly fee the lawyers want in Texas. In the Texas case they did not go to trial, so it is reasonable to assume that Texas put in far less time than Minnesota.

Again, assuming that 25 lawyers worked a total of 25,000 hours, then each of these lawyers would earn \$88 million—\$88 million. What kind of hourly fee is that for the "Sultans of Smoke" in Texas? It is \$88,000 an hour, Mr. President, \$88,000 an hour. Not bad when you consider that even the average doctor in America only earns \$96 an hour.

If the Texas grab is not outrageous enough, this excessive, grotesque sum for attorneys in Texas will have to be paid out of Medicare money. The New York Times recently reported that the Texas attorney general said publicly that part of the attorney fees will be paid by the Federal Government. And guess where it comes from? That is right, the Medicare money we are sending to the States in this bill.

So I ask you: Who do we pay—the sick and the elderly, or the greedy and the lawyerly?

Now the friends of the trial bar are arguing that the future "Sultans of Smoke" are expecting this money. We have heard that they are expecting this money and, therefore, it wouldn't be fair not to give it to them.

I don't mean to sound cold and hard-hearted, but I have absolutely no sympathy for any lawyer who thinks he deserves \$88,000 an hour. Moreover, there is no reasonable expectation that any Congress, in any State, or any nation, would allow this band of trial lawyers to pull off such a scam. I repeat, these lawyers have no reasonable expectation that public officials, elected to represent the best interest of the people, are going to stand by and codify a right to receive an excessive, gargantuan,

and grotesque payment of attorney fees. Worst yet, these outrageous payments will continue for at least the next quarter century.

Every lawyer in this deal, and, in fact, every lawyer in this country, knows that the rules of professional conduct preclude them from charging fees that are unreasonable and clearly excessive. In fact, no attorney will dispute the fact that a judge could step in today and strike down any and all of these excessive fee grabs. It is absolutely ludicrous to argue that the very Federal Government that is approving, codifying, and regulating these deals is somehow unable to touch these outrageous fees.

In fact, let me tell you a little bit about the nature of contingency fees, as explained by George Will in a column earlier this year. George Will wrote:

Among the things that make Congress, among others, irritable about the settlement are the stupendous jackpots, totaling perhaps \$45 billion to \$55 billion, that may come to lawyers hired by State governments on contingency-fee contracts.

A Florida judge, who rejected the State's contingency fee agreement as "unconscionable and clearly excessive," calculated that the lawyers would be paid an hourly rate of \$7,716—assuming each lawyer billed was working 24 hours a day, every day, during the 42-month case. Some lawyers around the country probably stand to be paid hundreds of thousands of dollars per hour of actual work.

Further quoting George Will in his column:

Contingency-fee arrangements, under which a lawyer is paid nothing if his side loses and a fixed percentage of the settlement if his side wins, have traditionally been deemed unethical. This is because they give a lawyer a financial stake in the outcome of a lawsuit, which . . . "creates an inherent conflict of interest with the lawyer's role as an officer of the court." Contingency fees still are unlawful in Britain and most of the rest of the world.

Let me repeat that, Mr. President. "Contingency fees are still unlawful in Britain and most of the rest of the world."

The United States long ago made a narrow "necessary evil" exception to the general proscription of contingency fees in order to help give poor people access to the courts. And the American Bar Association's Code of Professional Responsibility stated that "a lawyer generally should decline to accept employment on a contingent-fee basis by one who is able to pay a reasonable fixed fee." State government can pay such a fee.

In other words, State governments could pay a reasonable fixed fee.

Mr. KERRY. Will the Senator yield?
Mr. MCCONNELL. I am sorry, I won't.

The states' tobacco lawyers demand, with more brass than plausibility, that their fees be treated as an island immune from Congress' general jurisdiction over the settlement.

Now, the Faircloth amendment agrees with Mr. Will's analysis and simply says that no trial lawyer's sweetheart deal is an island. I firmly believe that we cannot settle these

State deals and create a sweeping Federal regulatory scheme for tobacco without also regulating the fees.

Let me repeat something that others have forcefully said. No bill should leave the Senate of the United States that does not deal with the unjust enrichment of lawyers contained in this bill.

Let me read another piece that makes similar points. The article appeared in a home State newspaper, the Lexington Herald-Leader:

Question: If on election day you were asked to choose between a political candidate who promised to work for a reasonable salary, and another candidate who wanted to be paid 25 percent of the government's proceeds, an amount which could reach billions of dollars, which candidate would you vote for?

Many voters thought they were voting for the former, but are getting the latter. That's because several dozen states have chosen to farm out legal work to lawyers who will be paid not for the number of hours they work but a percentage of the proceeds from lawsuits.

Advocates for trial lawyers give several reasons why lawyers should be paid large contingency fees instead of for work performed, like other state employees.

First, they say contingency fees are the only way states can afford to hire top-notch lawyers. Nonsense. Tobacco litigation pits 40 states with extensive revenues (the Texas state government alone collected \$ 40.4 billion in 1996, which is about \$ 4 billion more than the domestic and international tobacco revenues of the largest tobacco company, Philip Morris, for the same year) against tobacco companies who pay their lawyers by salary or by the hour. If tobacco companies can do it, so can the states. Some have: Maine has capped the fees for its lawyers at \$ 150 per hour, and Vermont's lawyers, in the case of a national deal, will be paid no more than \$ 200,000.

Private lawyers will likely reap tens of billions from tobacco settlements. After they do, won't they try to keep this cash cow going? If lawyers can make billions saying that states are due dollars for the adverse health effects of tobacco, won't they want to say the same about junk food? Or liquor? Or fast cars?

The answer is: Yes. And that's why private profit-making has no place in government decision-making. Government policies should be based on their merits, not on opportunities to give private lawyers billion-dollar profits.

Mr. President, I am proud to say that every state did not go out and cut a sweetheart deal with their trial lawyer contributors. Some states took the high road in this deal and refused to allow the conflict-of-interest contingency fee arrangement to taint the deal.

Let me read to you a piece from the Seattle Times that explains the rationale of these states that took the road less traveled:

Using the state's own attorneys has permitted California Attorney General Dan Lungren to claim high ground and dismiss suggestions that the lawsuits were motivated by the plaintiff's bar.

The fact that we are not using outside counsel lends a lot more credibility to the legitimacy of these claims," said Tracy Buck Walsh, special assistant attorney general, who is managing California's case.

Colorado Attorney General Gale Norton, who also had the political backing of the governor, had another motive: She said she is philosophically opposed to her state using contingency-fee attorneys because these outside counsel are motivated by more than the pursuit of justice.

"We tend to be more objective than private counsel who are employed on a contingency basis and who maintain their own personal financial interest in the outcome of the litigation," said Norton, a Republican. "It gives them different motives."

The state of West Virginia's one-page contingency-fee contract agreeing to pay one-third of the recovery, by far the largest contemplated by any state, was thrown out of court as unconstitutional.

In arguing against the contract, tobacco-industry attorneys suggested that it was unethical because it compromised the independence and impartiality of the quasi-judicial role vested in state prosecutors.

"The litigation team is wielding the coercive, regulatory and punitive powers of the state," tobacco attorney Robert King argued. Such a contract "permits the power of the state to be exercised by attorneys with a direct financial stake in the exercise of that power."

The bottom line here is that the National Lawyer Enrichment Deal smells like an under-the-table arrangement cut in smoke-filled rooms.

The states have made deals with their lawyer friends to engage in what has been aptly referred to as "prosecution for profit"—and we can not simply bury our heads in the sand and pretend that we have no duty to regulate these deals.

In the words of the Weekly Standard:

Bribing judges was long ago made a crime. Bounty hunters were banished and state prosecutors put on salary for a reason—to remove any financial stake in their prosecution. Contingency-fee lawyers have a stake in litigation that reaches grotesque proportions. And now these lawyers are being deputized by attorneys general to prosecute under the cloak of state authority.

When these lawyers are making large political contributions to the attorneys general who hire them to sue, in lawsuits that have contingency fees running literally hundreds of millions of dollars, prosecution for profit takes on a whole new dimension. Such conflicts of interest once were considered a threat to justice. Indeed they were. Indeed they are.

So, Mr. President, I urge my colleagues to support Senator FAIRCLOTH's reasonable and fairminded amendment. Frankly, I had hoped the previous amendment offered by Senator FAIRCLOTH at \$250 an hour would be approved. But certainly, \$1,000 an hour, when the average American entering the work force at minimum wage is making \$5.15 an hour and when the average lawyer in America is making \$48 an hour, is not unreasonable.

The amendment says it is perfectly OK to make a great living in America—as a trial lawyer or in any other legal occupation—but it is not OK to cut sweetheart deals, "prosecute for profit," and use the massive, coercive, and punitive power of the State to transfer private and public dollars to make a few friends into instant billionaires.

I yield the floor.

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I rise to support the amendment offered by the Senator from North Carolina, Senator FAIRCLOTH, and the Senator from Alabama, Senator SESSIONS. I believe that the least we can do is assure that the tobacco legislation does not become a lottery for trial lawyers at the expense of the American taxpayer.

We have been debating this for several weeks. It has been mentioned that we have been debating it for several weeks. Usually, when we debate for 2 or 3 days on a bill, my constituents start calling and saying, "Why don't you get that wrapped up, over with?" I have to tell you that those calls are not coming in. There is a fascination with the debate here—a fascination, an interest, and a very deep concern, because this could be the precedent for a whole bunch of other kinds of products. There is an interest in the attorneys' fees because this could set a precedent for other product attorneys' fees.

Why are we doing this as part of Federal legislation? Well, if the States would have been able to resolve this all on their own, the Federal Government would not have been involved in it. But that is not the point where we are. We are at the point where the Federal Government is going ahead on its own with a tobacco bill, not a tobacco settlement. We are in the process of taxing folks in the United States who smoke. When we finish taxing those people in the United States, there are some outstanding attorneys' fees that we will be paying out of the Federal funds.

We have to be concerned about the money and how much money is going to the attorneys. This is not just a matter of letting the States do their own thing. This is a case where the States said: We need to have your involvement. And of course they do. It is interstate commerce. There are a whole bunch of constitutional issues that come into this that require Federal participation. We are now in this Federal participation. We say: Companies, you reached an agreement, but we don't agree with your agreement. And so we do our own thing and we start at \$68.5 billion. We decided that wasn't enough money, and we raised it another couple hundred billion dollars, and maybe a couple hundred million dollars more than that. We are still coming up with ideas for spending money. That is easy. That is a normal thing. When the family has a little extra money, they are always able to figure out ways to spend it.

But we are talking about taking some of that money and giving it to people for a job that they did do. But we are saying, if we are responsible for that money, we want to show responsibility for that money, and we think the responsibility for the money says that an attorney shouldn't get more than \$1,000 an hour.

Again, I can tell from the people who are getting hold of my office that they

think \$1,000 is a bit too high. In fact, they think it is a whole lot too high for tax money to be collected from tobacco and given out to other people as a precedent for the United States—\$1,000 an hour. There are a lot of people in my State who do not make that much in a month. They see that as a lot of money. I see that as a lot of money—\$1,000 an hour.

