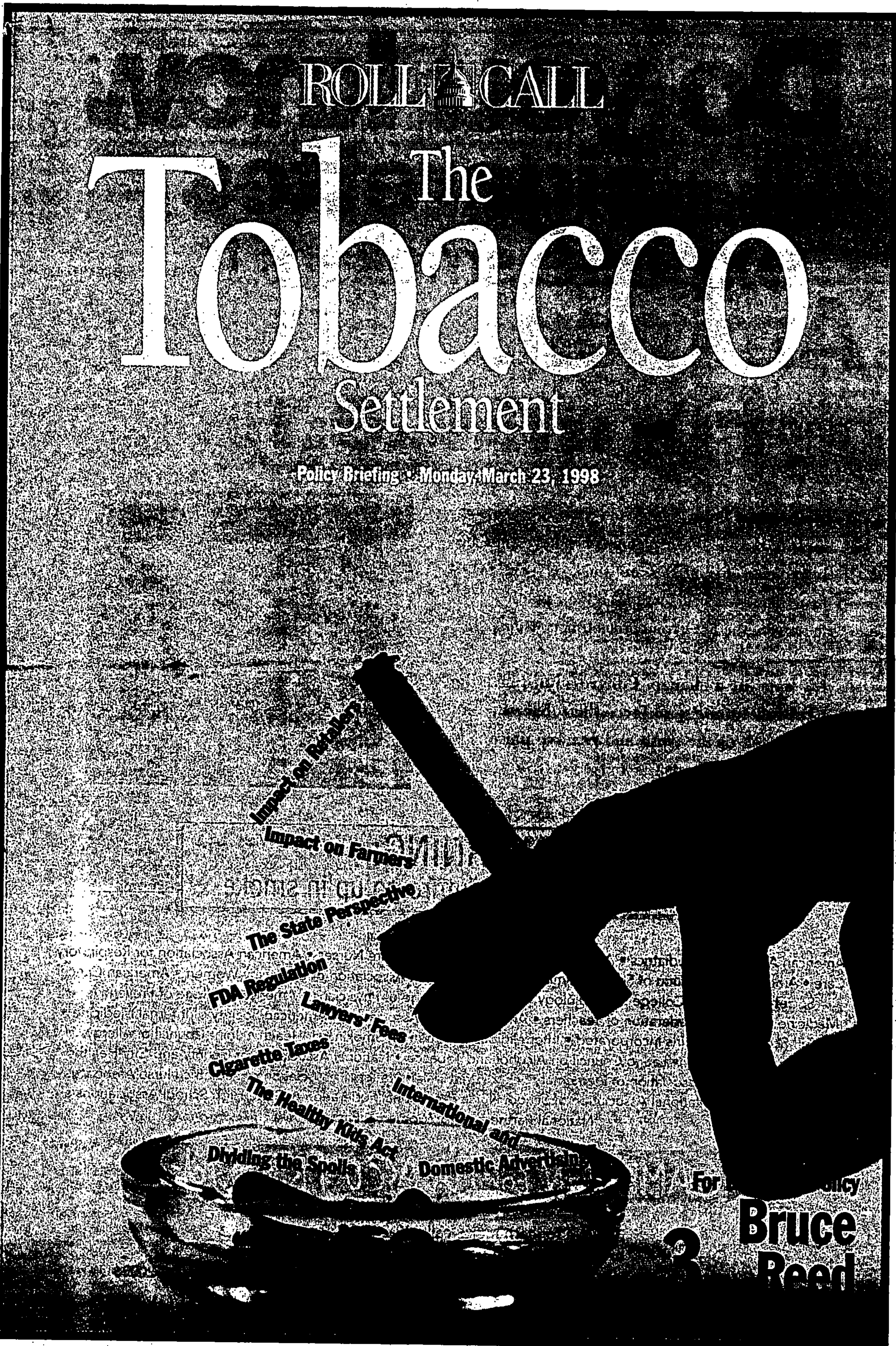

Photos by Maureen Keating

Tobacco Sett Sen Vote Count — EW

Do you know that cigarettes expose smokers to Ammonia, Arsenic and Formaldehyde?

You would if these ingredients were in cookies or aspirin. But the tobacco companies have kept the ingredients of cigarettes and smoke a secret for more than forty years and used their political power to prevent the FDA from protecting consumers.

It's time for a change. Congress must give the FDA full authority to force the tobacco companies to tell us the truth and remove poisons from their products.

WARNING:
Don't let America's future go up in smoke.

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Bruce Reed: 'All the Planets Are in Alignment To Pass More Sweeping Tobacco Legislation This Year'

Assistant to the President for Domestic Policy Believes Reform Must Come in a Comprehensive Bill

The Roll Call Q&A

Photo by Maureen Keating

In a March 16 interview with Roll Call, White House domestic policy adviser Reed discussed the possibility of Republicans protecting tobacco companies: "I think it's a shame that some see this as a political issue when so much is at stake."

L CALL: *What do you think the legislative situation is? What are the chances of getting a bill this year?*

BRUCE REED: I think we have a very good chance of passing tobacco legislation this year. There are encouraging signs of bipartisan progress, with the earliest movement on the Senate side. I think, in the end, there are too many members of both who want to get something here for it not to happen.

CALL: *But it's very complicated.*

A comprehensive solution to youth smoking touches on a lot of issues and crosses a lot of committee jurisdictions. So it's somewhat complicated, although there is a general public health consensus on how to address most of the issues, so if Congress wants to get it done, they can get it done relatively quickly.

L CALL: *What do you think the biggest sticking points are?*

REED: I think that the first decision that everyone needs to make is to unite behind the idea of a comprehensive bill and not try to solve this in a piecemeal way. In order to bring youth smoking down, we've got to raise the price, we've got to give the [Food and Drug Administration] the authority it needs, we need to help the tobacco farmers, and we need to make some public health investments in research and counter-advertising and other areas that should attract votes.

LL CALL: *The Republicans had talking about just a small bill. what's wrong with doing this incrementally?*

REED: We think that, first of all, without a significant increase in the price of cigarettes, we won't see a in youth smoking. Second, we it would be a real mistake to a historic opportunity. All the are in alignment to pass more sweeping tobacco legislation this year.

L CALL: *What legislation is the Administration backing?*

REED: We have praised about bills so far: the Conrad bill, the Fazio bill, and the Harkin-Chafee-Graham bill, and they're all strong, tough measures to reduce teen smoking. We have some differences with the Harkin-Chafee bill over how they choose to spend the money. Their bill does not fund class size child care; it gives money to the and it gives them some guidance in that direction but not as firm as we would like. The Conrad bill is a very good bill. The Fazio bill is modeled on the Conrad bill.

ROLL CALL: *Now, one criticism I've heard is that the Administration wants to raise the tobacco price $1.50 a pack over a ten-year period, and some of the anti-smoking people say that the way to stop teens from smoking is to raise it fast, — much faster than ten years. Are you amenable to changing that pace?*

REED: Our budget assumes a significant increase over the next five years — in the neighborhood of $1.10 to $1.25 — and we think that it's important to have an initial price shock and that there needs to be serious performance incentives in the legislation to make sure that if the first set of price increases weren't enough to reduce youth smoking that there are penalties that force the industry to raise the price further. By our estimates, the President's plan would stop three million children from taking up the habit over the next five years and we could save one million premature deaths as a result. But, if Congress wanted to increase prices more quickly we wouldn't object to that.

ROLL CALL: *What is your impression of the way the Republican leadership has been addressing this issue?*

REED: There hasn't been much activity on the House side. We've had some good discussions with [House Commerce] Chairman [Tom] Bliley [R-Va], but I don't think we have a clear sense of what the House Leadership would like to do on this issue. In the Senate, the Majority Leader has asked Senator [John] McCain [R-Ariz] to take the lead in this matter and we are working closely with his committee. We've had good discussions with the leadership but nothing close to real talks about where they stand on the issues.

ROLL CALL: *Republicans historically have received millions of dollars in campaign contributions from tobacco companies. One would guess that if nothing happens they would be vulnerable to charges that they protected the industry. What do they have to do to avoid that charge?*

REED: I think the best course for them is to pass sweeping legislation that can save one million lives. I think it's a shame that some see this as a political issue when so much is at stake.

ROLL CALL: *Is it necessary in order to pass a bill to give some sort of protection to the tobacco industry, realistically?*

REED: We said all along that was not our preference, but our primary interest was in making sure the legislation was comprehensive and [includes] the President's five principles, that liability relief should be weighed against the public health legislation can do and that should be the last issue on the table, not the first.

ROLL CALL: *For the record, repeat the President's five principles?*

REED: One, a comprehensive plan to reduce smoking by raising the price of cigarettes up to $1.50 a pack over the next ten years through a combination of payments. Two, reaffirm the FDA's authority to regulate nicotine.

Three, change the way the industry does business by having tough performance incentives and document disclosure. Four, meet other important public health goals such as protection against second hand smoke and investing in research. Five, make sure tobacco farmers and their communities are looked after.

ROLL CALL: *Is the liability issue going to be the hang-up here?*

REED: It has certainly attracted the most attention and is the most politically charged issue, as I said. First we should have a debate about how we are going to reduce youth smoking and what's the best package to do that.

ROLL CALL: *Senate Republicans have talked about devoting any revenue from tobacco price increases to Medicare. In the House they are talking about using it for tax cuts. If you could get the kind of charges you are looking for to raise the price so kids wouldn't smoke, would you be willing to consider other uses than the Administration's preferences for that money?*

REED: Our view is that this is not first and foremost about the money. We ought to first reach agreement on how to cut youth smoking and on a substantial price increase. [Then] we can have a healthy debate on the best way to allocate any resources that are raised. We have some real concerns about where the Republicans may be heading. A $1.50 price increase that goes to pay for tax cuts is going to be extremely regressive. A resolution that pays for Medicare but shuts out National Institutes of Health and child care spending is the wrong way to go.

ROLL CALL: *What kind of trouble, if any, will you have securing authority for the Food and Drug Administration over tobacco?*

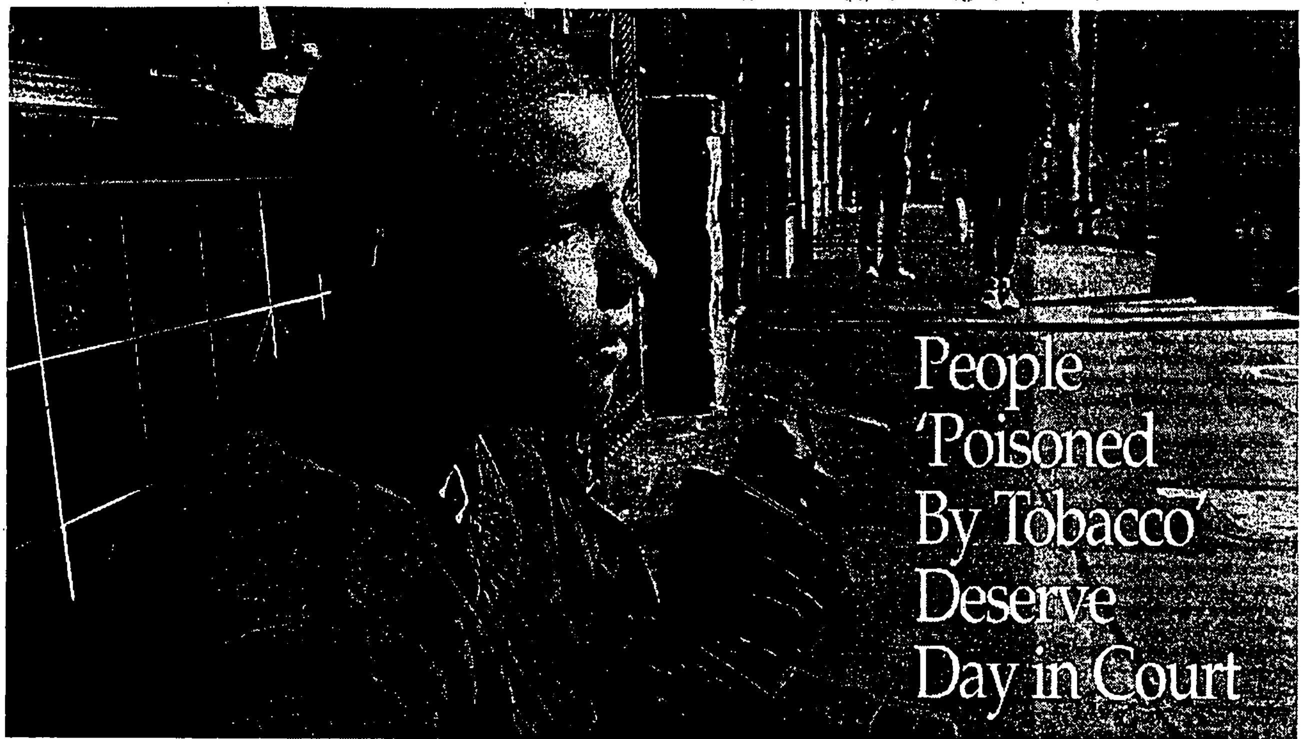
REED: It is the number-one priority for the public health community and we are going to hold a firm line on it. Their are some on the Hill who've raised outdated concerns about [how] the FDA works or have some fear that the agency is going to overstep its bounds. Let me just reject those arguments. At the end of the day, if Republicans are serious about enacting tobacco legislation, they shouldn't have any trouble giving the FDA the tools to regulate this product.

