

want. That is certainly the last thing that the people in the community of Sierra Blanca want.

The reason I mention both of these amendments is that we now have instructions to our conferees to insist on these amendments in conference committee. This is a battle that has been going on for over a year in the Senate. I raised questions about this starting a year ago. What I said was that, as a Senator from Minnesota, I am concerned about this issue of environmental injustice and, if we have to approve this compact, let us make sure there is some fairness to this and some justice to it.

My colleagues in the Senate have gone on record in favor of both of these amendments. The House of Representatives has gone on record as being in favor of the Doggett amendment, which is also a Wellstone amendment, that says, indeed, the waste will only come from Maine and Vermont.

As we go to conference, I want to emphasize one point to my colleagues, and that is, don't strip these amendments from this bill in conference committee. That is what the nuclear utilities would like conferees to do, but it will make a mockery of the House and Senate. It will, in fact, give people not only in Texas but from around the country reason to think this is another example of a back-room deal, another example of the legislative process at its worst, another example of big utility companies riding roughshod over poor communities and, for that matter, regular citizens in this country.

I want to make it clear to colleagues that it is extremely important that the conferees live up to our instructions and that these amendments become part of this bill. If they do not, it will be a striking example of unequal access to political power, which is, I think, the reason we have too much environmental discrimination all across the country in the first place.

I make this plea to my colleagues, to the conferees: We have voted to keep these amendments in this bill. The Senate is on record unanimously as saying that these amendments should be part of this compact and therefore it is extremely important that these amendments not be stripped out. The issue of environmental justice deserves better than that, the people of Sierra Blanca deserve better than that, and people in our country have a right to expect a higher standard of conduct from their elected representatives than to try to knock this out in the dark of night.

I say to colleagues, I have tried to work with my colleagues, even those who are in disagreement with me. But if these amendments are taken out of the conference committee—and I hope that they will not be, I pray that they will not be—but if they are, I will take advantage of every procedural means at my disposal to make sure that this does not happen, and to make sure that there is some environmental justice

when it comes to this compact which all of us are going to have to vote on as Members of the U.S. Senate.

I thank my colleague from Washington for letting me have an opportunity to speak from the floor to give colleagues a sense of where we are on this compact. I yield the floor.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 1415, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1415) to reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gregg/Leahy amendment No. 2433 (to amendment No. 2420), to modify the provisions relating to civil liability for tobacco manufacturers.

Gregg/Leahy amendment No. 2434 (to amendment No. 2433), in the nature of a substitute.

Gramm motion to recommit the bill to the Committee on Finance with instructions to report back forthwith, with amendment No. 2436, to modify the provisions relating to civil liability for tobacco manufacturers, and to eliminate the marriage penalty reflected in the standard deduction and to ensure the earned income credit takes into account the elimination of such penalty.

Daschle (for Durbin) amendment No. 2437 (to amendment No. 2436), relating to reductions in underage tobacco usage.

Gorton amendment No. 2705 (to amendment No. 2437), to limit attorneys' fees.

AMENDMENT NO. 2705

Mr. GORTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is amendment No. 2705 by the Senator from Washington.

Mr. GORTON. Thank you, Mr. President.

Mr. President, this will mark the third occasion on which the Senate has debated a limitation on attorneys' fees in connection with the litigation that led to this debate on tobacco legislation. As a consequence, I do not believe this debate need last for as extended a period of time as did those on the earlier Faircloth amendments, and I believe the leadership is attempting to reach a time agreement on this amendment, with a vote to take place perhaps right after the official Senate photograph early this afternoon. On the other hand, I do not have any official notification about a formal time agreement, but I will proceed on the basis that this Gorton amendment can be debated relatively expeditiously.

I have examined the debate on the last amendment on attorneys' fees that took place on June 11, less than a week ago, and I believe that the rationale for passing legislation with some limits on attorneys' fees in connection with this

litigation was so well stated by the Senator from North Carolina, Senator FAIRCLOTH, and by the Senator from Alabama, Senator SESSIONS, and by others that I do not need to repeat in detail their scholarly approach and analyses of the subject.

Mr. President, you may say, agreeing with their rationale, why is it that this Senator voted against both the first and the second Faircloth amendments? The answer to that is simple. I believe that it is appropriate for the Congress to limit attorneys' fees in connection with this litigation for reasons that I will outline briefly in the course of these comments. At the same time, I did not believe that the particular limitations contained in the two earlier Faircloth amendments were fair or just. So, with some regret but with firmness, I voted to table each of those amendments.

The fundamental reason for my opposition to those two amendments was the fact that they treated all attorneys in all tobacco cases as being subject to the same cap or the same limitation. Whether that litigation and those attorneys were involved from the very beginning with the States of Mississippi and Minnesota, at a time at which tobacco companies had not lost any litigation at all, when those initial attorneys came up with what were novel and difficult theories of law and took a tremendous risk in the litigation in which they were hired, those attorneys were treated the same in the two earlier amendments as attorneys who have just recently gotten into litigation on this issue after it was obvious that, at the very least, settlements were available to all of the plaintiffs and, for that matter, were treated the same as any attorney who brings litigation in the future when both the States and this bill have so substantially changed the burden of proof in tobacco litigation that one may almost say that an attorney who loses a tobacco case will be exposed to malpractice litigation thereafter.

Mr. President, that is fundamentally unfair. And so the amendment that I have put before the Senate today, for our vote, treats attorneys' fees differently depending on when the litigation was commenced. I have adopted all of the considerations for judges to use in determining the amount of attorneys' fees that are fair in a given case that were a part of the second Faircloth amendment. They, in turn, are an expanded version of considerations that the Supreme Court of the United States has articulated as used when the question of reasonable attorneys' fees has come before the Supreme Court.

So the dollar figures that we use per hour in this amendment are ceilings; they are not floors. If, in any case, the courts or others who make judgments in this connection feel that those figures are too high—and I think there will be many instances in which they do—they may be reduced below that ceiling. We simply set a ceiling.

The ceiling, unlike the \$1,000 ceiling in the last Faircloth amendment which was mitigated by allowing a cost recovery greater than the actual cost expenditures, is simply this. For lawyers who are part of litigating cases that began before 1995, the ceiling will be \$4,000 an hour—four times that in the Faircloth amendment. For lawyers as a part of litigation that was brought after the beginning of 1995 but before April of 1997, the maximum figure, the ceiling, will be \$2,000 an hour. Why, you may ask, April 1997, 2 months before the tobacco settlement was announced? That was the date, the time, that Liggett gave up—in effect, turned state's evidence—turned all of the internal memoranda, which show the horrendous way, the unprincipled way, the tobacco companies had acted, over to the general public, to all of the lawyers.

So after that date, after a date at which tobacco litigation was not only unprecedented and of extraordinary difficulty but really quite simple and easy, the maximum figure will be the \$1,000 an hour—in this case, identical to the overall limit in that Faircloth amendment, but only a recovery of actual costs.

And, finally, beginning on a date that roughly corresponds with the beginning of this debate on the floor of the Senate, in the anticipation that even the rules of evidence will be lower and lesser if this bill should pass, the ceiling will be \$500 an hour—actually lower than the Faircloth amendment itself.

It seems to this Senator, Mr. President, that that is more nuanced and more fair than the one-size-fits-all proposition that was contained in the two earlier amendments on which we voted.

As a consequence, this amendment is suggested to all of my colleagues here in the Senate, both those who felt that a lower limit was appropriate but were unsuccessful in getting a majority and those who, like myself, objected to the two earlier Faircloth amendments.