This is just a precedent. That is why we have to talk about it so carefully. We are talking about those terrible tobacco companies. They withheld information. They do have a drug that is addictive. But they are not the only people perhaps out there. I started keeping a list of the things that my constituents, the voters, the folks back home, think that we ought to put on the list next. I get a lot of calls for liquor and a lot of calls about caffeine. What don't we know about caffeine?

It is getting to the point on this list now where I thought maybe a project for the Senate might be to, each day, as a part of morning business, bring in a tray similar to a dessert cart that they serve to you at a restaurant that has different products on it, and we would try those products and determine how beneficial or how harmful they were to people and set a new tax on those. This might solve tax simplification for the whole Nation, because by the time we go through all the food products in the Nation and decide what a punitive tax we ought to put on them for information we don't know about them, that leaves a wide range and we will not need any other form of tax, except of course we will be figuring out new ways to spend the money as we go along.

The amendment before us would require the lawyers to provide a detailed accounting of their legal work to Congress in relation to the legal actions covered by the underlying bill, including any fee arrangements entered into. Then it would limit the payment of the attorneys' fees to \$1,000 an hour.

I know people are wondering why that is a limitation. Of course, I am sure they are hearing that there are some out there that are may be getting \$88,000 an hour or \$92,000 an hour. Then when they are checking, they are finding out that it is the wealthy and the connected lawyers who are being able to line their pockets from the settlements supposedly made on behalf of the American public. This bill would impose one of the most regressive taxes in America history on low-income Americans. Then we have to debate whether it is fair to limit somebody to \$1,000 an hour.

Mr. President, to put these figures in a little bit of context, last year the average gross receipts for the 100 top grossing law firms in America averaged \$18 million. That was for an entire firm—\$18 million. If this tobacco bill is not amended, some of the law firms involved in the tobacco settlement will stand to gain nearly \$925 million per firm. I would say that is a pretty good raise for relatively little work.

It is important that we reach a decision, that we put some limitations on it, and that we keep people from making an unusually large amount from the tax money of the lowest-paid Americans.

That is where we are. A thousand dollars is higher than I would like it to be, but we are trying to find a range where people will say that is enough. We will have enough other people who will say that is too much. But I will go with it. We will get a vote that will place some limitation on the way we are handling tax money for the American people.

I thank the President. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senator from Wyoming is correct; we have a responsibility.

In meetings and almost marathon sessions around the clock with all Senators, 20 of us—I finally disagreed and voted against us in the Commerce Committee—the distinguished Senator from Arizona, our chairman, made sure that everyone was factored in: That we certainly considered the health groups; Dr. Koop and Dr. Kessler were there. We considered the attorneys general. We seem to forget these agreements, and so forth, were made by the attorneys general in consultation with the White House, the health community, and the tobacco companies. We forget the fact, of course, that the tobacco companies—this thing has gotten all out of kilter—agreed to tax themselves. There was not a single Congressman and there was not a Senator at the table last June. They taxed themselves. Now we are running around, we are going to save victims, and everything else of that kind.

But let me get back to the Senator from Wyoming, because he is right, we have a responsibility. The 20 of us on the committee complied with that responsibility with respect to lawyers' fees that we would be engaged in, and the money would come to the Federal Government. Yes; as U.S. Senators, we are definitely responsible.

You will find that section, of course, on page 437 of the bill—"Attorneys' fees and expenses," and the criteria used, and everything else, on arbitration.

We have in a responsible fashion outlined the responsibility. There is none of this 25 percent—none of it. Absolutely, they are looking at settlements made by the several States—I think Florida, Texas, Mississippi, and now Minnesota I think is the last one. But we are not the Governor of Minnesota or Florida. We have not, as attorney general of Texas or Mississippi, anything to do with that. We could not legislate on it.

We believe, as the Senator does on that side of the aisle, in the 10th amendment, those things not outlined in the Constitution as responsibilities of the Federal Government are re-

served to the States. While we have one wayward former attorney general who didn't want to do anything, we have some outstanding attorneys general who have done more—we are going to prove it—to save people from cancer than Dr. Koop and Kessler combined. I will get to that.

But I want the Senator from Wyoming to know that we have done just that. We have acted in a responsible fashion. It is arbitration.

Incidentally, since I mentioned Florida, they ought to be ashamed of themselves and take down that sign. Our distinguished President, take down that sign that is absolutely false. Rodham, I don't know him—Hugh Rodham, Hillary Clinton's brother. They put that up because they want to project partisan politics into this and Hugh Rodham as a part of the litigation team—absolutely ludicrous. But they put a sign up there and then "drink with the Devil." They have all kinds of expressions. They are running around on the floor of the U.S. Senate with all the pejorative terms of "corruption," "greedy," "predatory," "raising taxes," "slam dunk," "outrage," "sultans of smoke." Oh, boy, they are having a heyday.

Oh, boy, aren't they having a heyday. Aren't they having a heyday—a total smokescreen—with respect to what the actual fact is.

Incidentally, you are looking at a lawyer who practiced for 20 years, and never by the hour. And let me identify myself as a defendant's lawyer as well as a plaintiff's lawyer. I represented the South Carolina Electric and Gas on their bus system, passenger bus. If you want to defend cases, defend the suits brought by passengers on a city transit system. And I can tell you here and now that about the middle of November, maybe even a little bit earlier, the Christmas club starts. Nobody who gets on a bus wants to catch their arm in the door, slip down in the aisle, fall down the steps. The bus is jerking off everywhere. And they got all of these little suits.

The corporate lawyers, the regular defendant lawyers, are lazy. I said that to the chief counsel of the electric and gas company because I was suing them as a plaintiff and making money doing it. I said, "Well, tell them to come in and try the cases." But they settle them all out because they are busy and they don't want to bring the cases.

So I lined them all up and saved that particular corporation millions of dollars, and I am proud of that. I am proud to stand here when the Senator from Texas says they ought to be ashamed. We had this nonsense. We have already voted on it. Sixty percent of the Senators, according to the Senator from Texas, ought to be ashamed—making all this thing up here of what has been going on now for years.

It has to do, Mr. President, with lawyers. We see it at every particular turn and the political opportunism that has come about as a result of an outstanding job done by lawyers. What really

happened—and the Senator from Alabama said he was one who was approached and did nothing and is proud of it. Well, if every other attorney general had done that and waited for others to prove the new theory, as he said—and it was a new theory; nobody had ever won a jury verdict—nothing would ever have happened and we would not be here.

If you look in the CONGRESSIONAL RECORD from January to June of last year, you will not see an expression of children smoking in the CONGRESSIONAL RECORD. Nobody was concerned about it. I have been here almost 32 years, and I have worked with the National Cancer Institute and the American Cancer Society, won national awards and everything else of that kind. Other than putting up the notification asking for more research and everything else, we were not stopping smoking. This whole thing is going on here brought about by trial lawyers. It is going to eliminate a lot of cases, a lot of cancer deaths, as a result of smoking.

But, yes, they had the ingenious approach of a class action, the trial lawyers did, over the past several years, culminating in the agreement last June. They said: We are going to continue to bring these class actions even though we have not won one, and we think we have some of the company's records here that the jury would take notice of and change their mind and give us a verdict. The attorneys general were approached by these particular trial lawyers, and they all joined in.

I will cite later on, one attorney general had to defend his life, had to hide the witnesses, had to really withstand a lawsuit of hourly pay, hourly wages—hourly, hourly, hourly. Oh, my heavens. Twenty years I practiced law, and if I didn't do something for the client, I did not get paid. And if I brought a case on a contingent basis and lost, I lost it; the client paid nothing. That is a wonderful thing in America for middle America and the poor Americans. If you can think up a better system, think it up, because it has worked over the years. And, yes, our business leadership doesn't like it. They call it frivolous suits. What trial lawyer has time for a frivolous suit? He doesn't get anything if it is frivolous; it is going to get thrown out.

So the proof of the pudding on frivolous suits is to try them and win, and the lawyers will quit bringing those kinds of cases if they are frivolous. We don't have time for frivolous suits, sham claims, and those kinds of things that they talk about. We bring good cases. We bring good cases, and we make a mark.

That is exactly what has happened here with respect to this case. They went to the attorneys general, and the attorneys general finally got together with the companies. And the companies are saying: Well, we are winning these cases but it is costing us \$500- to \$600 million in lawyer's fees.

Now we want to control lawyer's fees. They never have, over here, worried about really making money—this crowd over on the other side of the aisle. I have never seen a more sham performance than they are worried about anybody making money. Otherwise, I have been up here, and if there is an outrage, it is this billable hour crowd where "I don't know the law so I charge you as a client so much per hour to go up in the library on the weekend." It is my call, and if I can stay ignorant long enough and go up more weekends, I get more money.

That is the crowd that ought to be controlled. The Senators around here have been involved in various hearings now that owe all kinds of millions in billable hours to downtown lawyers to come and look at their records and everything else of that kind. That is the outrage that bothers this particular Senator, not the lawyers who really brought the case and did something.

And none of it is 25 percent. The truth be out and the fact is—and charge me for this; it is going in the CONGRESSIONAL RECORD—8 percent is what is going in with respect to these cases in Florida, Mississippi, Texas, and Minnesota. But they throw around 25 percent and everything else of that kind, and all of it is subject to arbitration and agreement.

In the Texas case, they already have been petitioned by the distinguished Governor of Texas, and they are in a hearing, and I do not know whether it will lead to arbitration; I haven't kept up with it. But the States know how to look out for themselves. To this States rights crowd on the other side of the aisle, now all of a sudden all the attorneys general are dumb, don't know what they are doing, and we have to protect the farmer, the filling station operator, and the repairman at the garage.

Isn't it interesting, Mr. President. There is no plaintiff up here complaining, no plaintiff ever complaining about lawyer's fees. Who is complaining? The crowd that is crying is the one that is causing the injury. They posture themselves that they are looking out for the filling station operator and the working lady and the laundry woman and everybody else like that—poor America.

The only way to get a lawyer is to go in and get good representation on a contingency basis. Isn't it interesting. You find me the plaintiff who has come up and said, "I get paid too much money." They are tickled to death to get anything, because if you left it to the corporate crowd, they wouldn't get anything. I know. I have been in the game. I have watched it over the years.

But be that as it may, they made that agreement and they said on a contingent basis, which now averages out to 8 percent—despite that sign of pejorative terms—just to excite people around here and throw poison about, drinking with the Devil and all. They have all the wonderful little expres-

sions, but I wish they would come out in the Chamber and debate this thing, because I am ready to debate it and stand up when they end up with their peroration that we ought to be ashamed.

Well, I am proud. I am proud of this particular initiative made by the lawyers and the States attorneys general, because they made that agreement and they went in never having won before. They put in their own money. And go to the distinguished Attorney General Mike Moore of Mississippi. Mr. President, you were an attorney general. Can you imagine bringing a case in the State of Washington and having the Governor of Washington sue you because you brought the case—not just say, "General GORTON, I think you might be mistaken." Just sue you. Just sue you and make you hire a lawyer to defend yourself to do your job. That is Mike Moore, from Mississippi. He fought that. Had to get in his own pocket, and hire lawyers there the whole time.