ROLL CALL: *Are there any particular problems you see in aiding tobacco farmers?*

REED: I think it has taken a while for farmers from different areas to reach consensus on the best answer, but I think there is a strong desire to do the right thing and it shouldn't be hard to do that.

ROLL CALL: *Some Republicans don't want to reward trial lawyers who are beneficiaries of the global tobacco settlement. What is the Administration's view on what the trial lawyers should get out of it?*

REED: That's not the issue that got us into this. We believe any fee should be reasonable and reflect the effort and risk for the lawyers involved. I think that we can work out a fair solution.



People 'Poisoned By Tobacco' Deserve Day in Court

AP Photo

"The basic marketing strategy of the tobacco industry has been, and remains today, 'Addict them early,'" writes Sen. Edward Kennedy.

By Sen. Edward Kennedy

Congress has a historic opportunity this year to protect current and future generations from nicotine addiction and early death caused by tobacco. For decades, the tobacco companies have shown a flagrant disregard for the health and well-being of the American people. The evidence of their wrongdoing is already overwhelming, and additional proof of the monumental misconduct of this industry continues to emerge each day.

This industry has conspired to conceal the health danger inherent in smoking. This industry has manipulated the nicotine in its products to make them even more addictive. And, most appalling of all, this industry has targeted generations of our children for a lifetime of addiction.

Tobacco companies know all too well that very few people — less than 10 percent of all smokers — start smoking as adults. The basic marketing strategy of the tobacco industry has been, and remains today, "Addict them early." Children who start smoking in their early years become customers for life — lives all too often shortened by smoking. Of the 3,000 children who begin smoking every day, 1,000 will die prematurely from smoking-induced illness.

The children of working families have been particularly hard-hit by this national plague. Blue-collar workers and their families have traditionally been targets of the tobacco industry's marketing. As a result, smoking rates in these families are twice the national average.

Both in Congress and in the courts, this will be the decisive year. We must stop this immoral industry from marketing to our children. And we must make the tobacco companies compensate their victims for the enormous harm that their products have caused.

During the past year, there has truly been a national awakening on this issue. As never before, the American people are focused on the harm that the tobacco industry has done. The dramatic revelations of corporate misconduct which have emerged from the industry's own files have truly shocked the national conscience. The harshest indictments of the tobacco companies are written in their own words, long kept secret, but now revealed for all to hear. From a 1981 Philip Morris strategic planning document:

"Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. Because of our high share of the market among the youngest smokers, Philip Morris will suffer more than the other companies from the decline in the number of teenage smokers."

From an R.J. Reynolds Tobacco Company document entitled "Planning Assumptions for the Period 1978 to 1987":

"Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR-T must soon establish a successful new brand in this market if our position in the industry is to be maintained over the long term."

Company records also detail elaborate efforts to chemically treat the nicotine in cigarettes to make it even more addictive than it naturally would be. All the while, these same companies were telling the American people that smoking is just a matter of free choice.

Industry wrongdoing is not only a thing of the past. Today's tobacco executives pretend that there is a "new corporate culture." They claim that marketing to kids no longer occurs, but their actions tell a very different story.

These executives have not even discontinued the advertising ploys that were specifically designed to attract children. The Marlboro Man still appears in magazines and on billboards across America. Other cigarette brands similarly glamorize smoking in ways aimed at impressionable teens. We all see cigarette ads everyday, and we know that nothing has changed.

No industry in America has a worse reputation than tobacco. No industry in America has done more to deserve such a highly negative image.

Sen. Edward Kennedy (D-Mass) is the ranking member of the Labor and Human Resources Committee.

The state attorneys general who first brought suit against the tobacco industry deserve a great deal of credit for helping to expose the gross and substantial misconduct of this industry. However, the settlement which a number of them negotiated with the tobacco industry is fundamentally flawed. When word of these negotiations first became public April, 1997 I spoke out on the Senate floor against any agreement that would give this industry de facto immunity from lawsuits.

I said then, "It would be unconscionable to deny people poisoned by tobacco their day in court. Each year, millions of Americans learn that they have diseases caused by smoking. In too many cases, it is beyond our power to restore their health. We must never permit the tobacco industry to extinguish their right to justice as well." Unfortunately, that is what they agreed to do in the June 20, 1997, settlement.

That settlement would have banned all class actions by tobacco victims against the industry. These suits are often the only effective way individuals can litigate against corporate giants. It would have banned all punitive damages. If ever we have seen an industry against which punitive damages are warranted, it is the tobacco industry. It also would have banned litigation by organizations which incur enormous costs treating the tobacco-induced illnesses of their members. These concessions to the industry were terribly wrong, and Congress should decisively reject them. I will stand firm in my desire to keep the courthouse door open. Simple justice requires nothing less.

Blue-collar workers and their families have traditionally been targets of the tobacco industry's marketing. As a result, smoking rates in these families are twice the national average.

I believe that Congress will reject the June 20 settlement. As a result of all the revelations, there is now very little support for giving the tobacco industry that type of litigation protection. Even some of the industry's traditional supporters appear to be distancing themselves from the settlement.

While the settlement lacks support in Congress, the concept of comprehensive tobacco control legislation is very much alive. Last November, I introduced legislation which would increase the price of cigarettes by $1.50 a pack over three years and then index the price for inflation. Public health experts tell us that increasing the price of cigarettes is the most effective way to deter youth smoking. An increase of at least $1.50 is needed if we are to reach our national goal of reducing youth smoking by 60 percent within a decade.

My legislation also provides for: 1) full and unfettered jurisdiction by the Food and Drug Administration over tobacco products, 2) stiff financial penalties for companies that fail to substantially reduce sales to youth, 3) restrictions on industry marketing and advertising, 4) explicit warning labels, 5) a large-scale counter-advertising and anti-smoking education campaign, 6) licensing and monitoring of all sellers to prevent the sale of cigarettes to minors, 7) protection from involuntary exposure to second-hand smoke, and 8) assistance for smokers attempting to quit smoking. The legislation would not give the tobacco industry any protection from private litigation. Congress must be guided by what the public health requires, not what the industry desires.

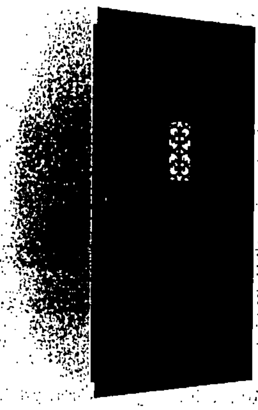
These principles for effective tobacco control legislation have been steadily gaining support within Congress. They are reflected in the legislation drafted by the Senate Democratic Task Force on Tobacco Policy, chaired very ably by Sen. Kent Conrad (D-ND). That legislation has now been co-sponsored by a substantial majority of the Democratic Caucus. It has the support of President Clinton, Vice President Al Gore, and House Democratic leaders. Some Republican Members are also moving closer to our position. I believe that by late spring, legislation containing these principles will be embraced by a bipartisan majority of Senators.

We have made enormous strides in the battle to protect our children against tobacco — the number-one preventable cause of disease and early death. Legislation that appeared to be only a distant dream not long ago is now a very real possibility. It can happen this year with your help. But it will only happen if we make it happen.

While dramatically weakened, the tobacco industry still controls enormous financial resources. It is a formidable adversary. If the American people maintain their current focus on controlling tobacco, refuse to settle for half-way measures, and hold the Members of Congress accountable on this issue, we will see landmark legislation enacted into law this year.

The legacy of this battle can be millions of healthier children leading longer lives. It is a battle well worth fighting.

Thank You For Opening The Door.



Effectively reducing underage tobacco use requires a national effort involving many parties. That's why it was so important that Congress opened the process to all involved in this effort. This open forum ensures that all voices will be heard and Congress can craft a national policy that fairly allocates responsibilities and consequences among all of us who have a role in eliminating tobacco use by kids.

The retail community is prepared to accept our share of the responsibility. That's why we are squarely behind Senator Gordon Smith's community-oriented approach for preventing access and eliminating consumption of tobacco by our children. Senator Smith's bill, S. 1238, prescribes responsibilities for retailers, store employees, law enforcement, families and the kids.

As retailers, we are on the front-line in the effort to prevent tobacco use by minors. We thank Congress for listening to us and giving us an opportunity to help develop an effective national policy to protect the youth of America.

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The Case for the Original Global Tobacco Settlement

Critics Call It an Industry 'Giveaway,' But Sen. Hatch Wants to 'Take Advantage' of the Companies' Offer

By Sen. Orrin Hatch

There is little question that youth smoking is a profound and costly problem, whose incidence is on the rise in virtually every state across this nation.

For years, neither the American people nor their elected representatives have possessed the will to change that situation, despite alarming statistics indicating that 3,000 children start smoking each day.

Our failure to get tough on tobacco is true for many reasons, prominent among them the fact that farming, marketing, and using tobacco products has been a way of American life since this country began. Today, almost 50 million people in our country use tobacco products, many of them at the lower end of the economic scale.

The landscape dramatically changed on June 20, 1997, when a courageous cadre of state attorneys general announced that they had hammered the tobacco industry into agreement on a bold new initiative to reduce teen smoking.

Although that proposed global tobacco settlement is sometimes denounced as a "giveaway" to the industry, serious study of its provisions indicates quite the contrary. In fact, its stringent financial penalties could ring the death knell for the tobacco industry in America. Let's take advantage of the tobacco companies' offer.

Following hours and hours of review of this issue, including seven hearings in the Senate Judiciary Committee, I have concluded that it is abundantly clear the proposal put forth by 40 states almost a year ago represents the best chance we have had in a generation to curb the widespread use of an extremely deadly, addictive product, which is seriously harming our youth and shortening their lives. I believe that the framework of that settlement should provide the basis for comprehensive anti-addiction, anti-tobacco legislation which can be enacted this year.

After consultation with other leading committee chairmen in the Senate, House Members, and the Clinton Administration, I have developed a core set of ten essential elements which I believe should be included in any bill.

First of all, we should aim for anti-tobacco legislation that is comprehensive in nature. Public health experts have testified that such a thorough, wide-ranging approach has the best chance of being successful in combating tobacco use.

Second, the legislation should include flexible, community-based funding for public health programs, such as tobacco use prevention and cessation and counter-advertising.

Third, it must contain broad constitutionally permissible mechanisms to limit advertising, which are a key ingredient in any successful anti-tobacco-use program.

Fourth, the program must also include well-defined liability limitations, including settlement of the state and local suits. Although this has been widely criticized as unwise, unachievable, a "giveaway," or all of the above, it is not.

Fifth, the bill must include substantial new funding for biomedical research which is really the key to discovering why people use addictive substances like tobacco, and how to treat the numerous harmful effects of its use, such as cardiovascular disease and stroke.

Sixth, we should insert a new program to transition farmers to non-tobacco-related livelihoods. There is virtually no opposition to this idea in Congress or the Administration.