I believe it is very difficult to stand for the proposition that there should be no limitation under any set of circumstances. That might be an appropriate position for Members of the U.S. Senate if we were not engaged in this debate. If the very people whose clients have come before us asking us to pass that bill—ratify the settlement made by the great majority of States of the United States—had not come here to Congress to ask us to pass this legislation, we would have no business simply debating attorneys' fees in the abstract in this connection. But they are here. They have used up, as the Senator from Idaho said, too much of our time already, time which might more profitably have been devoted to other legislation.

But it has been a serious debate. It has been a debate in which we have examined every single element not only of the litigation that led to this debate but of the whole relationship between

tobacco, the tobacco industry, and the farmers, teenagers, adults, health care, and the like. And to say that the only aspect of tobacco policy that we cannot and should not examine is the fees of the attorneys who are involved in this litigation, to me, Mr. President, is an unsupportable proposition.

Mr. President, a couple of weeks ago I came across a short essay by Stuart Taylor, Jr., which appears in the May 30 edition of the *National Journal*. I ask unanimous consent that that essay be printed in the *RECORD* at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. GORTON. Mr. President, Mr. Taylor, in stating the case for limitations on lawyers' fees, sets up the five fundamental arguments against doing so and deals with each of those five.

The first is, "Don't mess with the marketplace"—that these were accounts freely entered into. In the first place, I am not sure that there was a great deal of "marketplace" in connection with litigation much of which was solicited by the lawyers themselves.

But in any event, the marketplace disappears with this legislation. There is no real marketplace for tobacco products anymore. It will be the most regulated marketplace for any legal commodity in the United States, far exceeding the degree of regulation applied to alcohol and alcoholic beverages, for example. So if we can regulate the marketplace for tobacco, we can regulate the marketplace for tobacco lawyers.

The second objection that is brought up is that these are sacrosanct contract rights. But, of course, these are contract rights that are subject to review by the courts, by the judges who are dealing with this litigation. There have already been judgments made in that connection. The law is clear that attorneys' fees must be reasonable. And when they are unreasonable or overreaching, the courts, with their equity powers, said, "We can intervene." Well, then, Mr. President, it seems to me that we can intervene as well. We represent the conscience of the people of the United States. And I believe overwhelmingly the people of the United States will reject the kind of attorneys' fees running up into the billions of dollars that seem clearly possible and perhaps close to certainty should we not intervene in this aspect of the marketplace.

The third objection is States rights—that all of this litigation was brought by the States; we ought to stay out of it. Again, Mr. President, a good argument had the States not come to us and asked us to pass this legislation, because literally, in the case of most of them, they could not reach the goals they sought without the assistance of the President and the Congress of the United States.

The fourth reason—and it has been expressed on this floor—is that these

lawyers deserve these big, huge fees. I was presiding, Mr. President, when Senator HOLLINGS eloquently made that case, that whatever they get they earn. Well, I suppose one can make that argument, but I do not believe that most of the American people believe that lawyers, under any circumstances, should earn \$10,000 or \$50,000 or \$92,000 or \$200,000 an hour for their work, no matter how imaginative and how successful that work may be.

I think there are very few Members of this body who believe firmly that they deserve fees larger than the \$4,000 cap that is included in this amendment.

The final argument that Mr. Taylor set out in his essay 2 or 3 weeks ago was that \$250 an hour was not enough. That, of course, was a reference to the first Faircloth amendment, and I agreed with Mr. Taylor, \$250 was not enough for those who had begun this litigation by any stretch of the imagination. I don't think, myself, \$1,000 was enough.

That is why, with a bit more reluctance, I voted against the second Faircloth amendment. But I certainly believe that the staged amount that we have in this amendment is enough and is enough for each of the four different categories of lawyers to whom it applies. It is for that reason that I have placed this proposal before the Senate once more in a different fashion than the fashion in which it previously appeared.

This is a legitimate part of the debate over tobacco legislation. We should reflect the conscience of the American people in this connection. We should try to see to it the maximum amount of money, consistent with fairness, that changes hands in one respect or another as a result of this legislation goes to the social and mostly antismoking purposes for which it is intended. We don't need to make billionaires out of lawyers simply because they were lucky enough or even wise enough to get into this field at an opportune time. We particularly don't need to do that for those lawyers who didn't either bother or have enough imagination to get into it until this kind of litigation was a slam dunk.

This is perhaps one element of our system of justice that increasingly disturbs the American people. We have dealt with it a little bit at a time in tort reform legislation. I hope that the Senate will take up a product liability bill and I hope now we can get a bipartisan degree of support here on the Senate floor and get a signature from the President on a modest attempt to reform our legal system.

I voted for all such reforms that have come before the Senate while I have been here in the last 7 years. I am not generally considered to be someone who defends trial lawyers. I found it a little bit awkward to vote against the first two Faircloth amendments, but I think even with respect to people with whom I disagree, with whom many of

us disagree, fairness is vitally important. I have designed this amendment in a way to be fair and to be equitable, to treat people in different circumstances differently. I submit it to the consideration of the Senate on that basis.

EXHIBIT 1

[From the National Journal, May 30, 1998]
(Stuart Taylor Jr.)

TOBACCO FEES: THE REWARDS OF WINNING COULD BE STUNNING

It's an estimate, but perhaps not all that far-fetched: In some cases, lawyers suing the tobacco companies could make as much as \$100,000 an hour if the cozy contingency fee deals they have signed with state attorneys general and others are left intact.

That helps explain why some in Congress are pressing to add curbs on lawyers' fees to the \$515 billion tobacco bill sponsored by Sen. John McCain, R-Ariz.

In Texas, five leading plaintiffs lawyers would split a pot of \$2.3 billion over the next 25 years—15 percent of a \$15.3 billion statewide settlement—under a contingency fee deal signed by Democratic state Attorney General Dan Morales for a lawsuit to recover health care costs attributable to tobacco.

The five lawyers did not keep track of the hours they worked. Nor have they specified how much of the money they would share with the dozens of other lawyers who helped them. But professor Lester Brickman of Benjamin Cardozo Law School, an expert witness in a court challenge brought by Texas' Republican Gov. George W. Bush against the fee deal, says the lawyers' hourly rates come to at least \$92,000, based on his estimate that they almost surely put in no more than 25,000 hours on the cases.

In Florida, West Palm Beach Circuit Judge Harold J. Cohen invalidated as "unconscionable" a deal that would give the state's 12 lead private lawyers \$2.8 billion—25 per cent of a similar, \$11.3 billion statewide tobacco settlement. But his decision was overturned on May 18, on procedural grounds, and sent back for further action.

The total cut for the plaintiffs lawyers in all current and future tobacco cases covered by the McCain bill could run as high as \$5 billion a year, with the biggest bucks coming from future class action suits on behalf of sick smokers and their families.

The plaintiffs lawyers and their champions—one of them Sen. Ernest F. Hollings, D-S.C.—make no serious efforts to knock down the numbers. In fact, they dismiss the dollar figures as irrelevant. "Don't give me this billable hours or \$180,000 an hour or \$5 an hour or whatever it is," Hollings declared in a May 19 debate. "This isn't any hourly thing. . . . They deserve every dime of it and more."

Hollings was speaking against an attempt by Sen. Lauch Faircloth, R-N.C., to amend the McCain bill by capping the anti-tobacco lawyers' fees at \$250 an hour. Faircloth's rider was rejected, 39-58. The bipartisan majority's objections were essentially these:

DON'T MESS WITH THE MARKETPLACE

Congress does not curb the gargantuan compensation packages of, say, tobacco executives, other corporate fat cats, actors or star athletes. So why should it selectively restrict the fees of the entrepreneurs of litigation—especially those who take on Big Tobacco?