Otherwise, they had to hide witnesses that they got from the company. For 2 years they chased them around. They tried everything in the world to intimidate their witnesses. They really went on a struggle to come this far. And some of the lawyers they are talking about—I am not that intimate to the case—have yet to get a red cent. They have millions of dollars invested in time and effort—discovery, interrogatories, appeals, appearances, travel, on and on and on, on behalf of the public of America, and they are the ones who are doing the job and not these Senators with this particular amendment.

Because if they were really interested in billable hours, I would refer to some of them here who are listed by none other than our friend, Steve Forbes. I worked closely with Steve Forbes. He was always asking me for more money. I was chairman of a subcommittee of State, Justice, Commerce, and he had Radio Free Europe, and Liberty. I really respect him. He is a wonderful fellow, a dedicated American. He did an outstanding job. But don't let him act like he never saw this town, because he has, and he has been asking the town and the Government for more money.

But he listed here, since they brought in Intel—I just got this at the first thing—Andrew S. Grove, and he gets \$164 million compensation a year, coming down to \$77,000 an hour. Where is the bill about the predatory greed, corruption, "Sultan of Smoke," outrage, predatory, right on down the line? They don't say that Grove is all of those nasty things. They say that is pretty good. Right on. And I agree with that. I admire him.

I have been to the Intel plant in Dublin, Ireland. I have to tell that. I have to enjoy something this afternoon. Just to show how we do work with industry, I walked into the Intel plant, a billion-dollar plant outside of Dublin,

and when I walked in the distinguished head of the plant named Frank McCabe—I know everything I say is going to be checked. In a campaign, they have nothing but lawyers and billable hours to check everything you say, so write that down—Frank McCabe is his name. And he said, "Governor, glad to see you."

Well, I don't remember him. But I remember him now, because he was with General Electric in Irmo, a plant we brought to Irmo, SC; GE. He was there for 10 years, managing that beautiful operation, and \$1 billion invested.

He said, "You know how I got it operating and up and in the black?"

I said, "No, how is that, Frank?"

He said, "I went back and sent teams to Columbia, SC, where you had Midlands Tech, and we copied your technical training for skills, and we have it over here in Ireland."

So, we do not speak casually or critically of Mr. Grove. I am proud of him. I wish I had the ability to make \$77,000 an hour.

The next fellow here is Mr. Eisner. Oh, I know him, and he is a wonderful operator. I have been out, talked to a board of young folks. I don't know the official name of that board, but I can tell you they were the smartest young gentlemen I ever met, and ladies. They cross-examined me and they knew more about what was going on in Washington than any group with whom I have met. They were really updated and had very thoughtful questions, and I learned from them. So I don't speak critically.

But they got Michael D. Eisner here. Steve Forbes lists him down at \$245 million, or \$120,000 an hour. Where is the bill? Here is a fellow who has more than your \$90-some thousand or \$80-some thousand. The floor is cleared. They are not around. There is no amendment to grab Eisner at \$120,000 an hour.

Then, there is Stephen Hilbert. He gets \$350 million, or \$170,000 an hour. Man, this thing is going up, up, and away. I better start subscribing to this magazine and see where I can get out of this political rut, trying to defend the working people of America, those who cannot afford billable-hour lawyers—who cannot afford a lawyer, period—but can come in and if they have a claim or have a chance or whatever.

One of the last cases I handled, I said, "I don't think too much of that case." Well, the lady said, "Mr. HOLLINGS, we have been to four other law firms and finally the sergeant out there at the police station, he said that you didn't mind trying the cases. And what I am telling you is right. I wasn't at fault."

Well, it looked to me the way she described the particular injury, and the case that had come about, they had to have a moving bridge. If someone is ever interested, I will go, because I took that case all the way up past the circuit court of appeals in Richmond, and we won it. I worked for a year and a half easily, almost 2 years, my part-

ner and myself. We had a fortune tied up in that. I wish I had the time to go into it this afternoon, it was very interesting. The point is, we didn't know we were going to get anything for that 2-year period until the end when we finally prevailed.

I could go down the list. Wait a minute—Sanford Weill, Travelers Group, \$434 million—\$200,000 an hour. Where are they? Man, come on. Don't give me about this \$80,000 an hour or \$1,000 an hour. We have people in America making \$200,000 an hour. Yes. Yes. They are ashamed all right. They wouldn't come out here. They won't come out because they know what we are telling is the truth about this situation.

What goes into an agreement is a lot of things listed here: the time and labor, that is the billable hour; then the novelty and difficulty of the question; the skill requisite; the preclusion of other employment—you can go down the list of these things, on and on, about the tests, the experience, reputation, ability, the attorneys involved, the undesirability.

Can you imagine bringing a case more undesirable than to have your own Governor sue you for bringing the case and everybody else chasing you around and calling you predatory, and "Sultans of Smoke," and everything else like that, when what you have done was agreed upon by the State?

And no, no, no, Senator from Wyoming, we don't have a responsibility other than to leave that one alone; and the one in Florida alone; and the contract in Texas alone—because those were contracts made and cases disposed of without the Congress of the United States under formal agreement.

We are all good enough Americans to realize we are not going to abrogate the agreement or contract or whatever it is.

Even if we wanted to write it into this particular bill, we couldn't do it. Those are agreements made when we were sleeping at the switch and not doing anything about children smoking. Now, we are all in heat—"children smoking," "we've got to look out for the children," "they're victims, victims." People are bringing in their relatives saying they are victims, smoking for years on end. For 30 years we have been telling them the best we could about the danger to your health on a package of cigarettes.

There it is. There it is, Mr. President. They want to come in now with this assault, about how they are saving people, totally misrepresenting the record. There isn't any question about it, starting with the Hugh Rodham sign and going down to billable allowance and our duty and 25 percent and the outrageous—outrageous—words again and again and again.

Now, what's afoot? Well, any and everything on this bill, unfortunately, because we have drugs, we have tax cuts for marriage penalties, we have all kinds of little provisions here and little

provisions there. If you take the political polls, they say, as they said in Henry VI, "Kill all the lawyers." That is what Dick the Butcher said. But it was the greatest compliment we ever had, I say to the chairman of the Judiciary Committee, my most distinguished friend, because they wanted to start anarchy and tyranny in that vast land. They knew as long as there was a living lawyer to protect individual rights, anarchy could not prevail. So Dick the Butcher shouts, "First, we must kill all the lawyers." But, of course, this crowd over here could care less about Shakespeare, and they are the ones who should be ashamed of themselves, absolutely ashamed of themselves bringing on this onslaught, taking up this time on a matter we have already voted upon.

Why? Because we have the billable hour crowd downtown. A lot of good friends I have, and I have gotten most every award you can find from the Chamber of Commerce. I love them, but they even have TV ads about trial lawyers, trial lawyers. If they ever get in trouble, tell them to get one, because they don't want to get a corporate billable hour lawyer sitting on his duff up on the 32nd floor looking at his oriental rugs, at his mahogany desk, blinking his eyes, waiting to go to the club and charging you for it.

It reminds me of a Sam Ervin story, when he was a Senator here, about that poor doctor down there in North Carolina. He said the gentleman practiced medicine for 32 years and never had a vacation. He finally got his son out of med school and said, "Son, your mother and I are going to have to take off for a couple of weeks. You have to take over because we have never had a vacation."

He came back off vacation and was talking to his son.

"Dad, you know Mrs. Hurleeha?"

He said, "Yes, that's the lady with the bad back."

The son said, "She doesn't have a bad back."

"My God, son, did you settle that case? She paid your way through med school."

If you don't kill them, you can charge them, and if you don't bring the case to court and keep on studying it, you get into this billable hour thing. That is exactly what is going on.

They have it with respect to the product liability, with the Coast Guard bill, the transportation bill. Anytime that corporate America can hammer on lawyers who really are bringing about safety, bringing about good health, bringing about the end of smoking in America, you have done something.

Let's get to the point. The greatest call upon any profession, Mr. President, is to rid itself of the profession. Specifically, if the ministers can get rid of all sin, the doctors all disease, the greatest call upon the distinguished chairman of the Judiciary Committee and me is to get rid of all injury cases.

When I came up here 32 years ago, just about, one of the first things was Love Canal. We had all the toxic fumes and the people dying. What happened? We didn't sit around when it was brought to our attention, by whom? Trial lawyers. We put in the Environmental Protection Agency. And it bothers some people getting those EPA statements, environmental statements, but they have saved a lot of injury. It has saved a lot of lives. We have a much, much more healthy America.

Similarly speaking, we found little children burning up with flammable blankets in the cribs. The trial lawyers said, "Look, there is no sense trying these and winning and getting money; let's stop burning up the children. Let's get a Consumer Product Safety Commission."

I have been in test labs where they test not only the toys, not only the cribs, but all the particular devices that go into the kitchen as to safety, and we have corporate America on a safety course.

Ask Ford Motor Company. Just the week before last, they recalled 1,700,000 Ford pickup trucks. Why? Because of Mark Robinson out there with the Pinto case in San Diego. Mr. President, 20 years ago, he got a verdict of \$3.5 million actual damages and \$125 million punitive damages. He hasn't collected a dime on the punitive damages, but we in America have collected on it, because that is why they are calling in these things now. Time and again every week—Chrysler, just before that, called in hatchbacks. These automobile companies don't just get a CPA to factor in the cause of the injury—"We can afford that rather than pay the lawyers; we just settle the cases"—they are putting out safe products in America. And Europe is following our example.

So what happens then? Along comes the trial lawyers with the attorneys general. They have come in now and not taxed anybody. When I heard this figure last June, I was almost in shock. I have worked on the defense budget for 28, 29 years on the Defense Appropriations Subcommittee. The actual amount is \$250 billion, but when they came up with \$368 billion, I said my newspaper has gone loco. They don't know how to print things. They have a mistake here. They came up with \$368 billion and said just increased a modest amount, and they are saying, "Oh, Congress is up there, tax and spend." And that is the companies' ads. They are the ones who agreed to it. It was their idea.

Come on, we have gotten totally off track here with this political charade that has been going on with attorneys' fees. "We'll come back again, and if we can't get \$1,000, we'll come back for another amount; we'll come back next year, and we shall return," like MacArthur. Come on, they know better. We will not put in here to get the billable hours crowd downtown and limit them and or take these corporation fellows

who "deserve" what they get. "They produce," and don't tell me the trial lawyers don't produce. We are here. No Congressman brought us here. No Senator brought us here. The trial lawyers brought us here on this particular initiative.

It is greed, trying to get even more, acting like we are the ones giving the fees. As the Senator from Wyoming says, the provisions are in here for responsibility of arbitration. You wouldn't have found 19 Senators who would have reported this bill out for a reckless 25 percent and billions and billions of dollars like they are talking about. It is less than what corporate America is doing, riding around smiling. I met with that crowd. I like the carpetbagger up in the Northeast and Boston and New York.