Seventh, an essential component is inclusion of a strong mechanism to ensure continued oversight of the tobacco industry, such as the "look-back" penalties included in the June 20 proposal. Without that oversight, we run the risk of allowing an industry which has knowingly marketed its harmful products to our youth to continue to play its dirty tricks. That would be unconscionable.

Eighth, although I believe that current legal authority for Food and Drug Administration regulation of tobacco products is at best murky, I would not be opposed to inclusion in a comprehensive bill of a provision allowing the agency jurisdiction in this area. I believe any FDA provision should be drafted as a new section to the Food, Drug, and Cosmetic Act, since it is hard to argue that tobacco products are in any way safe and effective, the critical tests for current-law regulation of drugs and medical devices. I believe that a good starting point for development of this language would be inclusion of the provisions from the Jeffords-Hatch bill, S. 1648.

Ninth, the scope of the bill should be limited to tobacco-related activities. There will be strong pressure on Members on both sides of the aisle to expand the bill to fund other worthy or politically popular programs. However, I must caution that any attempts to broaden use of the funds beyond tobacco will dilute the effectiveness of the program and squander the opportunity we have to stop youth smoking.

Sen. Orrin Hatch (R-Utah) is the chairman of the Judiciary Committee.

And, finally, the bill should include establishment of a documents depository, which will assist in the dissemination of information the tobacco companies have kept secret for years and greatly enhance the likelihood that plaintiffs will succeed in future litigation.

I recognize that there is a great temptation to go with a "tax-and-spend" bill, and indeed many such bills have either been proposed or are on the drawing boards. The flaw in this logic is that you cannot tax away the companies' First Amendment rights, and therefore such an approach would not include important advertising restrictions.

There has been much discussion about the wisdom of drafting a bill which the tobacco companies agree to. I do not advocate such a bill. However, to be realistic, unless all the parties who were originally at the bargaining table and who made the proposed settlement possible do not have some level of acquiescence to the bill, however reluctant, the fact is that we risk jeopardizing enactment of a substantial program and its successful implementation.

The settlement's stringent financial penalties could ring the death knell for the tobacco industry.

I aim for a program that can be implemented now, not litigated for years. Let us not make the lawyers rich; let us stop kids from smoking.

By necessity, this requires some measure of liability reform, the shape of which Congress needs to actively debate. With such provisions, we will lessen the possibility of a continued, unstable litigation environment with unpredictable funding streams for any new, comprehensive program. By earmarking up to one-third of total payments we are increasing the likelihood that people injured by smoking who prevail in court will be paid, especially with the information contained in the proposed document depository.

Inclusion of limited liability will also decrease the likelihood that companies will merely seek the protection of a bankruptcy court to avoid financial responsibility. Bankruptcies could jeopardize funding, give the larger companies monopoly or near-monopoly status, encourage smaller new companies with no liability history to enter the market, dramatically increase the possibilities for black market sales, and increase imports from neighboring countries with less regulation than in the United States.

Agreement to liability provisions would also guarantee that a comprehensive program with broad advertising restrictions is implemented. Companies have already testified to Congressional committees that they will not voluntarily yield their First Amendment rights. This should not be perceived as a threat as much as good business sense for companies which are marketing a legal product.

On Nov. 13, 1997, I introduced draft legislation, the Placing Restraints on Tobacco's Endangerment of Children and Teens Act (PROTECT), S. 1530, which meets these ten key tests and which I hope will provide the basis for a bipartisan, bicameral discussion leading to enactment of comprehensive anti-tobacco legislation this year.

There are many reasons such a bill should be enacted this year, but none more compelling than the gravity of the statistics themselves. Can the United States really continue to see one-third of its youth die prematurely from tobacco use? To me, the answer is clearly "no," and it is time to do something about it.

As Mississippi Attorney General Mike Moore observed about the tobacco companies recently, we have to get over being mad and get even. This is our chance. Let's not blow it.

AP Photo

Children sit on toy tractors loaded with miniature bales of tobacco as they ride a float in a Kentucky tobacco festival. Sen. Hatch writes that after conducting seven hearings on the global tobacco settlement, he has concluded that it represents "the best chance we have had in a generation to curb [smoking]...which is seriously harming our youth and shortening their lives."

THE TOBACCO SETTLEMENT

What's in it for you? What's in it for us?

Last June, following three months of intensive negotiations between the tobacco industry, attorneys general from around the country, plaintiffs' lawyers and representatives from the public health community, a comprehensive agreement about tobacco was announced. The agreement now before Congress seeks to reduce underage tobacco use, while protecting the right of adults to use tobacco.

The agreement imposes unprecedented legal and financial burdens upon us, and subjects us to regulatory changes.

Even though these recommendations place extensive demands upon our industry, we are willing to accept them in order to end conflicts surrounding tobacco products.

Let's look briefly at why the proposals are good for all concerned.

What's in it for the public:

- A massive and sustained assault against underage smoking.
- Industry payments of billions of dollars that can be spent on health care.
- Larger, more prominent warning labels on cigarettes.
- A multibillion-dollar anti-smoking public education program, including $500 million a year for an independently managed campaign aimed at preventing young people from smoking.
- A new $25 billion trust fund for tobacco-related medical research.
- Industry-funded smoking cessation programs for adults.
- A ban on outdoor advertising and on the use of cartoon characters or human figures in other advertising.
- A ban on cigarette vending machines.
- Regulation of nicotine and tobacco products by the U.S. Food and Drug Administration, backed by severe penalties for violations.
- Disclosure of all health-related research.
- New federal restrictions on secondhand smoke in public places.
- Individuals can still sue tobacco companies for all actual damages, and for punitive damages related to future conduct.

What's in it for the industry:

If the settlement contained no benefits for our industry, or threatened the very existence of our operations, we could not accept it. While the current proposals will impose massive financial obligations, advertising and marketing restrictions, and stringent regulations upon us, they also mean our industry will benefit in certain ways:

- Regulatory guidelines will clearly define what the industry may and may not do.
- Payments of any legal judgments against the industry are capped on the order of $5 billion <u>each year</u> with any excess judgments carrying over for payment the next year. The industry is required to pay even if it <u>prevails</u> in all litigation against it.
- Lawsuits are barred against persons other than the tobacco manufacturers, such as distributors, retailers, farmers, suppliers and stockholders.
- Because the industry will pay <u>$60 billion</u> to settle punitive damage claims, such claims <u>for past conduct only</u> are being barred:

This $60 billion will be used for a wide array of public health initiatives rather than for windfall payments to individual litigants and their lawyers.

- For payments by the industry of hundreds of billions of dollars <u>in perpetuity</u>, the attorneys general's suits and similar suits are settled, and mass suits – such as class actions, which could exhaust the settlement judgment fund and delay payments to individual plaintiffs – are barred.

But the industry is NOT getting "immunity":

- Notwithstanding the industry payments, individual smokers will <u>still</u> be able to sue tobacco companies for actual damages and to receive <u>full</u> compensation for any wrongful injuries to their health.
- The industry remains fully exposed to punitive damage claims related to <u>future</u> misconduct and to severe federal regulatory penalties.
- The industry receives no protection of any kind from criminal prosecution for any misconduct.

As a result:

- Tobacco companies will be able to operate in a more stable environment, and continue to employ hundreds of thousands of American workers.
- Tobacco companies will continue to make valuable contributions to the U.S. economy, to provide hundreds of thousands of jobs, and to pay billions of dollars in taxes.
- Tobacco companies will operate in a strictly regulated environment, with strong compliance provisions and severe penalties for any violations. We know how crucially important this is to us and all of America.

What happens now?

The provisions that we have accepted in the agreement will have far-reaching effects upon our industry. Indeed, we have made concessions that give up our constitutional rights.

We want to see the agreement become law. But not at the expense of adults who choose to use legal tobacco products, our shareholders, or the hundreds of thousands of Americans employed by the tobacco industry.

For example, some are now calling for immediate and massive increases in excise taxes on tobacco products. These taxes are not only unfair to millions of our customers, but also will have a devastating impact on the hundreds of thousands of people who work in our industry. Moreover, simply passing new excise taxes does nothing to further the comprehensive nature of the settlement.

All sides can find fault or favor with individual features of the settlement. But the President and Congress now have a unique opportunity to chart a new direction by passing comprehensive federal legislation on a national tobacco settlement. The whole of the settlement is much greater than the sum of its parts.

We're ready to work to make the agreement final and to put an end to decades of fruitless conflict, where no one wins.

To see the entire agreement and to learn more about it, visit our Web site at: <u>www.tobaccoresolution.com</u>.

Philip Morris Incorporated • R.J. Reynolds Tobacco Company
Brown & Williamson Tobacco Corporation • Lorillard Tobacco Company

Our Plan Makes Fastest Cut of Kids' Tobacco Use: 50 Percent in Three Years

By Sen. Tom Harkin,
Sen. John Chafee,
and Sen. Bob Graham

The United States faces a public health crisis of unparalleled proportions. Nearly 400,000 Americans die every year of tobacco-related illnesses — more deaths than those caused by alcohol, car accidents, suicide, AIDS, murder, illegal drug use, and fire combined. In all, tobacco-related health costs will top $50 billion this year.

Worse, an astounding 3,000 kids start smoking every day. Fully 1,000 of them eventually will die prematurely as a result of the habit. Unfortunately, the only response from the tobacco industry has been a systematic effort of distortion and deceit to hook kids and hide the facts. Now is the time for Congress to act.

The only way to achieve dramatic reductions in youth smoking over the long term is to act comprehensively. And the only way to pass tobacco legislation in 1998 is to make sure that it has support from the public health community, the President, and both sides of the aisle in true, bipartisan form.

> *The only response from the tobacco industry has been a systematic distortion and deceit to hook kids and hide the facts. Now is the time for Congress to act.*

Our Kids Deserve Freedom From Tobacco Act meets all of these tests. We were proud to have leaders in the public health community join us in announcing our plan last week. In addition, two of our nation's leading public health advocates — former Surgeon General C. Everett Koop and former Food and Drug Administration Commissioner David Kessler — have called our proposal "tough medicine for a tough problem." President Clinton has also announced his support, characterizing the Kids Act as a "tough, strong bill."

Tobacco reform is the most important issue that Congress will grapple with in 1998. Unfortunately, the tobacco debate in Washington has thus far been largely partisan. That's why we've joined forces — across party lines — to introduce a bill that will significantly increase the likelihood that reforms will be made this year.

The Kids Act would cut tobacco use by kids in half over the next three years. That's the sharpest and fastest reduction achieved by any bill proposed to date. Our bill would achieve these life-saving reductions through a comprehensive and aggressive series of reforms:

Sen. Tom Harkin (D-Iowa) is a member of the Labor and Human Resources Committee. Sen. John Chafee (R-RI) is chairman of the Environment and Public Works Committee. Sen. Bob Graham (D-Fla) is a member of the Finance Committee.

• Price increase. Public health experts agree that the most effective method for reducing youth tobacco use is to increase the price of tobacco products significantly. Our proposal would raise the price of a pack of cigarettes by $1.50 over two years.

• Annual youth reduction targets. The Kids Act would make the tobacco industry accountable for achieving a significant reduction in tobacco use among children. Our proposal would set an ambitious yet realistic schedule for reducing the rate of youth smoking by 65 percent over the next ten years. It would also impose tough, escalating, industry-wide and company-specific penalties for failure to meet these annual targets.

• State performance bonus payments. The June 1997 tobacco agreement and pending legislative initiatives fail to provide strong economic incentives for states and communities to decrease tobacco use among children. The Kids Act would establish a $500 million annual "performance bonus pool" to reward states that meet or exceed the reduction targets within their own borders.

• Marketing and advertising reforms. The tobacco industry spends an estimated $5 billion per year on marketing and promotional activities — much of it targeted to children in the form of characters like Joe Camel and the Marlboro Man. The Kids Act would fundamentally alter tobacco marketing and advertising practices.

• FDA authority. The addictive, disease-causing nature of tobacco products makes it critical that we ensure full and appropriate regulation of the industry. In addition to establishing new advertising and marketing restrictions, the Kids Act would assure that the FDA has the authority to monitor and regulate the manufacture and distribution of tobacco products, promote the development of safe alternatives to tobacco, and conduct research.