CONTRACT RIGHTS

Any move by Capitol Hill to override contingency fee deals would interfere with the lawyers' contract rights. "A deal is a deal," in the words of Sheldon Schlesinger, one of the Florida lawyers pressing for a full 25 per cent cut.

STATES' RIGHTS

In the many cases in which attorneys general and other state officials have retained private lawyers to sue tobacco companies, federal fee-capping legislation would interfere with the states' rights to sign whatever contingency fee deals they choose.

THEY DESERVE BIG FEES

The plaintiffs' lawyers are entitled to generous rewards because they took extraordinary risks—which even state governments could not take on their own—and used their expertise, financial resources and entrepreneurial flair to bring to their knees the mighty tobacco companies, which until recently had seemed invincible.

\$250 IS NOT ENOUGH

While it may seem a princely wage to most people, \$250 an hour is barely half the rate tobacco companies and other corporate clients pay their highest-paid lawyers. And those lawyers are paid whether they win or lose. Contingency fee layers, on the other hand, get nothing when they lose. So when they win, they should get more—far more, in some cases—to compensate for their risks.

This last point is so clearly, well, on the money, that by itself it warrants rejection of Faircloth's \$250-an-hour cap, which smacked of standard conservative Republican lawyer bashing.

But what about a fairer, more realistic curb on fees in tobacco cases covered by the McCain measure? Brickman—a leading scholar on contingency fees and a fierce critic of excessive ones—proposes an upper limit of \$2,000 an hour, several times the rates charged by the tobacco companies' lawyers.

Although some of the points noted thus far could be raised against a \$2,000-an-hour fee cap, the counterarguments seem more persuasive.

Don't mess with the marketplace? Precious little evidence suggests that many contingency fee lawyers engage in the kind of competition for business that is the essence of a health marketplace—perhaps because most smokers and other individual plaintiffs don't have the time or expertise to bargain or shop around for better fee deals.

And even some of the fee deals signed by presumably astute state attorneys general, such as Dan Morales, seem remarkably unsophisticated (at best), with the same fixed percentage of the award going to the lawyers no matter how large the award. Noting that Morales (like many other politicians) got campaign contributions from some of the same lawyers, Bush and Brickman have suggested that he either sold out or was snookered or both. (Morales, returning the fire, has called Bush a lackey of the tobacco companies.)

Be that as it may, the McCain bill would not leave much freedom in any corner of the tobacco marketplace. It would subject tobacco products, advertising and litigation alike to pervasive federal regulation, in a manner somewhat analogous to the government's Medicare and Medicaid systems, which of course impose strict limits on doctors' fees.

The McCain measure would also make winning a lawsuit against tobacco companies far easier (by superseding key state tort law rules), while at the same time giving the companies strong financial incentives to offer plaintiffs generous settlements rather than fighting tort suits and class actions all the way to trial. For a Congress that would thus be enriching both plaintiffs and their lawyers—by eliminating much of the risk of litigation and enabling them to win with relatively little effort—it would be a bit odd to ignore the matter of how much money the lawyers should be able to take off the top.

Contract rights? As fiduciaries, lawyers everywhere are subject to ethical rules barring them from charging "excessive" or "unreasonable" fees. So Brickman's proposed fee cap would clash with the contract rights of only those who can show that they can reasonably demand more than \$2,000 an hour.

Individual lawyers should be free to try to make such a showing, on a case-by-case basis, and, if they are successful, obtain an exemption from the \$2,000-an-hour cap. But few would (or should) succeed. And a requirement that lawyers present justifications in court for such exceptionally high fees would have the wholesome effect of spurring judges to put teeth into the seldom-enforced ethics rules against unreasonable fees.

States' rights? The McCain bill would virtually take over—at the behest of the states themselves—the pending state lawsuits to recover tobacco-related costs incurred by combined state-federal Medicaid programs. In this context, on what basis could any state official object to attaching a \$2,000-an-hour fee cap, especially one that would benefit the state's citizens?

While some opponents of any fee cap assert that the main beneficiaries would be the merchants of death (aka the tobacco companies), it seems more likely to affect only the split between the merchants of litigation (aka the trial lawyers) and their clients—the states themselves, smokers and others.

Do the lawyers really deserve more than \$2,000 an hour? Many surely do not, because their risk of loss has diminished, and will diminish even more if the McCain bill passes. Fred Levin, a Florida lawyer, helped illustrate this point by boasting on ABC's *20/20* program not long ago that he not only had brokered the contingency fee deal between the state and its private lawyers for his "good friend" Democratic Gov. Lawton Chiles, but also had the lawsuit against the tobacco companies "a slam dunk," by slipping through the state Legislature obscure amendments that virtually guaranteed victory to the state.

Not much risk there. Could even so stalwart a champion of the trial lawyers as Sen. Hollings explain why, for such lawyers, \$2,000 an hour is not enough?

Mr. MCCAIN. Mr. President, first of all, I say the Senator from Idaho came to the floor to argue that the tobacco legislation now spends more money than it takes in. The argument neglects one fundamental fact, and that is the legislation can't spend more than it takes in because the authorizations, including the drug amendment, come from the trust fund only. You can earmark all you want to, but unless the money is in the trust fund, it can't be spent. That is, obviously, up to the appropriators.

Having only been here for 12 years, I have, time after time after time, observed authorizations of large amounts of money which are then reduced by the appropriators, as which is their job, to fit into the overall budget. These authorizations that are a result—the drug amendment, prevention, cessation, counterads, research, et cetera—that are authorized, cannot be appropriated unless the money is there in the trust fund.

By the way, those who would argue that we need to reduce the size of this bill by about \$100 billion, I say that is a very likely outcome if we are successful in reducing teen smoking, because the volume of cigarettes sold in

America, if we are successful, would be reduced significantly, which would, first of all, mean less revenues and less payments into the trust fund which is set up, and over time, obviously, would then reduce the amount of money that can be spent. Most experts believe that if this legislation is enacted that we could effectively reduce teen smoking in America.

So I say to my friend from Idaho when he comes to the floor, when we come to the floor in a day or so with a defense authorization bill which greatly exceeds the amount that is budgeted, I hope that he will make the same arguments that we exceeded in practically every other authorization bill. As the Senator from Idaho well knows, the way we do business around here is we authorize a certain amount of expenditures and then that is subject to the appropriators who are guided by the budget—in this case, guided by the amount of money that will be in the trust fund. I think it is important that be mentioned.

I think most of us agree it is time we made a decision on this bill. I want to comment on the Gorton amendment. I think it is important. I think it is a good amendment. I think Senator GORTON, Senator SESSIONS, and Senator FAIRCLOTH have great credibility in this body—both Senator GORTON and Senator SESSIONS having been former attorneys general. I believe that it is appropriate if we are going to designate how the money is spent that comes from the increase in the price of a pack of cigarettes, then there should also be some limitation on the amount of money that is paid for legal expenses.

Senator GORTON's amendment calls for initially \$4,000 an hour and scales down as to what time in the calendar the legal entities entered into these settlements. I think most Americans would believe that \$4,000 an hour is a rather generous wage. In fact, there are very few Americans who are compensated to the tune of \$4,000 an hour.

The argument will be made on the other side that we are dictating something that should be left up to the States, should be left up to arbitration. We have just passed several amendments that come from that side that dictate exactly what the States should do. We just passed one that said a certain amount of money had to go to early child development. We passed one that said a certain amount had to go to a specific kind of research.