When you are a young Governor, they will let you in the door. And we have the blue chips, corporate America, down there. Now we travel over to Europe and Latin America, and we have—and we are proud of it—the hundreds of Hondas, the Hoffmann La Rouches, the BMWs.

But I can tell you here and now, let us not as a Congress bog down into this political thing on account of pollster politics and start limiting fees. Let us let them make their agreements. Let us, as a Federal program, have an arbitration like we have in everything else. They have subjected themselves, I know, in Mississippi and otherwise, to arbitration. The trial lawyers will agree with that. Let us get away from all of this onslaught of Hugh Rodham, Hillary's brother, everything else like that, that they might think is a good thing to put on national TV so they can get on C-SPAN and go again and again at the particular bill that we have before us.

Mr. President, as a question, we had hearings on this. And there is a legal question. I am sure the chairman of the Judiciary Committee will get into it.

Mr. HATCH. Will the Senator yield on that point?

Mr. HOLLINGS. Yes.

Mr. HATCH. You know, as chairman of the Judiciary Committee, and somebody who has been both a defense lawyer and a plaintiff's lawyer, I have some specific thoughts and first hand experience on this issue.

Mr. HOLLINGS. As has this attorney.

Mr. HATCH. As you have been an attorney who has tried cases on both sides of the issue, you understand very well that without the attorneys in the Castano group, we would not be where we are today with the original settlement.

Mr. HOLLINGS. Exactly.

Mr. HATCH. We would not have had a settlement that amounts to \$368.5 billion; not anywhere near that amount without those attorneys.

Mr. HOLLINGS. No Congressman, no Senator—just those.

Mr. HATCH. Is it your understanding that not one of those plaintiffs has been paid a dime for this case so far?

Mr. HOLLINGS. That is right. None of the Castano lawyers, and they have been at it for years.

Mr. HATCH. Many of them have millions of dollars in unpaid fees in this matter. Is that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Isn't it also true a contract between a plaintiff and his attorney is a legally enforceable contract, which Congress should not impair?

Mr. HOLLINGS. Exactly. You cannot impair the obligation of a contract constitutionally. You and I both know that.

Mr. HATCH. If Congress, as it would be doing here, at least as I understand the intent of this amendment, were to interfere retroactively with private contracts, it would be unconstitutional for a variety of reasons; isn't that right?

Mr. HOLLINGS. It would not be worth the paper we would write it on. We would be wasting our time here.

Mr. HATCH. By capping a fee, such an interference is a taking under the Fifth Amendment of the Constitution. The Supreme Court cases clearly show that the Federal Government cannot confiscate money or interfere with a lawful contract. Is the Senator aware of that point?

Mr. HOLLINGS. The Senator is correct.

Mr. HATCH. In addition, the regulation of attorneys' fees properly, at least as I view it, belong in the domain of the States, and such usurpation of State prerogatives may very well violate the Tenth Amendment in the eyes of many constitutional authorities. Is that right?

Mr. HOLLINGS. Absolutely. If the Senator would yield for just a second.

Mr. HATCH. Sure.

Mr. HOLLINGS. Unconstitutional. It was cited by the constitutional professor of law at the Kansas City School of Law. And I quote: "It would violate the State sovereignty protected by the 10th amendment. Second, it would constitute an uncompensated taking of private property in contravention of the 5th amendment."

Mr. HATCH. Recent court opinions, if my colleague would permit me to ask another question, such as *New York v. United States* or *Printz v. United States* has made the Tenth Amendment a shield against Federal impositions on the sovereign authority of the States. Is that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. That was not always the case, but it has been so in those cases. Under any view of federalism, there is no justification for Congress, whatsoever, entering an area of pure State jurisdiction, altering the rights and the liabilities or remedies of private parties, and then dispensing with all due process protections guaranteed by the Constitution. Isn't that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. Well, let me ask the Senator just one or two more questions. I may have a lot more to say later in this debate.

The States have already shown a willingness to step in and prevent unreasonable and excessive fees in the tobacco settlements. Is that right?

Mr. HOLLINGS. The State of Florida has stepped in and has it as a hearing; so has the State of Texas.

Mr. HATCH. In the Florida settlement, the court threw out the contingency fee arrangement, which it found to be clearly excessive under the circumstances. This shows that the State courts are best equipped to address this issue by utilizing the arbitration provision of the Commerce Committee bill. Is that correct?

Mr. HOLLINGS. That is correct.

Mr. HATCH. As I understand it, the bill that the distinguished Senator has worked on, the one that is on the floor before us today—as much as I dislike the bill, as much as I think it will not solve the problem, as much as I think it will not bring the tobacco companies back to the table, as much as I think it could be written in a far better way, and as much as I think it has been substantially weakened by some of the amendments agreed to—the fact of the matter is that the bill does have a provision whereby attorneys' fees can be resolved. Is that not correct?

Mr. HOLLINGS. Certainly.

Mr. HATCH. The bill contains a provision whereby the attorneys' fees will have to be resolved in a legally reasonable manner. Isn't that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. It is very unlikely that anybody is going to get away with some big windfall under the provisions that apply in this bill and, I might add, in the substitute that we have worked on as well. Am I right on that?

Mr. HOLLINGS. The distinguished Senator is right on target.

Mr. HATCH. Well, let me ask the distinguished Senator this: It seems to me we must also examine the precedent we are setting here in having the U.S. Congress single out any one profession by capping their earnings.

Mr. HOLLINGS. That is my plea, Senator. It might in the one instance be an instrument of good, but it is the customary weapon to run amok and start into an area where it is totally up to the individual parties, on the one hand, making the agreement, but more particularly invading the sovereignty of several States.

Mr. HATCH. Can I ask my dear friend and colleague, do we single out the insurance executives or computer executives?

Mr. HOLLINGS. No, sir.

Mr. HATCH. Does the U.S. Congress set their fees or their salaries or their compensation?

Mr. HOLLINGS. No. I apologize for raising these, but I just wanted to show the sincerity. You know, these are all friends of mine. I admire them all. And they produce that amount.

Mr. HATCH. Do we single out labor union leaders and say they can only earn so much money?

Mr. HOLLINGS. No. The Congress has a lot of good work to do, but not to get off in the field of this thing.

Mr. HATCH. I remember when Jackie Pressler was the chairman of the Teamsters. He came before our committee and somebody brought out that he made over half a million dollars a year and was kind of needling him that it was too much money for a labor union leader to make. He looked right up at him and said, "Well, I want you to know that almost every one of my corporate counterparts makes a lot more. And I'm worth every penny that I make for my union."

Mr. HOLLINGS. Certainly.

Mr. HATCH. I had to agree with him. I thought he was worth every penny he made, whether you agree or disagree.

What about entertainers? Do we set an amount of money they can make?

Mr. HOLLINGS. No, sir.

Mr. HATCH. Or sports figures?

Mr. HOLLINGS. Not at all.

Mr. HATCH. If Michael Jordan wants to make \$60 or \$80 million a year, or Tiger Woods, who is earning millions of dollars a year, should Congress be setting their salary?

Mr. HOLLINGS. I appreciate the questioning of the distinguished Senator, because it brings into sharp focus exactly what we are about here.

Mr. HATCH. Let me ask one other question. I admire some of the top corporate leaders in the world as well as the top sports figures in the world.

Mr. HOLLINGS. Exactly.

Mr. HATCH. I admire people who are innovative and creative. Take Bill Gates, for example. I admire him. I think what he has done at Microsoft is nothing short of phenomenal. But should we begrudge the fact that he has earned his spot in our society as one of the wealthiest men in the world, worth somewhere between \$40 and \$50 billion?

Mr. HOLLINGS. What impressed me, Senator, about Mr. Gates—I missed him the other morning because I had to be on the floor—but he has some 21,000, 22,000 individuals working for him—all millionaires.

Now, how do you like that? That is a wonderful business and industry. And it is his genius that has gotten it there. It was nothing we did in the Congress.

Mr. HATCH. Not to dwell on that industry—Steve Jobs; he deserves every penny he made. He helped make the computer industry what it is today. Isn't that correct?

Mr. HOLLINGS. That is right.

Mr. HATCH. The head of Compaq, or the head of Hewlett-Packard or Larry Ellison, the head of Oracle, or any of them for that matter are all very wealthy people who some people think lucked their way into this wealth. I happen to believe they worked hard and with innovation and creativity they were able to make this kind of compensation.

Are they really that much different from really top-notch plaintiffs' lawyers like the Castano group lawyers who really made a difference here and who are responsible for bringing the tobacco industry to the table and getting

their agreement on the \$386.5 billion settlement?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Nobody has been able to accomplish what these attorneys have achieved. They brought the whole tobacco industry to their heels and tried to get the U.S. Congress—at least the Senate, so far—to try to do something about the deplorable behavior of tobacco companies. Isn't that correct?

Mr. HOLLINGS. That is correct, Senator.

Mr. HATCH. Don't you think they deserve better than average compensation for that significant accomplishment?

Mr. HOLLINGS. At least what is agreed to. They are complaining about an agreement that you didn't make and I didn't make and we have a responsibility to leave alone.

Mr. HATCH. Let me ask the Senator this question. If the Senate falls to pass this bill and we wind up doing nothing here or if we cut out the attorney fees, they could wind up not recouping the \$40 to \$100 million in legal time and other expenses that they have incurred in this matter; isn't that correct?

Mr. HOLLINGS. Exactly.

Mr. HATCH. Isn't that what contingency fees are all about?

Mr. HOLLINGS. Contingency fees are absolute risk. You are assuming the cost.

Mr. HATCH. When I tried cases for plaintiffs on contingency fees, I won most all of them. It was not a matter of not getting paid, because I was always able to win a bigger verdict than I could have gotten through settlement or they could have gotten through settlement.

The fact of the matter is, if I hadn't won the cases, I would have assumed those losses; isn't that right?

Mr. HOLLINGS. I have done it. I have lost that.

Mr. HATCH. My point is, that is why contingent fees are so important. A lot of the people who came to me could in no way have spent a day in court without a contingency fee lawyer who was willing to take the risk of bringing their case before a jury and trying to recover just compensation for them before that jury; isn't that true?

Mr. HOLLINGS. That is correct.

Mr. HATCH. I have been there, and I have to say, when we start setting salaries for attorneys, or any other group of people, that is going to be the end of the free market system, as far as I am concerned.

Mr. HOLLINGS. No question about it.

I see the distinguished managers of the bill. Let me yield the floor.

Mr. HATCH. Will the Senator yield so I can compliment the two managers. I want to compliment the managers for the provision contained in this bill that resolves these matters. You have taken a reasonable set of language and a provision that would resolve the question of reasonable legal fees. I

think both manages on this bill deserve credit for having done that.

I will have more to say on this issue later. I am sorry I interrupted my colleague, but I wanted to ask him these questions, since he had spoken so eloquently.

Mr. MCCAIN. Mr. President, we had agreed earlier that, pending negotiations with Senator NICKLES, there would be a modification of the Kerry amendment, which was not tabled. Following that language being accepted, then the Kerry amendment would be taken on a voice vote.