Importantly, the FDA would not be required to overcome special burdens or procedural hurdles in its regulatory activities. The Kids Act would classify nicotine as a drug and tobacco products as drug-delivery devices.

• Prevention in communities and schools. Experts agree that a comprehensive slate of local public health activities is needed to stop children from taking up this deadly habit. The Kids Act would provide $1.4 billion to states for community and school-based prevention activities.

• Counter-advertising. Research findings show that well-designed, counter-advertising initiatives help to reduce teen smoking. Accordingly, the Kids Act would provide $750 million annually to fund a nationwide anti-youth smoking campaign.

• Smoking cessation. While the primary emphasis of our proposal is to reduce tobacco use among children, the more than 48 million adult Americans who currently smoke deserve and need help in kicking the habit. The Kids Act would provide $1.5 billion annually for programs designed to enhance existing employer-based initiatives. This funding would also be used to assist uninsured and under-served populations.

• National Fund for Health Research. We are on the threshold of major breakthroughs in the treatment and prevention of cancer and other diseases. The Kids Act would greatly expand medical research by establishing a National Fund for Health Research, adding more than $3 billion per year to the National Institutes of Health budget, and providing $625 million annually for a significant expansion of tobacco prevention and cessation research.

• Victims compensation. The Kids Act would fully preserve the rights of individuals and groups to utilize the civil justice system to recover tobacco-related damages. Unlike the June 1997 tobacco agreement and some legislation currently pending in Congress, the act would not provide any immunity to the tobacco industry. Given the industry's past behavior, such liability protections cannot be justified or condoned. Furthermore, our legislation would provide no limitations on criminal prosecution of the tobacco industry.

The Kids Act would ensure reliable industry payments, so that the industry cannot use the excuse of financial woes to avoid its annual $25 billion commitment. As such, it would require that tobacco firms deposit $4 billion per year into a "National Victims Compensation Fund." Money from that fund would be used to pay victims who settle claims or win judgments against the industry. The industry would also have to pay up to $4 billion per year in any additional claims — a maximum total of $8 billion per year.

• Settlement of state suits. Forty state attorneys general have brought suits against the tobacco industry to recover costs incurred from tobacco-related illnesses and other damages. The act would provide states the opportunity to settle their suits in exchange for funding from the National Tobacco Trust Fund.

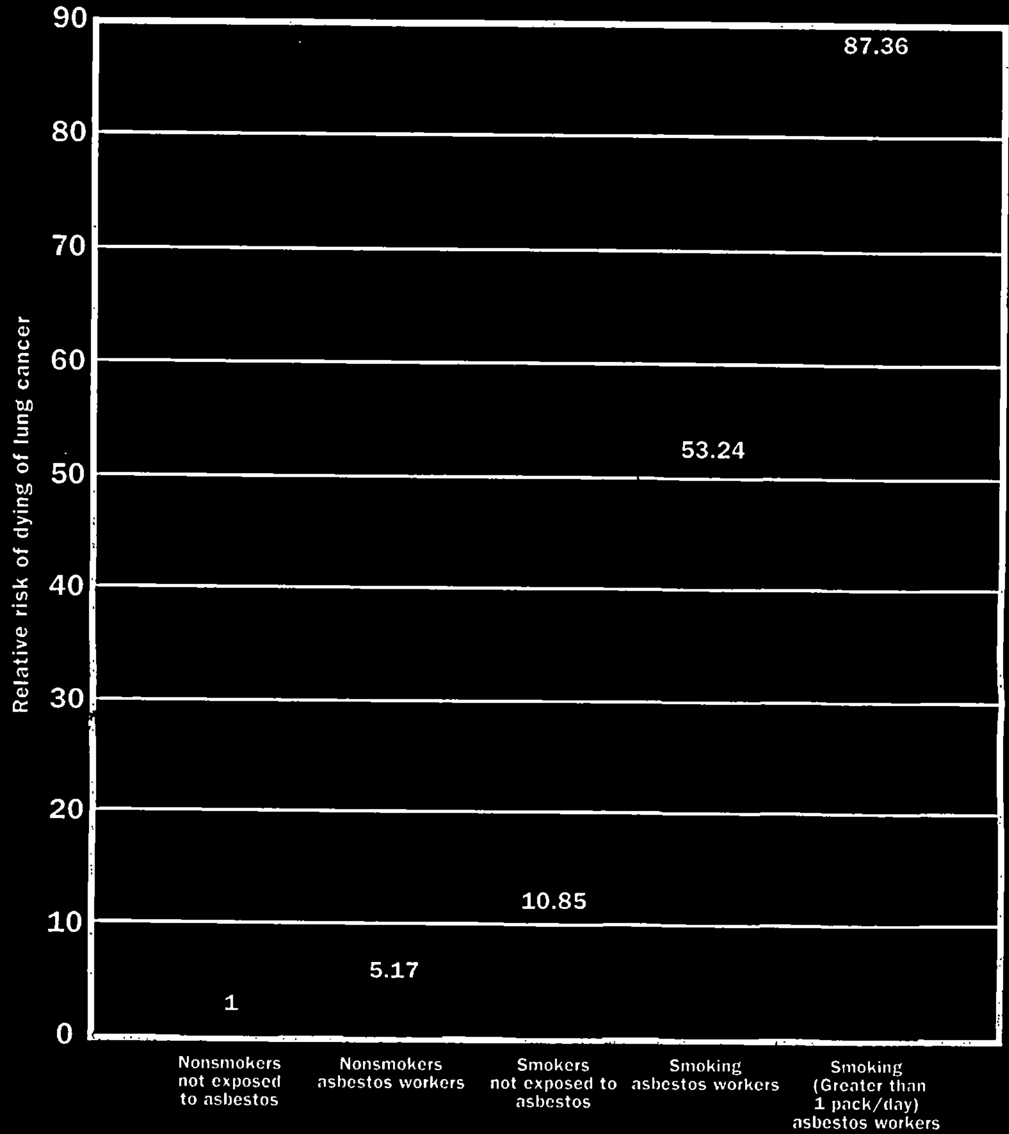
• Ending tobacco industry secrecy. The act would require that tobacco manufacturers and their agents disclose all private, internal documents relating to the health effects, safety, and marketing of their products to children. As a precondition of eligibility for the annual cap on awards and settlements, tobacco companies would be required to waive attorney-client privilege on key documents.

• Help for tobacco farmers and their communities. The Kids Act would provide $15 billion for compensation, income support, and transitional assistance to tobacco farming families, and for economic development and related assistance in tobacco-dependent communities.

• Cleaner indoor air. Three thousand Americans die each year of lung cancer caused by second-hand smoke and 15,000 children under 18 months of age are hospitalized with respiratory infections related to this exposure. The Kids Act would provide strong protections against exposure to second-hand smoke. In addition, our bill would require Congress to comply with the "no smoking" policies already in place throughout the executive branch.

We have a golden opportunity to pass comprehensive tobacco legislation in 1998. Since the window for action is closing, America's kids are counting on us to seize this opportunity. We look forward to working with our colleagues and the Administration on a bipartisan, bicameral basis to make sure that our children's lives are not cut short by tobacco use.

SMOKING IS FAR MORE LETHAL TO ASBESTOS WORKERS THAN TO OTHER SMOKERS.



Source: Report of the Surgeon General-1985

Seventy percent of asbestos manufacturers have gone bankrupt. They have paid billions for smoking-caused harm while the tobacco companies have paid nothing. • Many asbestos workers receive as little as ten cents on the dollar from those bankruptcies. • Congress: any tobacco bill should make tobacco companies begin paying their fair share to asbestos workers. • Please don't make the asbestos litigation crisis worse. • There is a better way. • Establish a Tobacco Asbestos Trust to permit asbestos-tobacco victims to recover for their unique smoking-caused harm without more wasteful litigation.

DON'T LET ASBESTOS WORKERS DOWN AGAIN. MAKE TOBACCO PAY ITS SHARE.

The Asbe Victims of America, International Association of Heat & Frost Insulators & Asbestos Workers, The Alliance For A Fair Tobacco Settlement, Building Construction Trades Department, AFL-CIO

Cap Lawyers' Fees in Tobacco Deal at $125 Per Hour

'Rapacious Claims' of Attorneys, Writes Faircloth, Belie the Contention That This Settlement Is for Health Care

By Sen. Lauch Faircloth

I recently introduced S. 1570, the Public Health Funds Preservation Act, to limit attorneys' fees paid on behalf of states and other plaintiffs under a tobacco settlement to $125 per hour.

This is the rate that Congress adopted for the Equal Access to Justice Act, which governs attorneys' fees in lawsuits brought against the federal government, and I believe that most Americans will agree that this is indeed generous compensation.

The act also requires attorneys to submit a detailed account of their time invested in the litigation, as well as to render a public disclosure of these records and their fee arrangements. The bill further obligates these attorneys to submit to the House and Senate Judiciary Committees a comprehensive record of the time and expenses for which compensation is sought.

The Public Health Funds Preservation Act will ensure that funds earmarked for the public health programs in the proposed tobacco settlement will not be diverted for excessive fees to a small band of trial lawyers. I believe that the spectacle of a limited number of trial lawyers lined up to collect billions of dollars from a tobacco settlement — the largest legal payment in history — will drive Congress to enact a fees cap.

I was shocked that one trial lawyer conceded that, although his fees "might seem a little obscene," he insisted that "we have to come up with a way to compensate everyone."

AP Photo

Mississippi AG Mike Moore (right) discusses the tobacco settlement while his team of trial lawyers looks on. Sen. Faircloth writes that the "spectacle of a limited number of trial lawyers lined up to collect billions of dollars" will drive Congress to enact a fees cap.

It will require little effort to compensate lawyers at $125 per hour, rather than at "obscene" rates. Since I believe that most Members of Congress will not resist this rate as excessive, the lawyers can rest assured that Congress will not oppose fair compensation for their efforts. This settlement is intended to fund a range of public health programs, and, consequently, lawyers' fees cannot be permitted to erode the funds earmarked for these public health initiatives. Of course, every dollar that goes to lawyers comes at the expense of these public health initiatives, and Congress must act to safeguard our priorities.

Officials in Florida, which settled its case against tobacco companies, estimate that some lawyers demanded fees that top $180,000 per hour. The lawyers involved in the settlement of the Florida suit sought a total of $2.8 billion — a 25 percent slice of the $11.3 billion state settlement — and their demands prompted the judge to declare that the proposed fee "simply shocks the conscience of the court." The rejection of their fee demands as "unconscionable and clearly excessive" gave little pause to the Florida trial lawyers, however, and these courtroom vigilantes filed liens to delay payments to the state until their fees were resolved and their stock portfolios thus enhanced.

The attorney general of Texas agreed to pay private lawyers close to $2.2 billion — a 15 percent cut of the estimated $15.3 billion settlement — and triggered a firestorm in his state. The gluttonous attitude of modern trial lawyers, and perhaps the specter of tens of billions of dollars in legal fees in the settlement, encouraged a trend towards increased judicial scrutiny of contingency-fee arrangements.

It was reported that a Tennessee court slashed the contingency fee upon realization that the arrangement generated an "unreasonable, exorbitant and improbable" rate of $950 per hour. That rate is offensive and excessive, but $180,000 per hour is incomprehensible, and the American public will not stand silent if Congress permits the trial lawyers in the tobacco suits to enforce these contingency-fee arrangements.

The contingency-fee arrangement — the vehicle that these trial lawyers intend to use to collect billions of dollars — was traditionally viewed as an unethical fee structure, and it remains illegal in England. The fee structure gives the lawyer a stake in the litigation, and thus creates a conflict between the lawyer and the best interests of his client — as well as between the lawyer as an officer of the court and the recipient of a financial windfall.

The United States, through a series of judicial and statutory changes, long ago approved the use of contingency fees in limited circumstances — a "necessary evil" — in order to encourage the access of poor people to the courts. However, it was a limited exception, and the ethical canons warned about the importance of court supervision to ensure that the fees remained reasonable. The Model Code of Professional Responsibility indeed states 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." Certainly, state governments can pay fixed fees, and it is irresponsible, both to the taxpayers and to the integrity of the legal system, to enlist an army of mercenary lawyers.