In all due respect to the arguments that somehow we are interfering with some kind of States rights here, then obviously an amendment should be supported that says the States can do whatever they want to with any of the money that goes to them, which contemplated in the original bill is some 30 to 40 percent of the entire amount of money that is collected.

Most Americans, when asked if \$4,000 per hour is adequate compensation to anyone—there may be some exception

to that, perhaps brain surgery—but for legal services I think the overwhelming majority of Americans would view \$4,000 per hour as more than generous compensation. In fact, if we pass the Gorton amendment, there will be some who will complain that this is far too generous. I remind observers that this is the third iteration we have attempted to try to bring some restraint to what many Americans are appalled to discover—that a single law firm, in the case of the Florida settlement, could make a couple of billion dollars.

I don't think that is appropriate, and I believe that we ought to act overwhelmingly in favor of the Gorton amendment.

We have been told of two possible substitute amendments—one by Senator HATCH and the other by Senators GRAMM and DOMENICI. I hope and expect that if those amendments are to be offered, we can move to them shortly.

As I said, the Senate has adopted several significant amendments, particularly with respect to how funding under this bill is apportioned. I thought it might be helpful to recap for the Senate where the bill stands in that regard.

The Joint Tax Committee estimates that under the managers' amendment, \$52 million would be available in the trust fund in the first 4 years and an additional \$72 billion in the following 5 years, producing a 9-year total of \$124 billion.

The Senate adopted amendments to the bill to provide \$3 billion to assist veterans with smoking-related diseases and \$46 billion in tax cuts, leaving a total of \$75 billion over 9 years for apportionment to the four major accounts authorized under the bill—the State account, the public health account, the research account, and the farmer assistance account.

Under the bill, 40 percent of the money, or \$30 billion over the next 9 years, would be made available to the States to settle their Medicaid and legal claims against the tobacco industry. This would mean a payout of approximately \$3.3 billion per year, or an average of \$66 million per State per year, to compensate State taxpayers.

And 22 percent of the money, or \$16.5 billion over 9 years, would be made available for public health programs, including counteradvertising, smoking prevention and cessation services, as well as for drug control programs authorized under the Coverdell-Craig amendment. As the bill currently stands, the precise amounts and selected purposes would be subject to appropriations.

This means an amount of approximately \$1.8 billion available for public health and subject to drug control purposes. Under the bill, 90 percent of the money reserved for public health is to be block-granted to the States.

Another 22 percent of the funds, or \$16.5 billion over 9 years, would be made available for health research at

the National Institutes of Health and Centers for Disease Control. This would mean a payout of nearly \$1.8 billion per year for advanced medical research.

As you know, Mr. President, lately the public health groups have complained about some of the reductions as a result of setting aside \$3 billion for veterans' treatment of tobacco-related illness as a result of tax cuts and as a result of an anti-illegal drug program. It still provides \$1.8 billion per year for advanced medical research. I would say that is a significant amount of money.

The bill designates 16 percent of the fund to tobacco farmer and farm community assistance. Also, Mr. President, \$1.8 billion is available for public health. And \$1.8 billion is, I think, a sizable amount of money. This is a total of \$12 billion over 9 years, or a yearly payout of \$1.3 billion.

The farm provisions still have to be worked out. I hope we can accomplish that end expeditiously and in a manner that is fair and appropriate.

I remind my colleagues again that the bill, as modified, contains measures of enormous benefit to the Nation, including vital anti-youth smoking initiatives that will stop 3,000 kids a day from taking up a habit that will kill one-third of them, critical funding for groundbreaking health research, and assistance to our Nation's veterans who suffer from smoking-related illnesses.

I would like to mention again, Mr. President, that for reasons that are still not clear to me, money was taken to use for highways that should have been used for treating veterans who suffer from tobacco-related illnesses. This provision of the bill is an effort to provide some funding for veterans who were encouraged to smoke during the period of time they were serving this Nation.

The bill will also fund a major anti-drug effort to attack the serious threat posed by illegal drugs, and it contains one of the largest tax decreases ever to eliminate the marriage penalty for low- and moderate-income Americans, and achieve 100 percent deductibility of health insurance for self-employed individuals. In fact, every penny raised above the amount agreed to by the industry last June is returned to the American people in the form of a tax cut.

Let me repeat that, Mr. President. I think it is rather important. It happens that this tax cut takes into consideration all of the additional funds above that which were agreed to by the attorneys general and the industry last June.

The bill provides the opportunity to settle 36 pending State cases, collectively, efficiently, and in a timely fashion. I argue that it is now time to finish our business and move the process forward.

There are those who labor under the unfortunate misapprehension that if we do nothing, the issue will go away. I don't believe that is correct. I don't

believe it is correct because the facts won't go away. Mr. President, 3,000 kids take up the habit every day, teen smoking is on the rise, and that probably won't stop unless we do something.

Mr. President, 418,000 Americans die of smoking-related illnesses every year—the No. 1 cause of preventable disease and death in America by far. This death march won't stop unless we do something. The taxpayers must shell out \$50 billion a year to pay for smoking-related health care costs—nearly \$455 per household. That number is increasing because the number of youth smokers is rising. I want to again repeat, those who call this a “big tax bill”—and I congratulate the tobacco industry for doing polling and finding that most Americans understandably are opposed to “big tax increases,” but I argue that the tobacco industry is responsible for one of the biggest tax increases in the history of this country. That tax increase is what taxpayers have to pay to treat tobacco-related illnesses. Those tobacco-related illnesses are directly related to the sale of their product.

If the bill disappears—which would be much to the industry's delight—the State suits will not disappear with it. If we fail to act, the States will continue their suits and they will win judgments and the price of cigarettes will increase sharply. So please don't be misled by those who would have the public believe that killing this bill would eliminate taxes or relieve smokers of an undue price increase. Following the Minnesota settlement, the price of a pack of cigarettes went up 5 cents, on an average, throughout the country, not just in Minnesota.

Mr. President, we have a tendency to throw around polling data quite frequently. Recently, there was a poll paid for by the tobacco companies, and some of the opponents took great heart in that the American people somehow did not support legislation to attack the problem of kids smoking. There was another telephone survey conducted by Market Facts TeleNation, which is an independent polling firm, and this poll was paid for by the Effective National Action to Control Tobacco. Mr. President, these polls' questions are always very important because how they shape the question quite often dictates the answer. We know very well how highly paid pollsters are.

Here is the question:

As you may know, the Congress is currently considering the McCain tobacco bill, which creates a national tobacco policy to reduce tobacco use among kids. Based on what you know about the bill, do you favor or oppose Congress passing the McCain bill?

Registered voters in favor were 62 percent. It is broken down: 45 percent strongly favor; 17 percent somewhat favor; strongly oppose, 23 percent; somewhat oppose, 9 percent. All adults who favor are 62 percent; oppose, 30 percent.

Question: The McCain bill includes public education to discourage kids from smoking,

help for smokers to quit, enforcement of laws to prevent tobacco sales to kids and increases in the price of tobacco products to discourage use by kids. There would also be strict limitations on tobacco advertising and marketing to kids, as well as authority for the Food and Drug Administration to regulate tobacco like it does other consumer products. These programs would be funded by increasing the price of a pack of cigarettes by \$1.10 over the next 5 years. Knowing this about the McCain bill, do you favor or oppose the bill?

This is what we call usually a “push question.” And the number goes up to 66 percent registered voters strongly favor, and about 4 percent oppose.

Question: If two candidates for Congress were otherwise equal, but one supported the McCain bill and the other opposed it, would you be * * *

More likely to support the candidate who supports the bill, 44 percent more likely; more likely to support the candidate who opposes the bill, 18 percent; 37 percent would say no effect on their vote; 44 percent would most likely support the candidate who supports the bill.