The debate has been on the Sessions-Faircloth amendment, which has not been propounded. We would like to have Senator SESSIONS come over and propound his amendment at that time, and then Senator KERRY would move to table the Sessions amendment.

At this time, I yield the floor so that Senator KERRY can modify his amendment to which Senator NICKLES and others have agreed.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, it is my understanding then—and I ask unanimous consent that after my modification we would proceed immediately to the vote on my amendment—subsequent to that, there would be a 45-minute period of debate evenly divided on the Sessions amendment, at which time that would be followed by a motion to table.

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

AMENDMENT NO. 2689, AS MODIFIED

Mr. KERRY. Mr. President, I send a modification to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself, Mr. BOND, Mr. CHAFEE, Mr. KENNEDY, Mr. DODD, Mr. WELLSTONE, Mr. JOHNSON, Mrs. BOXER, Mr. SPECTER, Ms. LANDRIEU, Mr. DURBIN, Mr. GRAHAM, Mr. BINGAMAN, and Mr. KOHL, proposes an amendment numbered 2689, as modified.

Mr. KERRY. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment will be so modified.

The amendment (No. 2689), as modified, is as follows:

On page 201, line 20, strike from the comma through line 21, and insert “;” after “Act.”

On page 203, line 7, strike from the comma and all that follows through line 14, and insert a period after (b)(2) on line 7.

At the appropriate place insert the following:

() ASSISTANCE FOR CHILDREN.—A State shall use not less than 50 percent of the amount described in subsection (b)(2) of section 452 for each fiscal year to carry out activities under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 2689), as modified, was agreed to.

Mr. KERRY. I move to reconsider the vote.

Mr. NICKLES. I move to lay it on the table.

The motion to lay on the table was agreed to.

Mr. KERRY. I ask my friend from Oklahoma if he wanted to proceed. I think we are going to proceed according to the unanimous consent request, which is to go immediately to the Sessions amendment.

Is that the understanding of the Senator from Oklahoma?

Mr. NICKLES. Yes.

Mr. President, I just want to thank both my friend and colleague from Massachusetts, as well as from Arizona, for accepting this modification. The modification did a couple of things. One, as I stated prior to the vote, we didn't want to pass an expansion that would basically take the means testing off of the child care development block grant, nor did we want to change the allocation or the ratio of the State match. We have corrected that.

I thank my friends and my colleagues for doing that. I have no objection to the unanimous consent request.

Mr. KERRY. Mr. President, just so the legislative record is absolutely clear here, there was, in the underlying bill, a change in section 418 of the Social Security Act which actually transfers money to the child development block grant. What we arrived at was an agreement that there was no intention to change the means testing and/or distribution with respect to section 418.

However, it is the understanding of the Senator from Oklahoma and the Senator from Massachusetts that as to the money that goes directly to the child care development block grant through the tobacco trust fund, that money may be disbursed according to the terms of the Kerry-Bond amendment.

Mr. MCCAIN. Mr. President, I want to take a second to thank the Senator from Oklahoma. He and his very capable staff have been through this bill with a fine-toothed comb. By the way, I say this with full understanding that the Senator from Oklahoma does not agree with this legislation. But what he and his staff have done has been extremely constructive.

There have been several provisions, as would be the case with a very large bill, where mistakes were made either through unintentional or erroneous technical printing of the bill.

This is not the first time that the Senator from Oklahoma has found unintentional provisions of the bill violating existing law and the jurisdiction of other committees, and I appreciate very much his effort, because I think whether the bill passes or not, it has been significantly improved due to his efforts.

Mr. NICKLES. I thank my friend.

Mr. KERRY. Mr. President, part of our agreement, and I want to make sure that Senator MCCAIN agrees, and I

ask further modification of the unanimous consent request, simply to say that, after disposition of the Faircloth-Sessions amendment on attorney's fees, it is then agreed that it would be the Democrats' opportunity to offer an amendment.

Mr. MCCAIN. Reserving the right to object, and I won't object, the Senator knows that we always have an objection from this side, but we have always acted back and forth. I can assure the Senator that, if necessary, I will seek first recognition so that the amendment from that side could be allowed.

Mr. KERRY. I thank the Senator. That is certainly the fair way we have been moving. I thank the manager for his continued effort to make sure we move that way.

Let me say for Members who are trying to understand exactly where we are going, the amendment we voted on earlier this afternoon, the Kerry-Bond amendment which carried by 66 to 30—something, was passed by the Senate by voice vote.

We will now proceed to have 45 minutes of debate remaining on the amendment on attorneys' fees, at which point there will be a motion to table and we will vote again this evening in about 45 minutes on that amendment, at which point we will then lay down an amendment. I am not sure what the intentions of the majority leader will then be with respect to scheduling a vote on that.

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

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

AMENDMENT NO. 2701

(Purpose: To limit attorneys' fees)

Mr. FAIRCLOTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from North Carolina [Mr. FAIRCLOTH], for himself, Mr. SESSIONS, Mr. MCCONNELL, and Mr. GRAMM, proposes an amendment numbered 2701.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 17. ATTORNEYS' FEES AND EXPENSES.

(a) FEE ARRANGEMENTS.—Subsection (c) shall apply to attorneys' fees provided for or in connection with an action of the type described in such subsection under any—

- (1) court order;
- (2) settlement agreement;
- (3) contingency fee arrangement;
- (4) arbitration procedure;
- (5) alternative dispute resolution procedure (including mediation);

(6) retainer agreements; or
 (7) other arrangement providing for the payment of attorney's fees.

(b) APPLICATION.—This section shall apply to all fees paid or to be paid to attorneys under any arrangement described in subsection (a)—

(1) who acted on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(2) who acted on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(3) who act at some future time on behalf of a State or political subdivision of a State in connection with any past litigation of an action maintained by a State against one or more tobacco companies tobacco-related expenditures;

(4) who act at some future time on behalf of a State or political subdivision of a State in connection with any future litigation of an action maintained by a State against one or more tobacco companies to recover tobacco-related expenditures;

(5) who acted on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(6) who act at some future time on behalf of a plaintiff class in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(7) who acted on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(8) who act at some future time on behalf of a plaintiff in civil actions to which this Act applies that are brought against participating or nonparticipating tobacco manufacturers;

(9) who expended efforts that in whole or in part resulted in or created a model for programs in this Act;

(10) who acted on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection; or

(11) who act at some future time on behalf of a defendant in any of the matters set forth in paragraphs (1) through (9) of this subsection.

(c) ATTORNEY'S FEES.

(1) JURISDICTION.—The determination of attorney's fees for compensation subject to this section shall be within the jurisdiction of—

(A) the court in which the action for which the claimant attorney is making a claim is pending; or

(B) an arbitration panel selected by the parties or otherwise selected by law.

(2) CRITERIA.—In the determination of attorneys' fees subject to this section, the court or arbitration panel shall consider—

(A) The likelihood at the commencement of the representation that the claimant attorney would secure a favorable judgment, a substantial settlement, or a successful negotiation towards a global settlement agreement for submission to the Congress;

(B) The amount of time and labor that the claimant attorney reasonably believed at the commencement of the representation that he was likely to expend on the claim;

(C) The amount of productive time and labor that the claimant attorney actually invested in the representation as determined through an examination of contemporaneous and reconstructed time records;

(D) The obligations undertaken by the claimant attorney at the commencement of the representation including—

(i) whether the claimant attorney was obligated to proceed with the representation through its conclusion or was permitted to withdraw from the representation; and

(ii) whether the claimant attorney assumed an unconditional commitment for expenses incurred pursuant to the representation;

(E) The expenses actually incurred by the claimant attorney pursuant to the representation including—

(i) whether those expenses were reimbursable; and

(ii) the likelihood on each occasion that expenses were advanced that the claimant attorney would secure a favorable judgment or substantial settlement;

(F) The novelty of the legal issues before the claimant attorney and whether the legal work was innovative or modeled after the work of others or prior work of the claimant attorney;

(G) The skill required for proper performance of the legal services rendered;

(H) The results obtained and whether those results were or are appreciably better than the results obtained by other lawyers representing comparable clients or similar claims;

(I) Whether the original fee arrangement includes a fixed or a percentage fee;

(J) The reduced degree of risk borne by the claimant attorney in the representation and the increased likelihood that the claimant attorney would secure a favorable judgment or substantial settlement based on a chronological progression of relevant developments from the 1994 Williams document disclosures to the settlement negotiations and the subsequent Federal legislative process; and

(K) Whether this Act or related changes to State laws increase the likelihood of success in representations subject to this section.

(3) LIMITATION.—Notwithstanding any other provision of law, any attorneys' fees or expenses paid to attorneys for matters subject to this section shall not exceed a per hour rate of \$1,000 in addition to 200 percent of actual out-of-pocket expenses for which detailed documentation has been provided and which have been approved by the court or arbitration panel in such action.

(4) RECORDS REQUIREMENT.—All records submitted to a court or arbitration panel pursuant to this section shall be available for public inspection and reproduction for a period of one year from the date of adjudication of the attorneys' fees.

(d) SEVERABILITY.—If any provision of this section or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this section and the application of the provisions of such section to any person or circumstance shall not be affected thereby.

Mr. FAIRCLOTH. Mr. President, there has been an agreement reached that we will have a vote on this amendment after 45 minutes of debate, equally divided between the two sides.

The PRESIDING OFFICER. The Senator is correct.

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

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

Mr. KERRY. Mr. President, before the Senator proceeds, can I ask how is

the time being allotted to both parties during the quorum call?

The PRESIDING OFFICER. Time is charged to the Senator who suggests the absence of a quorum, unless it is asked for otherwise.

Mr. FAIRCLOTH. Mr. President, I ask unanimous consent that the time under the quorum calls be equally divided. I did not specify that.

Mr. KERRY. Reserving the right to object, and I will not object. I think it is important to keep moving and we will do that. Mr. President, I will not object.

The PRESIDING OFFICER. Without objection, the time during quorum calls will be charged equally to both sides.

Mr. FAIRCLOTH. Senator SESSIONS is coming to the floor and will be here momentarily to speak on the bill.

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

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

Mr. WARNER. Mr. President, I ask the Senator to yield me such time as I may require.

Mr. FAIRCLOTH. I am delighted to do so.

Mr. WARNER. Mr. President, I rise in strong support of this amendment. This effort on behalf of the U.S. Senate has a laudable and commendable goal to reduce smoking among teenagers. But I regret that I will not be able to support the bill for many reasons; foremost among them is the fact that we are trying to enable a certain class of lawyers who, in many instances, I am sure have rendered legal services of great value, but others of questionable value. We will set precedence for the collection of legal fees that have never, in my memory as a lawyer, been established in the history of this country. I joined the distinguished Senator in a similar amendment to curtail these fees.

I feel that the people of this country will sit back in absolute stunned shock should legislation pass that did not in some way try to properly and fairly compensate attorneys, but not do so at the levels that have been discussed in the course of this legislation.

I lend my strong support to this amendment.