The payment of excessive attorneys' fees contradicts the public policies that undergird the settlement. I believe that, if trial lawyers succeed in their efforts to extract unreasonable fees from this settlement, these moneys will endow a litigation trust fund to finance frivolous lawsuits well into the next century. The result is clear: more lawsuits, more billable hours, more attorneys' fees.

It is an axiom of law, and, of course, good citizenship, that a lawyer cannot charge more than a reasonable fee. The American people, for whom this settlement was ostensibly negotiated, certainly prefer to see tobacco settlement funds directed towards health care rather than the further enrichment of a small number of litigators. Their rapacious claims to settlement moneys belie the contention that the trial lawyers acted to curtail teenage smoking and to help senior citizens in need of health care.

Sen. Lauch Faircloth (R-NC) is a member of the Appropriations Committee.

The October 1997 settlement of the so-called "flight attendants case" dispels the myths and reveals the real motivations of these trial lawyers. These attorneys negotiated a $349 million settlement with the tobacco companies that directs $300 million to a research foundation and provides $49 million for attorneys' fees. The individual flight attendants — the clients in that case — will not receive a single dollar under this settlement and are required to file individual lawsuits in order to pursue monetary damages.

The trial lawyers cannot defend these fee arrangements on the merits, so they contend that the Public Health Funds Preservation Act is unconstitutional. But their arguments are baseless.

The American people, for whom this settlement was ostensibly negotiated, certainly prefer to see tobacco settlement funds directed towards health care — rather than the enrichment of a few litigators.

The Congressional Research Service examined this issue and found that constitutional issues, federal jurisdiction, due process, the takings clause, and federalism are not impediments to comprehensive and well-structured fee-limitation legislation. Further, persuasive testimonies were offered before the House Judiciary Committee last December, and I am confident that the cap passes constitutional muster.

I believe that Congress is obligated to ensure that a settlement promotes the best interests of all Americans rather than a narrow band of special interests. The Public Health Funds Preservation Act will assist in that effort and ensure that the trial lawyers place the public health ahead of their checkbooks. This agreement is about public health, not private greed. Comprehensive tobacco legislation is not a tool for the creation of a small band of instant billionaires.

Don't Start Negotiating With Tobacco 'Terrorists'

The Industry's Consent Decrees Are 'Ransom Notes,' Claims Sen. Frank Lautenberg, Who Wants Big Tobacco Held Liable

AP Photo

Lautenberg writes that tobacco executives, shown here at an April 1994 Congressional hearing, have lied to Americans and thus are in no position to force concessions from Congress. He says that letting the industry off the hook on advertising in exchange for tobacco control legislation is "tantamount to trading Manhattan for a handful of beads."

By Sen. Frank Lautenberg

As someone who has been pushing for tobacco control legislation for over a decade, I find many aspects of the current debate over comprehensive tobacco legislation very odd — and in some cases, downright bizarre.

The strangest dynamic of this historic push for tobacco legislation in the 105th Congress is the notion that we cannot enact meaningful tobacco policy that will save millions of American lives unless the tobacco industry agrees to the reforms.

In relation to tobacco legislation, I am often asked, "Senator, what if the tobacco industry doesn't agree to this bill?" The last time I checked the Constitution, I could not find the section that allows tobacco companies to veto legislation they don't like.

Yet some of my colleagues seem prepared to allow the tobacco industry to have virtual veto rights over comprehensive tobacco legislation. To justify this position, advocates of the tobacco-industry veto point to "consent decrees" that the tobacco companies promise to sign if they approve of Congress's tobacco legislation. These consent decrees are agreements that would seem to prohibit the tobacco companies from engaging in specific advertising activity.

However, these "consent decrees" are more accurately described as "ransom notes." The logic behind this "tobacco industry veto" mindset is as follows: Unless Congress provides this industry with unprecedented special liability protections and other anti-public-health concessions in our legislation, it will continue to target our children for addiction.

Sen. Frank Lautenberg (D-NJ) is the ranking member of the Budget Committee.

In legalese, the tobacco industry has phrased it as follows: We will not sign consent decrees that promise to scale back our advertising unless Congress grants us broad protection from civil liability and other concessions on public health.

We should reject these threats made by the tobacco industry, and proceed with one goal in mind: developing the most effective legislation that will benefit America's health — not the tobacco companies' bottom line.

According to media reports, Meyer Koplow, one of the head lawyers for the tobacco industry, upped the ante on this threat considerably by stating that the companies might return to cartoon advertising if Congressional tobacco legislation fails the industry's litmus test.

There is an adage that guides US foreign policy that should be followed in certain domestic matters as well: We should not negotiate with terrorists. It certainly applies here. This industry wants to negotiate with Congress as it points a smoking gun at our nation's children.

When the Healthy Kids Act — of which I am one of 31 proud co-sponsors — was introduced, the tobacco industry criticized the bill and declared that the companies will be "unable to consent" to restrictions on their advertising under the legislation.

Vice President Al Gore, who announced White House support for the measure at a press conference I attended with Sen. Kent Conrad (D-ND) and other colleagues, reacted angrily to the tobacco industry's threats as follows: "They will keep on targeting children — did I understand that correctly?"

The Vice President is correct. It would be immoral for Congress to legislate based on the threats of an industry that touts the fact that it holds our nation's children hostage.

There is an adage that guides US foreign policy which should be followed in certain domestic matters as well: We should not negotiate with terrorists. It certainly applies here. This industry wants to negotiate with Congress as it points a smoking gun at our nation's children.

Furthermore, those who want to trade away Congress's right to enact effective tobacco legislation for these consent decrees would be giving the American people a raw deal — tantamount to trading Manhattan for a handful of beads.

First of all, Congress already has the power to enact substantial limits on the tobacco industry's advertising to kids — without these dubious consent decrees. For example, the Food and Drug Administration currently regulates the content of advertising for prescription drugs and medical devices. Most constitutional experts believe that the advertising restrictions contained in the FDA's Rule on Tobacco would be upheld as constitutional. The narrow advertising restrictions that might be attained in the signing of the consent decrees are far outweighed by the negative impact on public health that Big Tobacco's manipulation of the legislation would cause.

Additionally, these consent decrees would only bind tobacco product manufacturers. The decrees could not stop distributors, wholesalers, and retailers from erecting billboards or other advertising that the decrees would seem to prohibit. Therefore, a distributor for Camel cigarettes could engage in advertising displaying the same marketing images we see today and would not be bound by the terms of these agreements.

Third, constitutional experts have pointed out that these consent decrees, although voluntarily entered into, could be overturned later by these third parties — or perhaps the tobacco companies themselves — should the government attempt to enforce them. A credible argument under the doctrine of "unconstitutional conditions" could be used to render these decrees unenforceable.

The bottom line for Members of Congress is that we should not trade away our duty to protect the public in exchange for suspicious promises from an industry that has never played by the rules. It would be a breach of our responsibility. In the past, Congress has

I am often asked, 'Senator, what if the tobacco industry doesn't agree to this bill?' The last time I checked the Constitution, I could not find the section that allows tobacco companies to veto legislation they don't like.

failed to adequately protect the public precisely because it has allowed the tobacco industry to manipulate legislation. Those days must come to an end, simply because the public will no longer tolerate it.

If Congress is to assess the key "concessions" that the industry is seeking, such as protections from civil liability, these issues must be evaluated on their merits — not under threats against our nation's kids.

This Congress can make history by correcting decades of mistakes on tobacco policy and passing comprehensive tobacco legislation that focuses squarely on improving the health and lives of millions of Americans. We owe the tobacco industry nothing. However, the industry owes this nation a great deal because it has deceptively caused untold amounts of harm and suffering to millions of people.

It is time for Congress to rescue America's children — not to knuckle under to the tobacco industry's threats.

Retaile s Have Been Locked Out of the Tobacco Talks

Photo by Rebecca Roth

Sessions argues that retailers who have made efforts to keep tobacco out of the hands of kids should receive some limited protection against losing their tobacco licenses when employees violate the company policy. He notes that The Southland Corp. has a much-lauded "Come of Age" training program for its employees in 7-Eleven stores nationwide.

By Rep. Pete Sessions

For too many months now, we have witnessed a contentious battle of brinksmanship waged over proposed federal tobacco legislation. On one hand, anti-tobacco advocates have been demanding ever-increasing monetary sums from the tobacco companies. On the other hand, tobacco companies insist on restrictions being placed on various sorts of lawsuits as a condition of the agreement.

Amidst all of the sound and fury, we should all take care not to lose sight of the goal of these negotiations: to keep tobacco products out of the hands (and lungs) of children.

For Members of Congress to craft legislation which will be effective in reducing minors' access, we must seek the input from all responsible parties who have experience with the key issues. To date, however, one group has been largely excluded: America's retailers.

Without retailer input, a Washington "solution" could fail to address effectively and efficiently this critical societal issue.

I believe our own Texas legislature and governor have already acted responsibly in addressing the issue of minors' access to and use of tobacco products. The Texas law, which was enacted after extensive debate and input from all interested parties, including retailers and health organizations, should be the model for Congressional policy makers. It is effective, reasonable, and fair.

The Texas law is effective because it utilizes a shared responsibility approach. The law holds not only the individual retailer liable, but also the store clerk who sells tobacco products to minors and the minor who purchases such products unlawfully. In so doing, Texas recognizes that holding all parties accountable for their wrongdoing is essential to promote respect for and compliance with the law. Such an approach promotes positive incentives and promotes cooperative efforts calculated to reduce the incidence of underage smoking.

The Texas law is reasonable because, while it does require that all tobacco sales be seller-assisted, it does not require the extensive, costly, and unnecessary store renovations contemplated in certain federal legislation. The severe display restrictions in the proposed tobacco settlement have not been demonstrated to play an instrumental role in reducing minors' access and would be prohibitively expensive for many mom-and-pop retailers. We must not forget that the livelihood of many local retailers is dependent on being able to display their products responsibly for those consumers who may legally purchase them.

The Texas law is fair because it provides for graduated penalties and due diligence defenses for retailers. Despite clear and unequivocal efforts to prevent sales to minors, perfect in-store execution remains an unrealized goal, even for the most diligent retailers.

Graduated monetary penalties for the retailer, as well as the employee who made the unlawful sale, are equitable and provide incentives to work together toward the goal of reducing minors' access. However, responsible retailers who have made diligent efforts, through training and stringently enforced disciplinary policies, should receive some limited protection against losing their tobacco licenses when employees violate those policies.

The severe display restrictions in the proposed tobacco settlement have not been demonstrated to play an instrumental role in reducing minors' access and would be prohibitively expensive for many mom-and-pop retailers.

A notable example is The Southland Corporation, whose "Come of Age" training program has long been recognized as the premier retailer program aimed at preventing sales of tobacco products to minors at thousands of 7-Eleven stores nationwide.

We are currently facing a historic opportunity to enact legislation which can benefit society by significantly reducing minors' access to and consumption of tobacco products. We must not, however, miss the mark.

It is time for Congressional leaders to include retailers in this all-important debate. Only by working together can we reduce the incidence of teen smoking and ensure a healthy, smoke-free, future for our children. !

Rep. Pete Sessions (R-Texas) is a member of the Government Reform and Oversight and Banking and Financial Services Committees.

Farmers Must Receive Their 'Fair Shake' From Deal

Settlement Doesn't Address Those Who Grow Tobacco

By Sen. Ernest Hollings

Make no mistake — smoking prevention is one of the most important tasks facing us as stewards of the common good. Yet with all our attention focused on reducing teen smoking, we have lost sight of another important concern: the plight of our nation's tobacco farmers and their future after any global settlement.

Last June, 40 state attorneys general sat down with the major tobacco companies and negotiated a global tobacco settlement. In exchange for limited liability, the tobacco industry agreed to accept more regulation by the Food and Drug Administration, help reduce teen smoking, and compensate state and federal health care programs.

However, when these parties crafted this proposal, one key constituency was shut out of the negotiations — the tobacco farmers. I am committed to doing everything I can to make sure that our tobacco farmers — who make their living in tobacco fields and warehouses — and their communities receive a fair shake.