Question: Some in Congress have proposed amendments to the McCain bill that address issues other than tobacco use—like tax reductions and the war on illegal drugs. Which of the following statements do you agree with most?

The tobacco bill should address issues only, and other issues should be dealt with in separate legislation, 79 percent.

Mr. President, I ask unanimous consent that this poll be printed in the RECORD.

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

EFFECTIVE NATIONAL ACTION TO CONTROL
TOBACCO: A PUBLIC HEALTH COALITION
TOBACCO SURVEY RESULTS

Telephone survey using a random digit sample, commissioned by the Campaign for Tobacco-Free Kids and conducted June 12–15, 1998 by Market Facts' TeleNation, an independent polling firm. The poll included 924 adults and 784 registered voters. Responses below are based on the full sample of respondents unless otherwise noted. Margin of error is +/-3.2 percent for all adults and +/-3.5 percent for registered voters.

Question: As you may know, the Congress is currently considering the McCain tobacco bill which creates a national tobacco policy to reduce tobacco use among kids. Based on what you know about the bill, do you favor or oppose Congress passing the McCain bill?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net)	62	62
Strongly Favor	45	44
Somewhat Favor	17	17
Oppose (Net)	31	30
Strongly Oppose	23	22
Somewhat Oppose	9	8
DK/Refused	7	8

Question: The McCain bill includes public education to discourage kids from smoking, help for smokers to quit, enforcement of laws to prevent tobacco sales to kids and increases in the price of tobacco products to discourage use by kids. There would also be strict limitations on tobacco advertising and marketing to kids, as well as authority for the Food and Drug Administration to regulate tobacco like it does other consumer products. These programs would be funded

by increasing the price of a pack of cigarettes by \$1.10 over the next five years. Knowing this about the McCain bill, do you favor or oppose the bill?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net)	66	65
Strongly Favor	50	49
Somewhat Favor	17	17
Oppose (Net)	32	33
Strongly Oppose	24	24
Somewhat Oppose	9	8
DK/Refused	1	2

Question: If two candidates for Congress were otherwise equal, but one supported the McCain bill and the other opposed it, would you be:

	Reg- istered voters (percent)	All adults (percent)
More Likely to Support The Candidate Who Supports The Bill (Net)	44	44
Much More Likely	30	31
Somewhat More Likely	14	13
More Likely to Support The Candidate Who Opposes The Bill (Net)	18	19
Much More Likely	14	13
Somewhat More Likely	5	5
No Effect On Vote	36	37
DK/Refused	1	1

Question: Some in Congress have proposed amendments to the McCain bill that address issues other than tobacco use—like tax reductions and the war on illegal drugs. Which of the following statements do you agree with the most?

Randomized	Reg- istered voters (percent)	All adults (percent)
The tobacco bill should address tobacco issues only, and other issues should be dealt with in separate legislation	79	79
Issues such as tax reduction and illegal drugs are so important that they should be addressed in the tobacco bill even if it means reducing funds for programs to combat tobacco use among kids	18	18
DK/Refused	4	4

Question: Now let me ask you about a couple of specific amendments to the tobacco bill. Please tell me which of the following positions you agree with most.

	Reg- istered voters (percent)	All adults (percent)
Some in Congress want to amend the bill to use money intended for tobacco prevention to reduce the so-called marriage tax for couples with incomes under \$50,000 because these couples currently pay somewhat more in income taxes than two individuals who are not married	22	22
Others say the marriage tax should not be addressed in the tobacco bill and that it takes too much of the money intended for programs to reduce tobacco use among kids	69	69
DK/Refused	9	9

Question: Which of the following positions do you agree with most?

	Reg- istered voters (percent)	All adults (percent)
Some in Congress want to take much of the revenue generated by tobacco price increases that is intended for programs to reduce tobacco use among kids and use it instead to add to the funds the government has for fighting illegal drugs	21	22
Others say the money raised by the tobacco bill should be used first and foremost to address the tobacco problem, and that if more money is needed to fight illegal drugs, it should come from other source	75	74

	Reg- istered voters (percent)	All adults (percent)
DK/Refused	4	4

Question: Please tell me whether you favor or oppose spending the revenues from the McCain tobacco bill for each of the following.

Do you (strongly/somewhat) favor or oppose spending the revenues from the McCain tobacco bill for?

Randomized	Reg- istered voters (percent)	All adults (percent)
Reimbursing the states for the money they have spent treating sick smokers (favor (Net))	43	43
Funding health and medical research (favor (Net))	78	78
Funding programs designed to reduce tobacco use among kids like public education campaigns, school-based programs, and enforcement of laws prohibiting tobacco sales to minors (favor (Net))	84	85
Providing money and other assistance to tobacco farmers to help them in the transition to other ways of making a living (favor (Net))	62	62
Reducing the marriage tax for couples making under \$50,000 (favor (Net))	34	35
Adding funding to the government's budget for fighting illegal drugs (favor (Net))	46	46
Funding for states to provide expanded child care services (favor (Net))	46	48

Question: And which of those uses of the McCain tobacco bill's revenues is the most important in your mind?

Randomized	Reg- istered voters (percent)	All adults (percent)
Reimbursing the states for the money they have spent treating sick smokers	6	6
Funding health and medical research	16	15
Funding programs designed to reduce tobacco use among kids like public education campaigns, school-based programs, and enforcement of laws prohibiting tobacco sales to minors	48	48
Providing money and other assistance to tobacco farmers to help them in the transition to other ways of making a living	7	8
Reducing the marriage tax for couples making under \$50,000 (favor (Net))	5	5
Adding funding to the government's budget for fighting illegal drugs (favor (Net))	8	8
Funding for states to provide expanded child care services (favor (Net))	7	7

Question: Amendments passed so far to the McCain tobacco bill have removed virtually all funds dedicated to tobacco prevention programs. Funds remain in the bill for medical research, tobacco farmers, child care, reimbursement of state medical costs, the marriage tax reduction, and additional funds to fight illegal drugs.

Do you favor or oppose restoring the money in the bill for tobacco prevention efforts even if it means reducing the funds available for these other purposes?

	Reg- istered voters (percent)	All adults (percent)
Favor (Net)	61	61
Strongly Favor	37	36
Somewhat Favor	24	25
Oppose (Net)	33	33
Strongly Oppose	17	17
Somewhat Oppose	16	16
DK/Refused	6	6

Question: Other things equal, if one candidate for Congress supported restoring the money for tobacco prevention programs in the McCain bill and the other candidate opposed restoring the money, would you be:

	Reg- istered voters (percent)	All adults (percent)
More Likely to Support The Candidate Who Supported Restoring The Tobacco Prevention Money (Net)	54	53

	Reg- istered voters (percent)	All adults (percent)
Much More Likely	30	29
Somewhat More Likely	25	23
More Likely To Support The Candidate Who Opposed Restoring The Tobacco Prevention Money (Net)	14	14
Much More Likely	4	3
Somewhat More Likely	10	11
No Effect On Vote	26	26
DK/Refused	7	7

Question: How much do you trust each of the following to do the right thing on national tobacco policy?

How much do you trust Democrats in Congress to do the right thing on national tobacco policy? Do you:

	Reg- istered voters (percent)	All adults (percent)
Trust (Net)	47	47
Trust a lot	11	11
Trust somewhat	36	37
Distrust (Net)	49	49
Distrust a lot	23	23
Distrust somewhat	27	26
DK/Refused	3	4

How much do you trust Republicans in Congress to do the right thing on national tobacco policy? Do you:

	Reg- istered voters (percent)	All adults (percent)
Trust (Net)	46	45
Trust a lot	9	8
Trust somewhat	37	37
Distrust (Net)	51	51
Distrust a lot	25	25
Distrust somewhat	25	26
DK/Refused	4	4

How much do you trust President Clinton to do the right thing on national tobacco policy?