Mr. President, the other features of this legislation which trouble me greatly is the concept of passing on to a class of persons who still use tobacco, which is perfectly legal to do so, an onerous tax, particularly on a class of persons that really in many respects are least able to pay the tax. What we are doing is like the old days in the West. We are going out and deputizing sheriffs to be tax collectors. We are actually creating their own deputy tax collectors now to go out and collect

this tax. We are scrambling around here trying to figure out how to spend it.

I just cannot support legislation that increases, I think, in a most unfair manner a tax on this class of individuals.

This morning I watched, as I am sure many do, the various shows, television and news reporting shows about the reaction of the American public to this legislation. They had a group of young people on. They all admitted to the fact that they smoked. Some said they wished they didn't and would like to get off of it. I also find disturbing that we are putting a tax on a number of people—I don't know how you calculate the number—who are smoking and would like to get off, but they simply cannot for various personal reasons muster the strength to do so. But they are going to get punished.

But these young people are almost mocking the effort of the Congress thus far in dealing with this issue of smoking. Raising the cost of a pack of cigarettes is simply not going to, in my judgment, in any significant way curtail the smoker. It is just not going to do it.

I am proud, like most in this Chamber, to have raised children who are grown now. We know the nature of young people. If we raise the price per pack of these cigarettes, it will almost be a challenge for them to go out and in some way find the money to purchase cigarettes and use them almost as a status symbol. Indeed, I think we run the risk—and others have discussed this in great detail—of creating a black market situation and almost induce criminality among the younger generation.

For that and many reasons, eventually I will cast my vote against this legislation.

But on this issue this is, I think, the best attempt that I have seen thus far to try and recognize the injustice we are inflicting on people through taxation and that a class of beneficiaries of lawyers will be unjustly enriched.

Mr. President, I strongly support this amendment. I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I rise in support of the amendment by the Senator from Alabama and the Senator from North Carolina to try to put at least some limit or some reasonableness on legal fees in this bill.

I have heard some of my colleagues say, "Wait a minute. What about the Michael Jordans and the Bill Gates, and others?" They are not compensated out of the public trust fund that comes from a tax, that comes from a fee, whichever you want to call it. I call it a tax that is set up by Congress. Congress is in the process of raising taxes and fees in the first 5 years of \$102 billion. That is a lot of money. And over the 25-year period, you usu-

ally hear the figure of \$516 billion. But it is a lot more than that. \$516 billion doesn't index for inflation, and so on. We have already had charts on the floor that show it to be up to \$880-some billion. That doesn't even count the amendment of Senator DURBIN that was passed the other night that increased the look-back penalties from \$4 billion a year to about \$7.7 billion a year. So we may well have a tax package that over the next 25 years will transfer from consumers—not tobacco companies, from consumers—maybe \$900 billion; maybe closer to \$1 trillion.

These legal fees are coming out of this fund. This is a fund created by Congress. If this bill should become law—and I hope and pray that it doesn't, but if it does—these moneys are mandated by an act of Congress, and we have every right to say we want to make sure that the money goes to where we intend it to go.

I have heard everybody say we want it to go to reduce teenage consumption of tobacco. Now we say and also consumption and addiction to drugs. I think likewise we have every right—as a matter of fact, we have an obligation—to make sure that we don't spend excessively on legal fees. We want the money to go to its stated purpose—not to be going to enhance a few trial attorneys. In some cases these trial attorneys would become not just millionaires but billionaires.

Mr. President, there was an article in the Washington Times on June 7th. It talked about attorneys saying they deserve up to \$92,000 an hour. This is written by Joyce Price in the Washington Times. It goes on. I will read a couple of paragraphs and insert it in the RECORD.

It says the Orioles owner in Baltimore, Peter Angelos, who earlier this decade earned about \$250 million for representing ailing factory workers exposed to asbestos, stands to receive as much as \$875 million if he settles the State suit against tobacco companies to recover the cost of treating a smoking-related illness. It goes on. It talks about the Florida case. It talks about the Texas case. It talks about the total settlement of \$113 billion. But the trial attorneys would receive \$2.8 billion, or as much as 24.7 percent of the total received in Florida. In Texas, the total amount of settlement was \$15.3 billion in legal fees and \$2.2 billion or 2.3 billion, or about 15 percent.

Mr. President, those are outlandish fees. Those are fees in the neighborhood of \$100,000 per hour. If those States negotiated, maybe that is one thing. But for crying out loud. We shouldn't set up a fund that is going to compensate trial attorneys all across the country to receive those kind of fees, and act like we are doing it so we can reduce teenage consumption and addiction to tobacco. That is ridiculous.

Certainly it makes sense for us, if we are going to create this trust fund, if we are going to have amendments, as

my friend and colleague from Massachusetts just had, an amendment which said let's spend maybe \$2 billion more in child care development. I didn't support it. He won. He had the votes; congratulations to him. But we have the authority to say here is where the money is going to go. This is Congress. So he won on his amendment. I don't agree with it. I think it further confirms that this bill is a tax-and-spend bill.

But on the spending side we have a right to say we are going to limit on how much money we are going to spend in administrative costs and in legal fees. I think it is one of the most important amendments that we have.

I urge my colleagues to vote yes. I will tell my colleagues if they don't support this at \$1,000 an hour we are going to come back with another one and maybe another one. Where is the limit going to be? Surely we are going to have a limit?

I ask unanimous consent that an article from the Washington Times be printed in the RECORD.

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

[From the Washington Times, June 7, 1998]

LAWYERS, STATES TUSSELE OVER TOBACCO-SUIT FEES

(By Joyce Howard Price)

ATTORNEYS SAY THEY DESERVE UP TO \$92,000 AN HOUR; OFFICIALS SAY THIS WOULD ROB THE PUBLIC

Orioles owner Peter Angelos, who earlier this decade earned about \$250 million for representing ailing factory workers exposed to asbestos, stands to receive as much as \$875 million if he settles the state's suit against tobacco companies to recover the costs of treating smoking-related illnesses.

And Mr. Angelos is far from being the only lawyer who could reap a staggering windfall from tobacco settlements.

Lawyers in six of the 12 private law firms that helped negotiate Florida's \$11 billion tobacco settlement are refusing a deal that would let them share at least \$280 million in legal fees for their efforts.

Instead, the firms—most of which used only one lawyer in the tobacco talks—want in excess of \$2.5 billion, or as much as \$280 million per practice, over 25 years, and they've gone to court to try to get it, says Jim Peters, special counsel in the Florida Attorney General's Office.

"The lawyers laugh at a payment of \$280 million for all 12 law firms, which would be more than \$23 million per attorney. One lawyer said that wouldn't be a decent tip for his house staff," Mr. Peters said in a telephone interview.

There's a similar financial flap among lawyers who represented the state of Texas and other plaintiffs in a class-action suit against tobacco companies that was settled for \$15.3 billion. There, Gov. George W. Bush is fighting a contingency-fee agreement authorized by the state attorney general and upheld by a federal judge that will give the lawyers 15 percent of the recovery, or \$2.3 billion over 15 years.

"This is simply a giveaway of the state's money," Lester Brickman, professor of legal ethics at the Benjamin N. Cardozo School of Law in New York, said of the fortune Mr. Angelos could receive.

But Mr. Angelos, in an interview, countered: "We competed with five other firms,

and we were selected. We have a contingency-fee contract that will provide us with 12½ percent of recovery if we win the case [against tobacco companies]. If we lose, we would receive no fee."

As of April, the tobacco industry had already offered Maryland \$4 billion to settle its tobacco lawsuit, which would give Mr. Angelos \$500 million. But the Baltimore lawyer said Friday the expects the state will receive "a little better" than \$7 billion, which would entitle him to \$875 million.

Mr. Angelos pointed out that his firm will pay all litigation costs, which he says could run anywhere from \$1 million to \$50 million.

"We have discussed a [possible] reduction of the fee. We're reasonable," he said, but added he has nothing for which to apologize. "A San Francisco law firm that competed with us offered to underwrite \$1 million but they wanted 40 percent of recovery," he said.

Legal compensation experts say Sen. John McCain's tobacco bill, the fate of which the Senate could decide this week and which has no limits on attorney fees, promises to make billionaires out of some plaintiffs' lawyers who are already millionaires.

"That is jackpot justice for the trial lawyers, who are already Washington's ultimate special-interest group," said Sen. Lauch Faircloth, North Carolina Republican, who, with Sen. Jeff Sessions, Alabama Republican, tried unsuccessfully to set a \$250-an-hour cap on legal fees paid out under proposed federal tobacco legislation.

Undeterred, the senators plan to try again with a higher legal-fees cap, possibly as much as \$1,000 per hour, aides said.

But Mr. Brickman of the Cardozo law school said contingency-fee lawyers "do not keep hourly time records." He explained: "They recognize an effective hourly rate would be thousands and thousands of dollars per hour, and such figures would be a public relations disaster," he said.

Mr. Brickman estimates that the Texas lawyers spent, at most, 25,000 hours on their case, which did not go to trial. "The Texas lawyers will be getting \$2.3 billion, or \$92,000 an hour. . . . I think the Florida lawyers will get \$15,000 to \$25,000 per hour," he said.

Stephen Later, legislative counsel for Mr. Faircloth, noted that Texas Attorney General Dan Morales already has said taxpayers in that state will be paying a share of the \$2.3 billion in legal fees that a federal judge has approved in that state's \$15.3 billion settlement.

"It's immoral to reach into the pockets of working-class taxpayers in order to send billions of dollars to trial lawyers so they can buy another Lear jet, another vacation home or another private island," said Mr. Faircloth, who is also mindful about how much tobacco companies in his state are required to pay in litigation fees.

"We all know attorneys are paid well in our society. But these are the mother of all attorneys' fees. We're talking about the greatest attorneys' fees in the history of the world," said John Cox, spokesman for Mr. Sessions.

The goal of the tobacco settlements "was to recoup Medicaid money the states spent to treat patients with smoking-related illnesses and to prevent youth smoking. It's not right for these lawyers to walk away with this kind of money," Mr. Cox said.

The McCain bill calls for legal fees to go to arbitration, which has no fee limits.

Asked to comment on the size of some of the legal fees being discussed, Scott Williams, a tobacco industry spokesman said, "The industry will pay reasonable attorneys' fees as determined by independent [arbitration] panels." He did not quantify that statement.

Mr. Later, spokesman for Mr. Faircloth, noted that staggering legal fees aren't the

only way the McCain anti-smoking measure will ensure extreme wealth for many trial lawyers. The measure has been amended to remove a proposed \$8-billion-a-year liability cap, he said, so "there will be a rush to courthouses all over the country" by trial lawyers representing plaintiffs in tobacco suits. An estimated 800 liability lawsuits against the tobacco industry are currently pending, an industry official said.

Mr. Peters of the Florida Attorney General's Office said the compensation law firms receive from that state's tobacco settlement will just be the first of many lucrative payments. "Some of these legal firms represented 25 or 30 states" that brought class-action lawsuits against tobacco firms, he said.