The tobacco settlement in its current form does nothing to address the issue of equitable compensation for the people who depend on tobacco for their livelihoods. We must not enact a national tobacco settlement at the expense of the farmers and communities that will have to face the consequences head-on.

That is why I recently joined eight other Senators to produce legislation that will protect tobacco farmers and their communities. Sen. Wendell Ford (D-Ky) and I have spoken at length about this issue in committee hearings. But many of our colleagues who hear us talk about the plight of the tobacco farmer do not understand why it is essential that we address this issue.

My legislation offers farmers the opportunity to stop producing tobacco — if they so choose — by selling their quotas, whose value will be greatly increased under the LEAF Act, to other farmers.

Many people make a common error — they equate tobacco farmers with the large tobacco companies. In fact, most tobacco is produced on small, family-run farms. In South Carolina, for example, the size of the average tobacco farm is three to four acres. In many cases, these farms have been handed down through families for generations, and the people who labor on them are tied to the land. We cannot pass a tobacco settlement that uproots these people and tosses them aside like deadwood.

Any tobacco settlement that ignores small farmers would devastate the economy of my region. In many Southern states, tobacco farmers are the backbone of the area's agricultural economy. Over 51,000 acres of farmland in South Carolina yielded 117.8 million pounds of tobacco. Tobacco was the number-one cash crop in South Carolina in 1996. It provided over $214 million in cash receipts and generated more than 40,000 jobs on over 2,000 tobacco farms. The economic impact of tobacco producers on the Palmetto State was over $1 billion last year alone.

Photo by Laura Patterson

A North Carolina tobacco field.

These figures show that the impact of a tobacco settlement on the family farmer cannot be dismissed as inconsequential. Tobacco farmers represent an enormous, and possibly irreplaceable, contribution to South Carolina's economy. My state simply cannot afford to support any tobacco settlement that destroys this important component of the state's economy without new programs and funding in place that will retrain the thousands of farmers and workers who will be displaced, and will help these communities to survive.

One of the pieces of tobacco legislation I am co-sponsoring is the Long Term Economic Assistance for Farmers (LEAF) Act. This bill was introduced by Ford to ensure that the needs of the tobacco farmers and their communities are addressed.

In addition to the $368.5 billion provided under the 1997 settlement, the LEAF Act creates and funds a Tobacco Community Revitalization Trust Fund. This trust fund was set up to pay for lost tobacco quota, administrative costs of the tobacco program, Tobacco Community Economic Development Grants, the Farmer Opportunity Grant Program, and the Tobacco Worker Transition Program.

It also offers farmers the opportunity to stop producing tobacco — if they so choose — by selling their quotas, whose value will be greatly increased under the LEAF Act, to other farmers. The LEAF Act provides tobacco farmers with educational and economic assistance to find another means of making a living. For communities that would be crippled by any decline in tobacco production, this bill will help strengthen and diversify their economies.

As we review the elements of the global tobacco settlement negotiated last year, we must be careful to consider every aspect and every impact of this settlement. Various bills that provide short-term economic gains for tobacco farmers but sacrifice long-term security for these farmers and their communities have been introduced. By and large, these proposals are inadequate.

Sen. Ernest Hollings (D-SC) is the ranking member of the Commerce, Science, and Transportation Committee.

In contrast, the LEAF Act provides farmers with a true choice — it continues the tobacco program rather than letting it and the communities that depend on it dry up and die. If the goal of any tobacco settlement legislation is to provide an equitable settlement for all parties, I would hope we could all stand tall and support legislation like the LEAF Act which provides tobacco farmers and tobacco communities the help they need in the long run.

Tobacco Money Must Help Fund Medical Research

AP Photo

A sickly "Joe Chemo" stares down at Seattle motorists from a billboard "counter ad" placed by Tobacco-Free Washington. Sen. Connie Mack writes that cigarette smoking is responsible for 80 percent of lung cancer deaths.

By Sen. Connie Mack

In recent weeks there has been a considerable effort to develop a consensual, bipartisan tobacco agreement. I have been very encouraged by these outstanding efforts. A consensual agreement is realistically the most effective way to win the war on teen smoking and improve the health of our citizens.

Believe me, it has taken some time for me to come to this conclusion. I first had to get over my personal disgust with the conduct of tobacco company executives, and I'm sure many of my colleagues feel the same way.

Internal tobacco company documents show an industry that actively sought to hook Americans, and children in particular, to a product it knew caused life-threatening diseases and even death among tabacco users. A 1962 document states: "The amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming, while the evidence challenging the indictment is scant."

Another document quotes an industry official as saying, "stopping smoking, all the research indicates, is quite as difficult as giving up alcohol or even heroin."

How were we supposed to negotiate with an industry that has a corporate philosophy of lying and deceiving the American people? Perhaps more importantly, why should we bother? The answer is simple. In the words of the attorney general of Mississippi, "If we don't get over being mad, we'll never get even."

I am proposing that we get even in the most constructive way possible, by hitting tobacco companies where it hurts: in the pocketbook. We have a monumental opportunity to force Big Tobacco to pick up the tab for finding cures for the very diseases it has caused.

Sen. Connie Mack (R-Fla) is the chairman of the Republican Conference.

One of the main goals of any tobacco legislation has been to reduce the level of teen smoking and tobacco addiction in our country. This must remain our primary goal. Research from the American Cancer Society shows that one-third of high school students in the United States are current cigarette smokers, and research has also shown that 89 percent of adult smokers began using cigarettes by or at age 18. We must stop our youth before they start this addictive, destructive habit.

Yet if our emphasis is limited simply to reducing smoking without finding cures for diseases caused by smoking, only half our mission will be accomplished. We will have effectively abandoned those who have been unable to break the cycle of addiction and who will eventually be suffering from smoking-related illnesses.

As many people know, my family has had its share of battles with cancer. Although lung cancer has never been diagnosed in my family, we know firsthand the anxiety felt upon hearing the words "you have cancer." We also know the fear that upon discovering even the best treatments available, we are often a long way from a cure.

By focusing a significant portion of any tobacco agreement revenues on medical research, we will accomplish two goals at the same time: providing hope for those suffering from tobacco-related illnesses and their families while also making an investment in the future health of all Americans.

Research has repeatedly shown what happens to habitual smokers. You smoke, and eventually you'll get sick. Tobacco addiction greatly increases the likelihood that an individual will suffer from heart disease, emphysema, chronic bronchitis, and/or cancer of the mouth, lungs, bladder, or pancreas.

Cigarette smoking is directly responsible for 80 percent of lung cancer deaths and 20 percent of all heart disease deaths. Research has also shown that smokers, on average, make six more trips to health care facilities per year than non-smokers.

A recent study shows the cost of tobacco addiction was $12.9 billion for Medicaid in 1993, roughly $1 out of every $7 spent on the Medicaid program. The Centers for Disease Control estimated that in 1993, the direct medical costs for treating smoking-related illnesses totaled $50 billion.

A recent study published in Public Health Reports shows the cost of tobacco addiction in 1993 at $12.9 billion for Medicaid; roughly $1 out of $7 spent on the Medicaid program. The Centers for Disease Control estimated that in 1993, the direct medical costs for treating smoking-related illnesses totaled $50 billion.

If there is comprehensive tobacco legislation without significant medical research, it would be a tragedy. Big Tobacco should, at the very least, pay for research into new methods of treatment and the discovery of cures. After all, they have helped create many of the diseases and ailments currently plaguing our society.

I want to clarify that these funds ought to be used for basic medical research. Basic medical research has led to breakthroughs in many different areas. Congress must remain firm in its long-standing policy that scientists, not Congress, continue to decide how these funds would be directed and to resist the temptation to earmark research dollars for specific research initiatives. Why? Because you never know where scientific research will lead.

Less than two years ago, there was very little indication of a direct link between tobacco use and glaucoma. Today, because of unrestricted basic medical research, we know this link exists.

Also, in the 1980s, scientists at the National Cancer Institute were working to develop a therapy for the treatment of cancer. Unfortunately, the treatment did not work. However, this same research later led NCI scientists, working with the private sector, to develop the drug AZT, the first Food and Drug Administration-approved therapy which actually slowed down the progression of HIV.

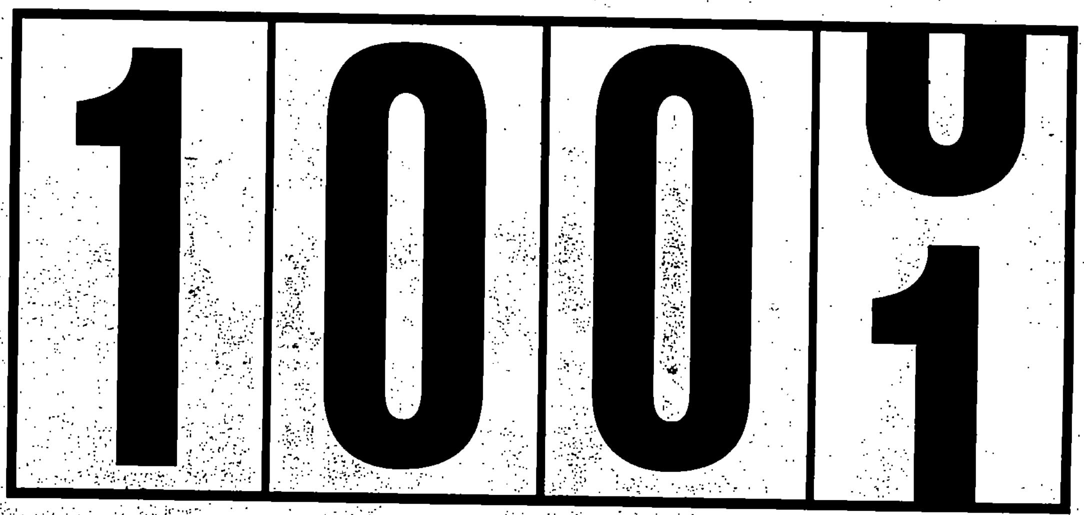
If Congress had tied the hands of scientists by limiting the use of research dollars to a specific disease, it is highly unlikely that these two discoveries would have been made. There are many other examples of how research into one disease helps our understanding of other diseases.

Putting together a consensual, bipartisan tobacco agreement is no easy task. There are many complex and politically charged issues involved.

We have the opportunity to craft comprehensive legislation and I encourage my colleagues to seize this moment. We have the knowledge. We have the technology. And most importantly, we have the support of the American people.

It is time for America to take this opportunity and win the war on teen smoking, and, at the same time, win the war against the diseases which plague our society.

American Heart Association
Fighting Heart Disease and Stroke



The longer Congress waits, the more people die.

Every day, 1,000 Americans die from tobacco-related illnesses — most from heart disease and stroke. And every day 3,000 kids **start** smoking. It's time to stop the death and addiction.

More than two-thirds of Americans want Congress to enact a national tobacco control policy. And 70% want action soon.

Listen to America, Congress. Enact comprehensive tobacco legislation now. We can't afford to wait!

My Legislation Is Healthy for Kids — Not Industry

AP Photo

Sen. Kent Conrad, chairman of the Democratic task force on tobacco, writes that his bill meets each of the eight goals laid down by Drs. C. Everett Koop (left) and David Kessler (right).

By Sen. Kent Conrad

This year, we have an opportunity to pass good public health legislation to protect our children from the dangers of tobacco. I, along with 29 of my colleagues, have introduced the Healthy Kids Act.

The Healthy Kids Act provides a comprehensive approach to tobacco policy that meets each of the eight goals laid down by Drs. C. Everett Koop and David Kessler. Our legislation rejects giving the tobacco industry the broad legal protections it receives in the proposed settlement reached June 20, 1997.

Providing the tobacco industry with special, unprecedented protections is bad public policy. Some Members of Congress have said that it is necessary to give the tobacco industry liability protection in order to restrict advertising targeted at children. This is a false choice. We do not need to give the tobacco industry special legal protection to protect our children from the industry's advertising and marketing practices. Doing so would be a serious mistake.