	Reg- istered voters (percent)	All adults (percent)
Trust (Net)	51	52
Trust a lot	21	19
Trust somewhat	31	32
Distrust (Net)	48	47
Distrust a lot	32	31
Distrust somewhat	16	16
DK/Refused	1	2

Question: If the McCain bill to reduce tobacco use among kids is not passed by the Congress, who will be most responsible for it not passing?

	Reg- istered voters (percent)	All adults (percent)
Democrats in Congress	16	16
Republicans in Congress	40	37
President Clinton	13	14
All of the above	11	12
None of the above	4	4
DK/Refused	16	17

Question: Which of the following describes your use of tobacco products?

	Reg- istered voters (percent)	All adults (percent)
Current regular smoker or regular smokeless tobacco user	25	26
Former regular smoker or regular smokeless tobacco user, or	25	25
Never smoked cigarettes regularly or used smokeless tobacco regularly	49	48

Question: Do you generally consider yourself a Republican or a Democrat?

	Reg- istered voters (percent)	All adults (percent)
Republican	37	35
Democrat	39	39
Independent	17	17
Other	5	6
DK/Refused	2	3

Question: Are you currently registered to vote in the state where you live?

	Reg- istered voters (percent)	All adults (percent)
Yes	100	86
No		14
DK/Refused		1

Mr. MCCAIN. Mr. President, as we do battle of the polls, there is one today that I think in many ways supports the argument that the American people want to do something about the issue. The other argument that I hear quite often is the American people do not care, that they care more about illegal drugs, that they care more about crime, that they care more about education. I agree with that. But they also care about tobacco.

After this issue is taken up, I understand there will be efforts to take up the issue of patients' rights under the present health management regime in America. I haven't seen that in any polls. That is one of the most important issues. Yet, I think Members of this body think that it is of great importance. We are going to take up the defense bill, of which there will be several controversial issues, such as ballistic missile defense, our sanctions on China, et cetera.

I haven't seen those in any polls either. But yet I think the American people care about our Nation's security, especially our ability to defend the Nation.

Should we do something about illegal drugs? Yes. I hope we will. I believe that this bill has been improved by that.

Should we do something about education? I believe that we have had significant and substantial debate on the floor of the Senate regarding that issue. The very excellent bill of Senator COVERDELL was passed after a very difficult process.

Should we do things about crime? Yes.

But, Mr. President, I think we should also do something about this issue as well.

As I began my comments, I believe that we are in an important period of time. I say the best way to proceed is to have a cloture vote proposed by the majority leader, which is the way we do business around here. If the Senate, in its wisdom, decides by 40 votes, and we don't have enough votes to conclude debate after being here in this fourth week, then we should go on to other issues. If there are sufficient votes, 60 votes to invoke cloture, I urge both proponents and opponents of the legislation to try to complete action on this legislation this week.

We all know we have 13 appropriations bills; perhaps product liability reform; perhaps other issues that are important to the American people as well.

I don't mind staying here all summer, if I may borrow a phrase from another leader of a different magnitude than I. But I believe that we have discussed and debated this issue at great length, and it is now time for us to make a decision as to whether we move forward on this bill or not, or throw the issue back to the States. Thirty-six attorneys general voted for it. Larger and larger settlements, and larger and larger legal fees will occur. But most importantly, as I have said on a number of occasions on the floor, today 3,000 kids will start to smoke, and tomorrow, and the next day, and the next day.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank my colleague, Senator McCain, for his remarks and putting some of this argument back in perspective.

I want to address briefly the amendment of the Senator from Washington, Senator GORTON. I know there are other colleagues waiting to speak on this question.

Mr. President, I understand the strong feeling that we want to limit lawyers' fees. I don't think there is a Member of this body that isn't concerned about seeing lawyers get windfall results for themselves as a result of this litigation.

We have in the McCain legislation, the bill that came out of the Commerce Committee on a 19-to-1 vote, a strong bipartisan vote, a means of addressing that problem.

What is in the bill is a provision for arbitration panels to determine what are the appropriate legal fees.

I think probably that is the best answer, as imperfect as it is.

The problem with the our taking action is, What action do you take? I think Senator GORTON has probably the best chance of prevailing. But it has problems. I think his is probably the most thoughtful provision before us.

But I say to my colleague from Washington, I think there are real problems with what he has proposed. Under Senator GORTON's proposal, fees would be limited to \$4,000 an hour for actions filed before 12-31 of 1994. The problem is that may be way too much. It is even conceivable in certain circumstances that it is too little, but I think it is more likely that it is too much.

He also provides \$2,000 an hour for actions filed between 12-31 1994 and 4-1 1997.

I tell you, my own view is that may well be too much. It is hard to say because it is an arbitrary cap. That is the problem with what the Senator from Washington is offering. In many cases, it may be way too much.

He says it establishes a cap, not a floor. But I think we all understand

what happens in these cases. Very often what is intended is a cap which then becomes a floor. What we may find out is that people being compensated at \$4,000 an hour do not deserve a fraction of that. Or we may find that we have attorneys who file actions between 12-31 1994 and 4-1 1997 who are capped at \$2,000 an hour. That may be far in excess of what they should receive.

He also provides for \$1,000 an hour for actions filed between 4-1 1979, and 6-15 of 1998; \$1,000 an hour.

Again, because this is arbitrary, it can wind up being too much in one case when it goes down to \$500 for actions filed after 6-15 of 1998. Those would be new cases.

That may be appropriate for those who have just gone out and made a copy of the previous actions filed by others, but if it is a new action, taking on the tobacco industry on a new theory where a law firm has to put up substantial resources of its own to bring an action, \$500 may not be enough.

The point is we don't know. Sitting here in this Chamber, how do we make a decision about what is an appropriate legal fee for literally thousands of cases across this country. I don't think it is possible for us to make this judgment. That is why some of us believe an arbitration panel is the appropriate resolution. Let's leave it up to the parties at issue. They each name somebody on their behalf, and those two name a third, and they reach a conclusion on what the appropriate fees are in a particular case. But to have us sit in Washington and try to decide what a contract ought to be in the State of Minnesota is really pretty far-fetched. We often say we are engaged in too much micromanagement from here in Washington. In fact, our friends on the other side of the aisle say that frequently, and frequently they are right. If there was ever a case of micromanagement, this is it. We are deciding what legal fees should be in the State of Washington, the State of Minnesota, the State of North Dakota. I don't think so. I tell you what an appropriate legal fee in North Dakota is and what an appropriate legal fee in New York is are probably not the same. For us just to put in an arbitrary amount that applies across the country is meddling at a level that I think is counterproductive.

Now, we have heard, gee, some of these cases that are settled are going to lead to a windfall for the attorneys at issue. I tell you, I am very concerned about that. That is why I have supported arbitration, because where there is a difference between those who hired the lawyers and those who have been hired, there ought to be a way of resolving it so lawyers do not enjoy windfall returns.

We have heard a lot of discussion about Florida. There has been the suggestion that law firms down there are going to get \$2 billion. I tell you, that is outrageous, absolutely outrageous

—\$2 billion for a case in Florida. But I am not the only one who thinks it is outrageous. The State court in Florida thinks it is outrageous. In fact, they have said it is unconscionable in the State of Florida, and they have not approved it.