An editorial last week in the Wall Street Journal described Richard Scruggs, a Mississippi lawyer who helped broker tobacco settlements in three states and who is representing at least another seven states as a "tobacco billionaire-in-waiting." Mr. Scruggs happens to be the brother-in-law of Senate Majority Leader Trent Lott, Mississippi Republican, said Mr. Brickman.

Wayne Hogan, a Jacksonville, Fla., lawyer, said in a telephone interview it would "not be appropriate" to say whether he wants to receive \$280 million for his work in the Florida settlement, since that's a matter to be settled by arbitration.

"But the work done was monumental and very risky, and it resulted in the disclosure of documents that were hidden behind the closed doors of attorney-client privilege," Mr. Hogan said in an interview.

"And the work achieved a result for Florida taxpayers that was tremendous for public health," he added.

Asked if he would be satisfied with \$23 million in compensation, Mr. Hogan replied, "That would be less than what the contract [between the state and trial lawyers] called for."

That's where Florida state officials and the lawyers disagree. Mr. Peters and Gov. Chiles argue that under a contingency-fee contract authorized by state law, Mr. Hogan and other private lawyers are entitled to an amount "not to exceed" 25 percent of the Medicaid funds spent to treat smoking-related disorders or "an amount that's commercially reasonable."

If the fees issue goes to arbitration, Mr. Peters said, it's virtually certain the "reasonable" fee the panel would award would exceed what the lawyers could get for Medicaid fund recovery.

But Mr. Hogan and other lawyers contend that, under the contingency-fee contract that was negotiated, they are entitled to "25 percent of the [full] recovery" amount.

"The lawyers filed charging liens against the state, saying they are entitled to 25 percent of everything," said Mr. Peters.

"This has embargoed 25 percent of the state's first payment from tobacco companies. In other words, \$187.5 million is tied down in court due to the lawyers' liens," he said.

In addition, Mr. Peters said, "We had a court remove \$203.3 million from our escrow account for money to pay the lawyers. This money had been earning 5½ percent interest. So we're losing \$31,000 a day interest. Plus the court imposed a 1-percent handling fee. So we're out-of-pocket \$35,000 a day."

Mr. KERRY. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I know the Senator from Alabama wants to go.

But let me just say to my friend from Oklahoma, I am not sure he is aware of

it. All the States that have settled, the four States that have settled, not one dime comes out of the Federal Treasury; not one dime comes out of the money that is going to be raised through the tobacco industry in this bill. It is all paid by the industry. They settled. They agreed to pay the attorneys' fees. In fact, not one of the figures that the Senators have yet used in this debate is an accurate or real figure. Not one. Why? Because there is not a State where an attorney has yet been paid. Not one. And the reason they haven't been paid is that in every State it is going to arbitration. It is going to be settled by the courts. It is not going to be settled in the way they are saying. So they are talking about all of these fictitious numbers, the initial contracts. None of the new States that have come to the suits are, in fact, using the level of the early contracts with the lawyers when it was at 25 percent. Do you know what they are using? They are using about 2 or 3 percent now. This is a fictitious debate, one that we have been through before.

I will summarize some arguments about it a little bit later. I will reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I believe the Senator from Texas would like 3 minutes. I would be glad to yield to the Senator from Texas. I appreciate his leadership on this related issue. He has done a tremendous job in analyzing this legislation.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I was yielded 3 minutes. Is that right?

The PRESIDING OFFICER. The Senator did not specify.

Mr. GRAMM. Let me take 3 minutes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, our colleague from Massachusetts says not one cent of these settlements comes from the money in this bill. But this bill makes the payment of these settlements possible. The consumer is going to pay every penny of this in higher fees and taxes. So the net result is that while the Federal Government is not paying these bills, blue-collar workers who smoke are going to end up paying each and every one of these bills.

I want to remind my colleagues that on the front page of the Washington Times, in a story about these \$92,000-an-hour fees paid to the attorneys, had the following quote:

The lawyers laugh at a payment of \$280 million for all 12 law firms, which would be more than \$23 million per attorney. This is \$23 million an attorney that they are talking about as a payment. "One lawyer said that wouldn't"—that is, \$23 million—"be a decent tip for his house staff."

Twenty-three million dollars would not be a decent tip for his house staff.

How many Americans think \$23 million is a pittance? The fact that we have in this bill \$92,000 an hour for plaintiffs' attorneys is piracy; it is outrageous; it is predatory on the working men and women of this country who have to work hard for a living. Many of them have become addicted to tobacco and nicotine, and they are going to have to pay higher prices and higher taxes to pay \$92,000 an hour to attorneys who say a \$23 million payment for an individual attorney "wouldn't be a decent tip for his house staff."

If people do not have their stomachs turned at this kind of behavior, at this predatory, outrageous behavior, then absolutely nothing will turn their stomachs. I believe we have an obligation to limit these fees to protect working Americans who will have to pay these prices.

It is important to note that we already have in the bill a procedure whereby the Federal Government is sanctioning these fees with a review by attorneys. What the Senator from Alabama is saying is, rather than having a group of lawyers review these fees for \$92,000 an hour, rather than having the provision which was in the original bill, we ought to have a clear definition, and the Senator from Alabama has defined it very simply: Give them \$1,000 an hour. How many waitresses or truck drivers who will be paying this tax will take \$1,000 an hour? Every single one of them.

The PRESIDING OFFICER. The Senator has used his time.

Mr. KERRY. Mr. President, parliamentary inquiry. How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 17 minutes 34 seconds remaining; the Senator from Alabama, 5 minutes 23 seconds.

Mr. McCAIN. Mr. President, could I ask the indulgence of my colleagues: We have a colleague who has to leave in about 7 minutes, if we could possibly consider yielding back some of the time so that the Senator from Arkansas, who has an engagement, could vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I thank the Senator from Texas. And he referred to the proposal in the bill dealing with attorneys' fees. I say it is, at best, ambiguous, and it is a testament to the drafters, in my opinion. I am not sure what it means, but it says this: If the attorney involved is unable to agree with the plaintiff—that is, the attorney general—with respect to any dispute that may arise between them regarding the fee agreement, then they can go to arbitration.

Now, what does that mean? When you go to arbitration, you have a fee agreement. You are talking about the agreement. Now, some argue, well, this agreement allows the arbitrators to go around the fee agreement. To that I would say, if so, then the legislation al-

ready provides for the undermining, going around the agreement. You can't have it both ways.

But I submit to you that it is particularly interesting. The arbitration panel is composed of three persons, one chosen by the plaintiff, which is the attorney general; one chosen by the attorney, which is the plaintiff's lawyer; and those two choose the third one. Those are the people who entered into the agreement. What kind of agreement is going to come out of arbitration from that?

Let me just say that the \$2.5 billion for four lawyers in Texas equals about \$500 million each. That is more than we spend each year on diabetes in the United States. That is the kind of money we are talking about—\$2.5 billion.

Let me make a couple of other points. The arbitration clause, as I pointed out, is ineffective and totally a sham, in my opinion, and will not protect the taxpayers. Of contract rights, they say you can't violate a contract. And this I say would be the principle we are dealing with: A person who signs a contract can keep the U.S. Congress or any other agency from passing a law that conflicts with that contract. It is just that simple.

That is the traditional law of America. We do it when we alter the minimum wage. Nobody has been crying that the tobacco companies' contract to run advertising is going to be terminated by these things. When Congress legislates comprehensively, it can legislate on matters involving contracts. It is done every day. And I remind the Members of this body that, under the Equal Access to Justice Act, the top fee is \$125; under Criminal Defense Attorneys, they are paid \$75 per hour. I think this fee is particularly generous, Mr. President. I will share this with the body. Everybody has been talking about how much this body is influenced by tobacco contributions. I want to say I didn't take any contributions from tobacco, and I do not take tobacco contributions. But this is instructive about the influence and the involvement of trial lawyers from 1990 to 1994. And I submit they have been more heavily involved in recent years. But we have these numbers.

Plaintiff lawyers in these States: Alabama, my home State, Senator GRAMM's State of Texas, and California, gave \$17 million. During that time, the Democratic National Committee in all 50 States gave \$12 million; the Republican National Committee in all 50 States gave \$10 million; big oil in Alabama, California, and Texas gave \$1.8 million.

I don't consider that determinative of this issue, but I would just say this. I think some people need to ask themselves some serious questions about public policy. If they care about children, if they care about fairness and justice, if they care whether or not they tax a waitress \$1,000 a year for her cigarettes, should we be turning that

money over to lawyers who are making \$92,000 per hour? I submit it is unconscionable, it is something that should not happen. It is a matter of the greatest importance to this body, and I ask that this amendment be supported.

Mr. GRAMM. Will the Senator yield for a question?

Mr. SESSIONS. I yield to the Senator from Texas.

Mr. GRAMM. I am sure the Senator has seen thousands of articles where outside groups rate how much money people received from groups that had interests before the Congress. You have seen thousands of those articles. Have you ever seen any of those groups rate how much money plaintiffs' attorneys have contributed on a bill where the plaintiffs' attorneys are the single largest beneficiary of the bill?

Mr. SESSIONS. I have not. I think it is an absolutely appropriate question to ask. I think it is appropriate to ask how much tobacco gives. I think it is appropriate to ask how much trial lawyers give. And my best judgment is, the trial lawyers are giving more to this body than tobacco companies.

The PRESIDING OFFICER. The Chair will advise the time allotted to the Senator from Alabama has expired.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I will be brief and this side will be brief. We will yield back some time. I know my colleagues have pressing flight schedules. I yield myself such time as I may use.

Let me say to my colleague from Texas, earlier this morning he was on the floor of the U.S. Senate suggesting how outrageous it was for the U.S. Senate to tell a State what it ought to do or how it ought to spend its money. He said at that time, "If I wanted to do that, I would run for the Texas legislature—I would run for the State legislature." I assume this amendment amounts to his announcement of candidacy for the State legislature, because here he is, telling them how they can spend money in State contracts in the State.

These are private contracts. Lo and behold, here is the Republican Party that suddenly has decided it can interfere with the private contracting of private sector enterprises. I am astonished by that. Not only that, almost every single fact on which—not fact, every single assertion that they have made today, trying to claim it as a fact, is incorrect. There is no \$92,000 mentioned anywhere in this legislation, and no lawyer has been paid \$92,000 an hour. In fact, every single one of those cases is subject to arbitration. Take the Florida case. The judge threw it out because it was excessive—threw it out. And they are going to resolve what is an appropriate fee.

What the Senator does not say is there are a whole set of criteria they have to use to decide that fee. They have to consider the time and the labor required by plaintiff. They have to show time sheets. They are going to have to come in and prove how much

time they worked. They are going to have to show how difficult the question was and the novelty of the question. They have to show they have the requisite skill for those claims or to litigate them. They have to show the amount that was involved in their litigation and the results that they achieved. And they have to show the undesirability of the action.

That is not an easy standard. I suggest the notion that arbitration—which requires both sides to come up with two additional people that they both agree on—is not somehow subject to a test is ridiculous. That is a tough process.