The June 20 settlement, reached between the industry and 40 state attorneys general, contains the following provisions that protect the tobacco industry from lawsuits:

1. All governmental claims are barred.
2. All addiction/dependence claims are barred.
3. Punitive damages for past misconduct are barred.
4. Class actions, joinders, aggregations, consolidations, extrapolations, or other means of resolving cases more efficiently are barred.
5. Third-party payor claims not based on subrogation brought after June 9, 1997, are barred.
6. Suits can be brought only against the manufacturing companies, not their corporate parents.
7. The development of reduced-risk tobacco products after the date of enactment of the act is neither admissible nor discoverable.
8. Eighty percent of judgments would be paid out of the settlement; only 20 percent would be paid by the industry.
9. Total awards are capped at $5 billion per year.

Taken together, these provisions amount to an unprecedented special protection for the tobacco industry. They give the tobacco industry immunity not just for its past misconduct, but for any potential future misconduct. Granting the tobacco industry this broad legal shield would allow it to engage in future misconduct with dramatically reduced risk of being held accountable. We should not give this privileged protection to this industry, of all industries.

We all know the history of the tobacco industry. It said its products had no ill health effects when it knew they did. It said its products were not addictive when it knew they were. It said it didn't manipulate nicotine levels when we now know it did. It said it didn't market to children when we now know it directly targeted 12-, 13-, and 14-year-old kids with advertising designed to hook them on a life-long addiction.

And now the tobacco manufacturers say they won't agree to stop advertising to children unless we give them blanket immunity for past and future wrongdoing. Let me give five reasons why the tobacco industry's proposal is an extraordinarily bad bargain for the American people.

Sen. Kent Conrad (D-ND) is a member of the Budget Committee and is chairman of the Senate Democratic task force on tobacco.

First, many of the advertising restrictions contained in the proposed settlement are constitutional without consent decrees. For example, the advertising restrictions contained in the Food and Drug Administration rule were carefully constructed to withstand constitutional scrutiny, and constitutional experts agree that they will survive any potential challenge. These restrictions include:

- requiring black-and-white, text-only advertising except in adult publications;
- banning outdoor advertising of tobacco products within 1,000 feet of schools and playgrounds;
- prohibiting tobacco companies from distributing items such as hats and t-shirts bearing tobacco brand names and logos;
- forbidding tobacco companies from sponsoring athletic and other events in tobacco brand names; and
- limiting advertising in an audio format to words only, with no music, and limiting advertising in a video format to static black text on a white background.

If we give immunity to the tobacco industry for past and future wrongful acts in exchange for advertising restrictions that are found unconstitutional, we will have failed in our responsibility as guardians of the public interest. This would truly be the worst of all possible outcomes; it is not a gamble Congress should take.

Second, additional statutory or regulatory advertising and marketing restrictions would also be constitutional. The courts have long held that the government has the right to take reasonable steps to protect the health and safety of children.

For example, the Fourth Circuit in the case **Anheuser-Busch v. Schmoke** upheld the city of Baltimore's broad ban on billboard advertising of tobacco and liquor products in locations where they are likely to be seen by children. The Supreme Court refused to hear an appeal of the decision.

Third, we do not have to provide sweeping legal protections for the industry to sign consent decrees. I strongly believe the industry would sign consent decrees to resolve local, state and federal claims, as provided in the Healthy Kids Act. These settlements provide powerful incentives for the industry to agree to advertising restrictions. After all, it was these lawsuits that brought the industry to the negotiating table in the first place.

Fourth, we must remember that even if the tobacco manufacturers sign consent decrees, other affected parties could challenge the constitutionality of the advertising restrictions. In fact, many experts believe the manufacturers themselves could challenge the restrictions as an unconstitutional condition. If we give immunity to the tobacco industry for past and future wrongful acts in exchange for advertising restrictions that are found unconstitutional, we will have failed in our responsibility as guardians of the public interest. This would truly be the worst of all possible outcomes; it is not a gamble Congress should take.

Finally, perhaps our best assurance that the tobacco industry will restrict its advertising aimed at children is to provide for strong look-back penalties. Effective look-back penalties create an incentive for tobacco companies to take the actions necessary to meet the goals for reducing youth tobacco use — including the elimination of advertising that appeals to children.

There is no question that we can and should take steps to restrict advertising. We must put a stop to the tobacco industry's cynical targeting of our children as replacement smokers to fill the shoes of the two million smokers who die or quit each year. But we do not have to give the industry special, unprecedented protection to achieve this goal.

Instead, Congress should focus on passing the best possible public health legislation. That is the goal of the Healthy Kids Act. It puts health and children first. That is the right thing to do.

Tobacco Deal Must Protect the Power of States, Cities

One of the Industry's Chief Courtroom Adversaries, Minnesota's Hubert Humphrey, Demands Whole Truth

With its $5 billion-a-year advertising and promotion budget, the tobacco industry will still find ways to advertise to young people, writes Hubert Humphrey III: "For them, getting around the youth marketing regulations will be, let's face it, child's play."

Photo by Rebecca Roth

By Hubert Humphrey III

Early this month, in a crowded courtroom in St. Paul, Minn., Geoffrey Bible, chief executive officer of Philip Morris Companies, Inc., testified he was "shocked," "ashamed," and "embarrassed" about the litany of internal documents showing his company has systematically targeted its advertising toward teens.

Pressed for an explanation, Bible claimed he was unfamiliar with the documents and had not even read them to prepare for his court appearance. Bible said that, as CEO, he chooses to focus on the future, rather than on his company's past conduct.

And who can blame him? If your past was as sordid as Big Tobacco's, you wouldn't want to focus on it, either.

Now Bible and other CEOs would like Congress to do the same: ignore the past and bail the tobacco industry out for the future, especially by giving it immunity for past wrongdoing. On March 7, we saw another damaging glimpse of the kind of wrongdoing they want immunized.

The new revelation appeared in a Saturday ruling by Judge Kenneth Fitzpatrick in Minnesota's tobacco trial. The judge ordered the disclosure of 39,000 previously "privileged" tobacco industry documents never before seen outside the industry. Big Tobacco had waged a three-year-long battle to keep this information confidential, claiming these documents were protected under the attorney-client privilege. But the court found evidence of crime or fraud in over 200,000 pages and ordered the information turned over — thereby "de-privileging" the largest abuse of the attorney-client privilege in the history of American jurisprudence. The industry has made an emergency appeal, and the decision of the Minnesota Court of Appeals is expected shortly.

Hubert Humphrey III (D) is the attorney general of Minnesota.

One item was especially shocking. A document from B.A.T., the world's second-largest tobacco company, titled "Apparently Problematic Research," referred to marketing research and stated that "the studies reported on youngsters' motivation for starting, their brand preferences, etc., as well as the starting behavior of children as young as 5 years old."

Five years old! No wonder the industry doesn't want the truth exposed — how can they explain away the targeting of five-year-old children? Two months ago, when caught with a document showing they were studying 13-year-olds, R.J. Reynolds called the evidence a "typo." Who will B.A.T. blame? Another sloppy typist? No wonder the industry needs immunity.

Congress holds the key to stopping this rogue industry, and I believe it is time for Congress to enact strong public health policy for the American people rather than grant tobacco companies a package of special protections against juries, judges, and the hundreds of thousands of Americans injured each year by their deadly products.

Unfortunately, some involved in the tobacco wars have argued that, to keep kids from smoking, America must accept the industry's "deal": America gets advertising restrictions, and, in exchange, Big Tobacco gets immunity. Tobacco companies must consent to advertising restrictions, they say, because otherwise the companies will challenge them as an unconstitutional limitation on their right of free speech.

And then — believe it or not, this is how the reasoning goes — the Supreme Court will strike down the advertising regulations and restore the tobacco companies' "constitutional right" to market to 14-year-olds. Or maybe it's now five-year olds.

The tobacco industry's consent to the advertising restrictions is worth nothing. Completely apart from the question of whether the tobacco companies can be trusted to keep their word — don't forget, this is the industry that promised as far back as 1954, in every large newspaper in the country, that its customers' health was "paramount to every other concern in our business" — the simple fact remains that the tobacco companies have no power to keep the advertising issues out of court.

The current legal challenge to Food and Drug Administration restrictions on advertising to children illustrates this point. It wasn't just tobacco companies that brought this lawsuit. It was also advertising agencies, retailers, distributors, and others affected by the advertising rules. Even if Congress were to give Big Tobacco immunity, in exchange for a promise not to fight the advertising sections, these other groups have already announced their intention to challenge any new legislation. So the "immunity in exchange for advertising" proposal is an illusion.

In my state, R.J. Reynolds filed, then dropped, a suit against our new law requiring the disclosure of harmful chemicals added to cigarettes. Perhaps they didn't want to be in court fighting the disclosure of poisons in their products while Congress was considering new national policy.

It should also be obvious that the industry, with its $5 billion-a-year advertising and promotion budget, will still find effective ways to advertise to young people. For them, getting around the youth marketing regulations will be, let's face it, child's play. Even more to the point. We shouldn't have to beg tobacco companies not to hook our kids. We should just come down on them — swiftly and firmly — if they continue.

As a public health advocate, I believe Congress should enact wide-ranging limits on tobacco advertising to reduce youth smoking. As a lawyer, I am confident Congress doesn't need the cigarette industry's permission to regulate advertising for a product which addicts children and kills 400,000 Americans each year.

What provisions should a national settlement include? The best blueprint is the report issued last year by the distinguished panel of health organizations headed by Drs. C. Everett Koop and David Kessler. Most of the elements identified by the Koop-Kessler Commission are contained in strong legislation introduced by Sen. Kent Conrad (D-ND), who has taken a leadership role in solving this difficult public policy dilemma. Like Koop and Kessler, Conrad has found the right answers because he began with the right question. The issue before the Congress is not "What does the tobacco industry need out of this?" but rather, "What is in the best interest of America and its children?"

Several points from the Koop-Kessler Commission's report are key to evaluating any proposal:

First and foremost, I agree that "all currently available avenues of litigation, both criminal and civil, must be fully reserved" with "no special rules of any kind, substantive or procedural." The tobacco companies are asking Congress to bar claims based on addiction and to cap the total amount the industry would pay to victims in any year, no matter how many juries found to the contrary. Congress should just say "no."

Continued on page 22

If We Don't Stop Being Mad, 'We'll Never Get Even' With the Industry, Writes the Tobacco Deal's Architect

By Mike Moore

As the 105th Congress stands at the threshold of crafting historic tobacco legislation to protect America's children from nicotine addiction, disease, and horrific death from smoking, the key to success is that any bill be bipartisan and comprehensive.

This is no easy task and there is much left to be done, but I have already seen men and women of good will from both sides of the aisle exercising extraordinary leadership in seeking a bipartisan consensus.

It is this same spirit of bipartisanship that, against all odds, drove the proposed tobacco settlement in the first place. Democratic and Republican state attorneys general all across this country joined together to ultimately secure what none of us could have accomplished by ourselves. The vast majority of us have repeatedly affirmed their support of the proposed settlement in committee hearings before the House and the Senate.

When the attorneys general, public health community representatives, and plaintiffs' legal counsel negotiated this plan, we knew that Congress and the President would get the opportunity to improve upon the framework we established. We have waited, listened, watched, and participated in the last nine months of debate. I am very encouraged that there is now a process underway to get the job done.

As we proceed with Congressional hearings and move closer to various committee mark-ups and consensus legislation, it is clear that the logic and substance of the proposed settlement remains valid. If Congress is to ensure the greatest public health benefit and a major reform of the tobacco industry, the provisions simply cannot be enacted piecemeal.

The proposed settlement establishes an organized, national consistency in dealing with tobacco litigation and immediately putting a clamp on youth smoking. The latter objective, the number-one reason for enacting comprehensive tobacco legislation, requires three indispensable and irreplaceable steps, in the following order of importance:

- Stopping all marketing and advertising aimed at children;
- Waging the largest counter-marketing campaign in history; and
- Raising the price of cigarettes.

Congress must understand the reality that the first and most critical step in stopping teen tobacco use cannot be rammed down the industry's throat. In view of the industry's First Amendment rights, no court or legislation could order the comprehensive advertising restrictions secured by the national settlement through court-enforceable consent decrees.