So why are we substituting our judgment for the judgment of courts in the individual States and the judgment of the attorneys general in the various States who are the ones who have hired lawyers on a contingency basis? Because that is why we have the problem. We have the problem because individual attorneys general did not, by themselves, have the resources to go take on the tobacco industry. They did not have the resources to do that. We all understand, before this series of cases, the tobacco industry had never lost a case and they had the best legal talent in the country.

By the way, as I understand it, the proposal of the Senator from Washington only applies to plaintiffs' attorneys. It does not apply to the tobacco industry's attorneys. So you have kind of an uneven fight here: The tobacco industry has no limitation, and the plaintiffs' lawyers, those who sue on behalf of the victims, are capped. And the caps that apply under the amendment of the Senator from Washington may be way too much. In fact, I think in virtually every case \$4,000 an hour is way too much; \$2,000 an hour for a different set of classes based on the time that they were filed may be way too much; \$500 an hour for new cases may be too little if the law firm has to put up substantial resources of its own in order to bring the action and successfully take on the multibillion-dollar tobacco industry, especially given the tobacco industry's rate of success.

Mr. President, in the task force that I headed for our side, the conclusion we came to as the appropriate resolution is not to have us try to determine appropriate legal fees. The Senate of the United States is not equipped, frankly, to reach into the facts, the different fact patterns of hundreds of different cases, even thousands of different cases across this country, and determine what are the appropriate legal fees.

I think that is a profound mistake, and it sets a precedent. Are we going to start to determine the legal fees in cases that involve the automobile industry? Are we going to start to get involved in what the legal fees should be in the medical industry?

Boy, I tell you, I do not think that is a road we want to go down, because I do not think this body is equipped to determine the legal fees. I think we may make very serious mistakes, and I can easily see under the amendment offered by the Senator from Washington that we could wind up with a scheme in which lawyers were compensated far more than they should be.

Now, if we look at what has happened around the country, I think we will see that, in fact, the individual States are responding to these challenges. We are

seeing in State after State that they are not accepting these outrageous contingency agreements that were entered into. They are not accepting 25 percent contingency agreements. In State after State they have changed what was proposed.

In Minnesota, outside counsel agreed to accept 7.5 percent instead of the 25 percent fee as called for in the original contract. In Mississippi, both the State and their counsel have agreed to submit a decision on fees and expenses to an arbitration panel. In both Texas and Florida, where there is a dispute over fees, the attorneys' fees and expenses will be decided either through agreement, arbitration, or court order. In each case, mechanisms are now in place to determine the amount of the attorneys' fees.

In Texas, a State court ruled that a 15 percent contingency fee called for in the contract between the State attorney general and the attorneys was reasonable but refused to award a specific dollar amount. In that State, the Governor has now petitioned the court to reconsider its decision and has asked for an evidentiary hearing. The decision is not expected until later this year.

In Florida, as I indicated, the State court rejected as unconscionable the fee request of the attorneys. Well, good for the court in Florida; they should have rejected it as unconscionable. But that is where the decision ought to be made. It should not be made here in this Chamber where we are not privy to the facts in each of these cases and not in the position to determine what are the appropriate legal fees.

Let me say further that the Gorton amendment would interfere in private contracts. That is a very serious matter. Where a State attorney general has entered into an agreement with an outside law firm, I think it is highly questionable for the Senate to reach behind that contract and say we know better, we know what the appropriate legal fees should be, and we divide it on this arbitrary basis as is called for in the Gorton amendment. I do not think I have ever heard our colleagues on the other side of the aisle call for interference in private contracts. I do not think that is a precedent that stands much scrutiny.

I am going to have more to say about this amendment as we go forward. I would say that Senator GORTON, I think, has done the most serious job of trying to address this vexing question, to try to prevent windfalls to attorneys, but I am afraid it fails at least the test that I would apply for something that can meet the very different standards one sees all across the country in the literally thousands of different cases where legal fees apply.

I yield the floor.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from North Dakota finds himself on the horns of a delicious di-

lemma. He feels there may be cases in which the amendment I propose would result in attorneys' fees being awarded that are too great, and so his answer is to reject the amendment and allow attorneys' fees in any amount. Attorneys' fees in one case, in Texas, I believe, have already been approved by the court in an amount more than 10 times higher than the highest amount in this amendment. I am afraid the Senator from North Dakota misreads the amendment.

The heart and soul of the amendment is a set of criteria for determining reasonable attorneys' fees, listing a wide range of factors, some of which we have discussed here, but leaving the matter to the discretion of the court. There is a limitation imposed on the discretion of the court by the amendment in the amounts that we have stated and debated. This is a cap and by no means a floor.

The Senator from North Dakota says that the better system is the system that is included in this bill, a system of arbitration. But, and the current Presiding Officer has read this very carefully, this is some kind of arbitration. This arbitration is to be decided under the bill by three arbitrators—one appointed by the plaintiff's trial lawyer himself, one appointed by the plaintiff, and a third appointed by the first two. The plaintiff has already signed an agreement—the plaintiff in most of these major cases is the State—they have signed an agreement, in some cases, for a 25-percent contingency fee on billions of dollars' worth of recoveries. Who is going to represent the public interest in this arbitration? No, Mr. President, there isn't anyone there to do that.

Mr. CONRAD. Will the Senator yield for a quick point?

Mr. GORTON. Sure.

(Mr. COATS assumed the Chair.)

Mr. CONRAD. I think the Senator misspoke himself. The Senator indicated in the arbitration panel one would be appointed by the plaintiff, one by the plaintiff's lawyer, and then one by the two. I am sure the Senator will acknowledge it is one by the defendant, one by the plaintiff, and the two of them determine the third member. Section 1413 provides how the arbitration panel will work. Obviously, the two sides at issue each pick one, and the two of them pick the third. That is the standard means of establishing an arbitration panel.

Mr. GORTON. I am reading section 1413. It says:

... In any such arbitration, the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff, one of whom shall be chosen by the attorney, and one of whom shall be chosen jointly by those 2 arbitrators.

That is not plaintiff and defendant. That is a fixed deal. In any event, to say that because it is possible that this sets a ceiling, that a \$4,000 fee or a \$2,000 fee might be too great a ceiling, we should, therefore, have no ceiling at

all, we should, therefore, allow attorneys' fees that have already been approved in far larger amounts, is, I think, a difficult argument to make.

The Senator from North Dakota makes it very well. But, in fact, the Congress of the United States has set attorneys' fees in all kinds of cases. They were discussed a few days ago by the Senator from Alabama and by others. There are many forms of litigation against the government itself in which we have set attorneys' fees that now, I think, are rather modest with the passage of time.

This is not unprecedented by any stretch of the imagination. What is unprecedented is the generosity of the proposal that I have put before the Senate. It is not unprecedented from the point of view of whether or not we have done it. No, we either have to say that because the States of these attorneys have come to us and have asked us to regulate tobacco in every conceivable, possible fashion, because they have asked us for a bill—this bill that makes it almost impossible for them to lose a case in the future because it totally changes the burden of proof—that we can say there is a certain level beyond which the conscience just simply doesn't allow attorneys' fees to go, or you have to take the position that we can regulate everything with respect to tobacco to the minutest degree, but we dare not touch attorneys' fees, personally, I think that is a very, very difficult argument to make.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. CONRAD. Will the Senator from Minnesota yield for just one moment?

Mr. WELLSTONE. I will be pleased to yield if I can have the floor.

The PRESIDING OFFICER. The Senator is entitled to yield for a question in order to regain the floor.