All the other arguments we are listening to today are the exact same arguments the Senate voted on previously. There is not one different thing here except that, instead of having Congress be the accounting factor, now they want to make the court the accounting factor. It is ridiculous.

Mr. President, I yield 2 minutes to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, although I am speaking on the same side of this proposition as did the Senator from Massachusetts, I believe it is appropriate for us to deal with this issue. Parties whose fee agreements we are interfering with have come to the Congress of the United States to ratify settlements that have already been made. If we can vote here on how much money States will receive and how they have to spend that money, if we can change the law to shift the burdens in tobacco litigation, we can address the issue of attorney's fees.

I also agree with the amendment's sponsors that we can and should set the attorneys' maximum compensation. I do not agree, however, that the amount proposed in this amendment is reasonable. It is too much for lawyers who bring lawsuits in the future, when, under this bill, it will be much easier to prevail against tobacco manufacturers. At the same time, the amount is considerably too little for those highly skilled attorneys who took on the tobacco companies on novel theories years ago, when their chances of winning were extremely remote.

If we are going to set maximum attorneys' fees, we ought to set them on a reasonable basis, a basis that fully accounts for the relative amounts of risk, skill, and investment on the lawyers' part. Unfortunately, this amendment does not do this. It does not make distinctions that I believe are fair and proper. For this reason, the amendment is not a good one, and I believe that it should be tabled.

Mr. KERRY. Mr. President, I yield 1 minute to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I associate myself with the remarks of the Senator from Washington. The reality

is, the Senator from Texas has said in this bill it provides for \$92,000 an hour to counsel. That is not true. You cannot find that on any page of this legislation. It is just not accurate. It is a fiction. It is made up out of whole cloth.

The fact is, what is provided for is, where there is a disagreement between the parties, that an arbitration panel determine what are the appropriate fees based on a set of criteria that includes the level of effort that needed to be expended, the quality of the legal counsel's work, the amount of the investment that they have made. Frankly, \$1,000 an hour is too much if somebody just went and copied the case from somewhere else and then filed it. But it is much too little in the case of those who invested millions of dollars in court preparation of their own resources without knowing whether they would be victorious or not. In that case, it is much too little.

So the problem we have with this amendment is it is one-size-fits-all. That is why we adopted an arbitration approach that would allow those who have a difference to have it worked out so there would be adequate compensation, but so there would not be the kind of ripoff that is, indeed, potential without what is provided for in the underlying McCain bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERRY. Mr. President, I yield the remainder of my time.

I move to table the Sessions-Faircloth amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 2701. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mrs. BOXER (when her name was called). Present.

Mr. LOTT (when his name was called). Present.

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

Mr. FORD. I announce that the Senator from New Mexico (Mr. BINGAMAN), and the Senator from Arkansas (Mr. BUMPERS) are necessarily absent.

The result was announced—yeas 50, nays 45, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—50

Akaka
Baucus
Bennett
Biden
Breaux
Bryan
Campbell

Cleland
Cochran
Conrad
D'Amato
Daschle
DeWine
Durbin

Feingold
Feinstein
Ford
Glenn
Gorton
Graham
Harkin

Hatch
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu

Lautenberg
Leahy
Levin
Mikulski
Moseley-Braun
Moynihan
Murray
Reed
Reid
Robb

Rockefeller
Roth
Sarbanes
Shelby
Smith (OR)
Thompson
Torricelli
Wellstone
Wyden

NAYS—45

Abraham
Allard
Ashcroft
Bond
Brownback
Burns
Byrd
Chafee
Coats
Collins
Coverdell
Craig
Dodd
Domenici
Dorgan

Enzi
Faircloth
Frist
Gramm
Grams
Grassley
Gregg
Hagel
Helms
Hutchinson
Hutchison
Inhofe
Kempthorne
Kyl
Lieberman

Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Santorum
Sessions
Smith (NH)
Snowe
Stevens
Thomas
Thurmond
Warner

ANSWERED "PRESENT"—2

Boxer Lott

NOT VOTING—3

Bingaman Bumpers Specter

The motion to lay on the table the amendment (No. 2701) was agreed to.

FORCE DOWN LANGUAGE IN DRUG-FREE
NEIGHBORHOODS ACT

Mr. INHOFE. Mr. President, I would like to enter into a colloquy with my friend, Senator COVERDELL, to clarify a situation that was brought to my attention during consideration of the Senator's Drug-Free Neighborhoods amendment to S. 1415. As an original cosponsor of the amendment, I fully support the Senator's efforts to stop the spread of drugs into our communities; however, one provision has the unintended effect of raising serious safety concerns for general aviation pilots.

Specifically, the amendment permits officers to order an aircraft to land, but does not require any reasonable suspicion of criminal activity. It also could make pilots responsible for paying thousands of dollars to reclaim their aircraft, even if they are totally innocent of any wrongdoing.

As a pilot for over 40 years, I can assure you that the "order to land" could be a dangerous and traumatic experience for a pilot. In fact, the International Standards, Rules of the Air, published by the International Civil Aviation Organization says "interceptions of civil aircraft are, in all cases, potentially hazardous."

As I understand it, the intent of the amendment was to provide additional authority to U.S. law enforcement officers to curtail border drug smuggling, which I am sure all us agree is a laudable goal. However, because of the potential danger and immense burden to general aviation pilots, I have worked with my friends at the Aircraft Owners and Pilots Association to develop some relatively minor changes that could be done to take care of general aviation's concerns.

Mr. COVERDELL. I thank my friend, Senator INHOFE, for bringing this issue to my attention. I understand the potential safety problems involved in the

"order to land" provisions, and I agree that we cannot jeopardize the safety of aircraft flying near the border for innocent purposes. I understand that we can achieve the goal of fighting drug smuggling without jeopardizing safety or undermining the rights of pilots by requiring reasonable suspicion and adding innocent owner provisions.

In fact, it was my intention to make the changes you have suggested. However, because of a parliamentary oversight, the corrections were not made prior to the vote on the amendment.

I appreciate your leadership in resolving this issue. With your assistance, I will work with the conferees should S. 1415 reach conference to make the necessary changes to resolve these problems or to eliminate the provision entirely as I understand the status quo is acceptable.

Mr. INHOFE. Thank you. I appreciate the Senator's assistance. This is an issue that is very important to general aviation pilots, and I look forward to working with you to correct this problem.

EXPLANATION OF ABSENCE

Mr. BIDEN. Mr. President, last night I was not present to vote on the two motions to table because I was in Wilmington attending the high school graduation ceremony of my godson and nephew, Cuffe Owens.

When I left the Senate yesterday, it was not clear that any votes would take place later in the evening and I did not anticipate that I would miss any votes. Nonetheless, after consultation with my colleagues, I left with the belief that, if these votes were ordered, my absence would not affect the outcome, and it did not. Had I been present, I would have voted to table the Gramm amendment, and against tabling the Daschle amendment.

Mr. MCCAIN. Mr. President, after consultation with the majority leader and the Democrat leader and the Senator from Massachusetts, it is now our intention to move to an amendment on the Democratic side and lay it down, tomorrow morning debate it, and then move to a Gramm amendment after that.

It is my understanding that it is the intention of the majority leader, and I am sure he will make it clear, to have votes on these some time around 6 o'clock on Monday evening, dispose of those amendments, and it would be our intention to go back to a Democrat amendment.

I yield the floor.

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

The PRESIDING OFFICER (Mr. BENNETT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KERRY. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 2702 TO AMENDMENT NO. 2437

(Purpose: To disallow tax deductions for advertising, promotional, and marketing expenses relating to tobacco product use unless certain requirements are met)

Mr. REED. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] for himself, Mrs. BOXER, Mr. WYDEN, Mr. KENNEDY, Mr. DASCHLE, Mr. DURBIN, Mr. WELLSTONE, Ms. FEINSTEIN, and Mr. CONRAD proposes an amendment numbered 2702 to amendment No. 2437.

Mr. REED. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____ DISALLOWANCE OF TAX DEDUCTIONS FOR ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following:

"SEC. 280I. DISALLOWANCE OF DEDUCTION FOR TOBACCO ADVERTISING, PROMOTIONAL, AND MARKETING EXPENSES UNLESS CERTAIN ADVERTISING REQUIREMENTS ARE MET.

"(a) IN GENERAL.—No deduction shall be allowed under this chapter for any taxable year for expenses relating to advertising, promoting, or marketing cigars, cigarettes, smokeless tobacco, pipe tobacco, roll-your-own tobacco, or any similar tobacco product unless the taxpayer maintains compliance during such year with the advertising and marketing provisions of part 897 of title 21, Code of Federal Regulations, that were published in the Federal Register on August 28, 1996.

"(b) GENERAL DEFINITIONS.—For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702."

(b) CONFORMING AMENDMENT.—The table of sections for such part IX is amended by adding after the item relating to section 280H the following:

"Sec. 280I. Disallowance of deduction for tobacco advertising, promotional, and marketing expenses unless certain advertising requirements are met."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

Mr. REED. Mr. President, this amendment would disallow the deduction for advertising expenses for tobacco companies who violate the Food and Drug Administration rules with respect to advertising. It is a sensible and constitutionally sound way to reinforce the important provisions that are necessary to prevent easy access to smoking by teenagers. The record has shown very clearly that the history of the tobacco industry is a history of advertising that invites, entices, some

would even say seduces youngsters into smoking. If we are serious about preventing teenage smoking, underage smoking, we must have effective ways to curtail the advertising to marketing that is directly targeted to youngsters in our society. The record from numerous documents released in the ongoing litigation suggest strongly, overwhelmingly that the tobacco industries have for years deliberately targeted youngsters as young as 12, 13 and 14 years old to get them to start smoking.

If we are serious about our primary goal, which is to eliminate access to smoking by underage smoker, then we must pass this amendment.

In anticipation of further debate tomorrow on this particular measure, I yield the floor and 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. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LOTT. Mr. President, for the information of our colleagues, there will be no further votes tonight. The Senate will debate a Democratic amendment and the Gramm amendment to the tobacco bill during the remainder of today's session and Friday's session of the Senate. The Senate could also consider the higher education bill, or vocational education, or NASA authorization, or the reauthorization of the Drug Czar office. These are all bills that are relatively noncontroversial, or there may be an amendment or two that Senators want to offer. We are trying to take advantage of time that may be available tomorrow to consider one of these bills. We want all Senators to be aware that we are trying to clear one of these four to be considered tomorrow after the Democratic amendment and the Gramm amendment. However, there will be no votes during the session on Friday. There will just be debate on these two amendments and any bill that can be cleared out of this group of four.

Any votes ordered with respect to the amendments on the legislation just identified, the tobacco bill, will be postponed to occur on Monday at a time to be determined by the two leaders, but not before 5 o'clock. We would like, though, to have those two votes back-to-back on the two amendments, if they are necessary, to the tobacco bill, as close to 5 o'clock as possible. We may begin at 5, or shortly thereafter, and have the two back-to-back. Then any vote, if necessary on any bill that is cleared, would not occur until Tuesday morning at approximately 9:30 or 10 o'clock. We will make that specific time available later.