Mr. CONRAD. I ask unanimous consent, so I can get recognition, that the Senator from Minnesota be recognized right after I finish. I will take 1 minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CONRAD. Mr. President, I want to clear up this confusion about the arbitration panel. On page 438 of the bill it says:

* * * the arbitration panel shall consist of 3 persons, one of whom shall be chosen by the plaintiff—

In this case, the State, who has hired the attorney—
one of whom shall be chosen by the attorney—

That would be the claimant for the fees—

and one of whom shall be chosen jointly by those 2 arbitrators.

That is the standard method of setting up an arbitration panel. Nothing new, nothing unusual here. That is the way of setting up an arbitration panel

to get a result that is fair to both parties.

I say to my colleague from Washington, for us to decide we have better judgment than the State courts that administer the cases that are before them, I think, is a huge mistake. We talk about micromanagement. When we start deciding legal fees in this Senate Chamber, we are making a mistake. We do need to be worried about windfalls to attorneys; absolutely we do. That is why arbitration panels were included in the legislation that came out of the Commerce Committee on a 19-to-1 bipartisan vote. I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair. Mr. President, my colleague from North Dakota has spoken to the arbitration provision in the legislation. I shall not do so. I just want to present a Minnesota perspective for just a moment.

I come from a State where we just went through a very important trial. The lawyers in my State, working with the attorney general, were able to unearth 33 million pages of documents—33 million pages of documents. This was during a discovery process that went from August 1994 to the end of 1997. Many of those documents have had an enormous impact, not just on the settlement in Minnesota, which was a very important settlement, but also directly on the debate in the U.S. Congress. Thirty-nine thousand pages of those documents were ordered produced by the Minnesota judge and were ultimately subpoenaed by the House of Representatives and made public on the Internet.

What I want to do is speak to the part of this amendment that concerns me the most. I have had some discussion with my colleague from Alabama, and I have said to him, "Why don't you, in fact, not make this retroactive," when he had his similar amendments on the floor, because I don't think we should be taking action here that reaches back to the Minnesota settlement, which has already been entered into and has been declared final by the court. We already have an arrangement between the State and the Attorney General and the lawyers who represented our State. Congress should not disturb that.

I think the amendment of my colleague from the State of Washington has a different weakness and that is its lack of evenhandedness. What I want to see at a bare minimum is to have the same kind of caps or limits put on those attorneys representing the tobacco companies. I say to colleagues, when you vote on this amendment, the thing you ought to fasten your attention on is that we don't have the same kind of ceiling, the same kind of caps put on fees that go to lawyers representing the tobacco companies. I see

nothing here that does that, in which case I would argue that we are hardly talking about a level playing field.

I think the problem with the amendment is that it just simply lacks balance. I cannot support an amendment that puts caps on the fees of plaintiffs' attorneys representing consumers and representing the attorney general from a State, but at the same time puts no cap at all on the fees of attorneys hired by tobacco companies or other big corporations with their corporate lawyers working with these companies, but there is no cap on the fees. That just simply makes no sense to me from a kind of elementary standard of fairness, and that is why I think the amendment is fatally flawed.

HOMOSEXUALITY AND THE NOMINATION OF JAMES HORMEL

Mr. WELLSTONE. Mr. President, before I give up my time on the floor, I just want to take 1 minute also to mention another matter that has something to do with fairness. I am going to do this with a tremendous amount of sensitivity, but I just want to take a minute to mention this.

There were a number of newspaper articles today which report on the majority leader's comments about homosexuality. I ask unanimous consent they be printed in the RECORD.

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

[From the New York Times, June 16, 1998]

LOTT SAYS HOMOSEXUALITY IS A SIN AND
COMPARES IT TO ALCOHOLISM

(By Alison Mitchell)

WASHINGTON, June 15—In an interview about his personal beliefs, Senator Trent Lott, the majority leader, told a conservative talk show host today that homosexuality is a sin and then compared it to such personal problems as alcoholism, kleptomania and "sex addiction."

The Mississippi Republican made his remarks in a 40-minute taped interview conducted by Armstrong Williams for the America's Voice network, a cable television network. The interview—part of a series on some of the nation's political leaders—was timed for Father's Day and is scheduled for broadcasting over the weekend or next week.

Mr. Lott and Mr. Williams explored a range of social topics from Mr. Lott's thoughts on disciplining children (he said that on occasion he used a belt) to his opposition to abortion to his views on the role of men and women in marriage. He described his childhood growing up in Mississippi in the late 1950's and early 1960's as a "good time for America."

Mr. Lott has made his views on homosexuality known in the past, speaking out in 1996 against a bill, narrowly defeated by the Senate, that would have banned discrimination against homosexuals in the work place. At the time he called the legislation "part of a larger and more audacious effort to make the public accept behavior that most Americans consider dangerous, unhealthy or just plain wrong."

Asked today by Mr. Williams whether homosexuality is a sin, Mr. Lott replied, "Yes, it is." He added that "in America right now there's an element that wants to make that alternative life style acceptable."

Mr. Lott said: "You still love that person and you should not try to mistreat them or treat them as outcasts. You should try to show them a way to deal with that." He said his own father had had a problem with alcoholism, adding: "Others have a sex addiction or are kleptomaniacs. There are all kinds of problems and addictions and difficulties and experiences of this kind that are wrong. But you should try to work with that person to learn to control that problem."

With the investigation of President Clinton's connection to a former White House intern as a backdrop, Mr. Lott also spoke about his marriage to his wife, Tricia. He said he had never been unfaithful in their 34 years of marriage "because I love her and because I believe that's wrong."

Asked if he was ever tempted, he allowed: "Sure I was. I'm a human being." But he said he took great care to insure that his behavior was beyond reproach. When he travels in his Mississippi district with a woman who works for him as a field worker, he said, "I would never get in a situation where it was just the two of us in a car." He said he took that precaution "because just the appearance bothered me."

Mr. Lott said his opposition to abortion was taught to him by his mother. He remembered coming home from high school and telling his mother he thought abortion might be acceptable under certain conditions, only to see her drop a dish towel and burst into tears. "She started crying and said, 'If I have raised you to have no moral respect for human life then I have failed,'" he said.

Mr. Lott, who is a Southern Baptist, stepped carefully when asked about the Southern Baptist Convention's declaration that a woman should "submit herself graciously" to her husband's leadership. He said that he felt "very strongly" about his faith, but said he would speak of marriage roles "in different terms." Spouses, he said, should "serve each other."

[From the Washington Post, June 16, 1998]

LOTT: GAYS NEED HELP "TO DEAL WITH THAT PROBLEM"

Senate Majority Leader Trent Lott (R-Miss.) said yesterday that he believes homosexuality is a sin and that gay people should be assisted in dealing with it "just like alcohol...or sex addiction...or kleptomaniac."

While taping an interview for "The Armstrong Williams Show," a cable television program, Williams asked Lott if he believed homosexuality is a sin. The senator replied, "Yeah, it is."

Lott added: "You should still love that person. You should not try to mistreat them, or treat them as outcasts. You should try to show them a way to deal with that problem, just like alcohol...or sex addiction...or kleptomaniacs."

"There are all kinds of problems, addictions, difficulties, experiences of things that are wrong, but you should try to work with that person to learn to control that problem," he said.

Lott's comments show "how the extreme right wing has a stranglehold on the leadership" of Congress, said Winnie Stachelberg, political director of the Human Rights Campaign, the nation's biggest gay political organization. Stachelberg also said Lott is "out of step" with scientific studies of the causes of homosexuality.

Some groups believe homosexuality is a chosen lifestyle and have searched for a "cure" for being gay. Many in the gay community, however, insist that homosexuality is a matter of biology.

"The medical community, the mental health community for 20 years now has