Thus, the civil liability provisions detailed in the proposed settlement are an essential negotiating tool in securing these consent decrees and ensuring that never again will Big Tobacco prey on our children.

But the civil liability provisions are more than that. They ensure that all those who have been injured by tobacco use are compensated fairly, not just a chosen few who win what will otherwise be a chaotic race to the courthouse.

Photo by Maureen Keating

The tobacco deal would snuff out all outdoor advertising of cigarettes, writes Mississippi Attorney General Mike Moore, who crafted the agreement. The deal would also ban tobacco advertising on the Internet, sponsorship of sports events, sales by vending machines, and the use of company logos on promotional products like baseball caps and backpacks.

And they ensure that the tobacco companies responsible for the death and debilitation of millions of Americans over the past half-century are able to pay the victims of tobacco use and pay for public health improvements benefiting all Americans into perpetuity.

In exchange, what do we get?

First, we get all of the Food and Drug Administration advertising restrictions that have so far been successfully challenged in the courts — the same provisions that were praised by the heads of FDA and the Department of Health and Human Services and various public health community leaders as the greatest advance in public health since the historic breakthroughs with smallpox and polio.

But the proposed settlement goes much further. It would ban all outdoor advertising. The use of human images and cartoon characters in ads would be prohibited. Advertising in sports stadiums and the sponsorship of sporting events would be banned. Ads in stores would be severely limited in size, content, number, and location. Ads in magazines with a youth-oriented readership would be severely limited.

Mike Moore (D) is the attorney general of Mississippi

Also, tobacco companies would be prohibited from promoting their products, directly or indirectly, on television and in movies, plays, and concerts. Advertising on the Internet accessible to the United States would be prohibited. Sales by vending machine would be prohibited. Promotional products, such as baseball-like caps and backpacks, could not carry a brand name of the company's logo, nor be provided as rewards for purchasing tobacco products.

The proposed settlement also addresses the need to constructively change the tobacco industry's future business practices. It provides vital public health benefits, preserves the free market system and federalism, and recognizes the right of adults to be given the whole truth about the dangers of smoking so they can make an informed choice. It places the most severe regulatory restrictions on a dangerous legal business while stopping short of measures that would most assuredly result in the development of an illegal black market.

'If we allow emotion to stand in the way of bringing Big Tobacco to the comprehensive and deservedly harsh terms of settlement now, we will miss the opportunity of a lifetime to protect America's children,' writes Mississippi Attorney General Mike Moore.

While FDA jurisdiction over nicotine is currently being challenged in the courts, the proposed settlement codifies FDA power and extends it to tars and other harmful components of tobacco smoke.

In addition to the regulatory program, the companies have agreed to a funding package for a range of public health programs, some aimed at countering the impact of the industry's advertising over the years. Over the first 25 years, the industry would pay $368.5 billion in 1997 dollars, the largest settlement in world history.

Of the total, $500 million annually would be used to fund a comprehensive public education campaign to discourage and deglamorize the use of tobacco products. Additionally, $100 million would go annually toward funding research on how best to discourage individuals from starting to use tobacco and how to effectively quit if they have started. A fund would be created to assist individuals who want to quit using tobacco, funded the first four years at $1 billion a y, growing to $1.5 billion annually thereafter. The entire funding package would be paid for by a per-pack price inc which is so important in discouraging teenage smoking.

Finally, there are certain misconceptions about the proposed comprehensive settlement that should be put aside once and for all. First, there is no "immunity," civil or criminal, for past misconduct and no "immunity" for future misconduct. The word "immunity" should be stricken from any bipartisan debate fairly considering the comprehensive settlement.

Second, the industry would pay $60 billion more than the total of all other punitive damages awarded in history in punitive damages through the settlement. That is why new individual cases would be limited to compensatory damages for past misconduct. And the industry's punitive damages would benefit all Americans through public health gains, rather than a select few lucky enough to try their cases and win in those states that allow unlimited punitive damages.

Third, while class actions would be eliminated as a mechanism for trying individual claims, consolidation of cases for preliminary discovery and motions is permitted, and a centralized repository for industry documents will be created. This will substantially reduce the cost of trying and increase the odds of winning an individual lawsuit against any tobacco company. Moreover, the fact is that class actions for individual injury claims are very unlikely to be certified under current action court procedures and recent Supreme Court case law.

As critics of the comprehensive settlement point out, there is no doubt that the tobacco companies have a long record of targeting addicting America's children and deceiving the American public about the true dange addictiveness of tobacco products. That is the very reason, however, that the bipartisan group of state attorneys general filed the lawsuits all over America that drove the industry to agreeing to a comprehensive settlement!

The time has come that we all realize that if we don't get over being mad, we'll never get even.

If we allow emotion to stand in the of bringing Big Tobacco to the comprehensive and deservedly harsh terms of settlement now, we will miss the opportunity of a lifetime to protect America's children. We will miss the opportunity of a l e to attack America's number-one preventable of death.

Big Tobacco Must Stop Targeting Kids Worldwide

Settlement Could Leave 'Shameful Legacy,' Write Sens. Durbin and Wyden, if Global Smoking Increases

By Sen. Dick Durbin and Sen. Ron Wyden

Suppose that, as a result of tough tobacco legislation, smoking by US children and teenagers was dramatically reduced. But suppose the price for that decline was a surge in youth smoking in other countries. Would that be an acceptable result? The answer from Congress should be "no." Kids are kids, no matter where they live.

That's why any tobacco legislation passed by Congress should include controls on the promotion and marketing of US tobacco sales overseas. It will be a shameful legacy if our tobacco control efforts end up protecting America's kids at the expense of children in other countries.

The proposed tobacco settlement does not address the issue of international tobacco control. And while not a word was said in the agreement about US tobacco industry sales overseas, the silence is loud and clear: American tobacco companies are looking abroad to make up for billions in lost sales which could result from higher tobacco prices and declining domestic consumption in the United States.

Multinational tobacco companies have already invested billions of dollars in foreign marketing and promotion, including $1.6 billion just in the countries of the former Soviet Union.

The first commercial advertisement that ever appeared in Moscow's Red Square was an ad for an American cigarette. Street lights with the Camel logo have been installed in Bucharest, Romania. Tobacco companies have obtained the intervention of the US Trade Representative in their efforts to challenge a new law in Thailand that would require the tobacco companies to disclose the ingredients of their products.

Advertising of US brands continues to expand, and much of the advertising has been aimed directly at kids. Toy cars with the Camel insignia are sold to children in Buenos Aires. Children's tattoos sporting the Salem logo are distributed in Hong Kong. Arcade games in the Philippines are plastered with the Marlboro label.

These marketing efforts are clearly working, especially when measured in terms of addiction, disease, and death. This year, three million people from around the world will die from tobacco-related diseases. But tobacco's body count is expected to rise.

Over the next 25 years, tobacco-related deaths will more than triple to ten million a year. The overwhelming majority (70 percent) of those who die from these tobacco-related diseases will live in developing countries.

By the year 2025, tobacco is projected to be the leading cause of premature death and preventable disease around the world. Premature deaths caused by tobacco in the developing world will exceed expected deaths from AIDS, tuberculosis, and complications from childbirth combined. And if worldwide smoking patterns continue, about 500 million people alive today — half of whom are children — will die from tobacco use.

For much of this century, the United States has helped bring safe water and sanitation practices, nutrition, prenatal care, immunizations, and other child health initiatives to villages and towns across the globe — teaching parents how to keep their babies well and their children healthy. But today, we have a more dubious reputation. The Marlboro Man has replaced Uncle Sam as the image of America.

Photo courtesy Library of Congress

Childhood smoking is nothing new, as shown by this photo from 1917. "If worldwide smoking patterns continue, about 500 million people alive today — half of whom are children — will die from tobacco use," write Sens. Durbin and Wyden.

This trend must change. The tobacco industry must not be allowed to pay for a resolution of its domestic woes simply by deemphasizing the American market and pumping up its deadly sales to children in other countries. Tobacco legislation will not be complete if it fails to address the international effects of the US tobacco industry sales campaign.

Sen. Dick Durbin (D-Ill) is a member of the Judiciary Committee. Sen. Ron Wyden (D-Ore) is a member of the Commerce, Science, and Transportation Committee.

How can Congress help ensure that kids in other countries aren't recruited to replace customers lost as domestic consumption declines? In an attempt to address this issue, we have joined with Sens. Frank Lautenberg (D-NJ) and Paul Wellstone (D-Minn), and Reps. Frank Pallone (D-NJ) and Lloyd Doggett (D-Texas) in drafting five international tobacco control initiatives:

First, we need to end US government support for tobacco abroad by prohibiting the federal government from supporting the sale or export of tobacco products in other countries. The government also w[illegible] be prohibited from attempting to weaken a foreign tobacco regulation unless the regulation discriminates against US products in an arbitrary and unjustifiable way and is not a reasonable protection of public health.

While the Clinton Administration has made important strides in reducing our country's inappropriate use of influence to support Big Tobacco's agenda, we must lock into law a policy that puts health concerns above economic gains when it comes to tobacco.

> *Toy cars with the Camel insignia are sold to kids in Buenos Aires. Children's tattoos sporting the Salem logo are distributed in Hong Kong. Arcade games in the Philippines are plastered with the Marlboro label.*

Secondly, we need to fund global nongovernmental tobacco control efforts by establishing a private, non-profit organization to assist public health organizations abroad with public education programs, technical assistance to health professionals, mass-media campaigns, grants, and other assistance.

Other countries can benefit from the same kinds of non-partisan, grassroots efforts that have worked in the US to educate the public and partially [illegible]teract the industry's continual advertising barrage. Moreover, this type of assistance can restore our nation's tarnished image by putting tobacco control ahead of tobacco profits.

Third, we should establish a code of conduct for labeling and advertising overseas by requiring US tobacco companies to print health warning[illegible] on products sold overseas which are as stringent as those required in the United States. US tobacco companies also would be prohibited from selling, advertising, or marketing tobacco products to children in other countries in ways not permitted in the United States.

This code of conduct would force the US tobacco companies to live up to their claim that they don't want to market to children. Rather than stopping at our borders, it would force them to act responsibly wherever they sell [illegible] products. Two decades ago, the US set an international standard by making it illegal for any US company to bribe a foreign government. Today, we should prohibit any US tobacco company from enticing children into a lifelong addiction through clever marketing techniques.

Fourth, we should work to stem international tobacco smuggling by giving the Bureau of Alcohol, Tobacco, and Firearms the authority to deter [illegible] smuggling through a system of export permits and increased record-keeping.

According to published reports, from one-quarter to one-third of worldwide tobacco exports end up on the black market. What other legal industry allows up to one-third of its product to be diverted to illegal sales? Smuggling has proven to be an effective marketing tool for our tobacco companies in other countries.

When sold legally overseas, American brands are priced out of the [illegible] of most teenagers. However, those same brands are affordable when sold on the black market. It's time to end the smuggling that undercuts tobacco-control efforts around the world.

Fifth, we need to fund international tobacco control through a fee of two cents for each package of cigarettes US tobacco companies sell overseas. Revenues from such a fee would be used for tobacco-control efforts by governmental and non-governmental entities.

There is no reason for the US taxpayer to pay for these international tobacco-control efforts. The industry should pay for its own policing, and extra funds should be devoted to reducing the damage caused by this industry around the world. The funds can be [illegible] for programs operated through other governments or multilateral entities like the World Health Organization or through non-governmental public health organizations.

The tobacco companies have no conscience. They don't care about the nationalities of the children they hook. In the tobacco legislation we hope to pass this year, we can and will put a stop to their irresponsible marketing to kids in the United States.

We must take the international challenge no less seriously. As the world's leading exporter of tobacco products, the United States must respond to this dubious title and clamp down on the behavior of American tobacco companies wherever they sell their products. The children of the world deserve no less.

The Food and Drug Administration Needs 'Sensible' Authority Over Tobacco Products, Writes Sen. Jeffords

Sen. James Jeffords

As the Senate moves over the next few weeks to draft comprehensive tobacco legislation, media attention will focus on the politically charged issues of lawyers' fees and legal immunity for tobacco companies.

But the long-term verdict on this work will not be based on attacking attorneys or companies, but stopping underage smoking. It is this challenging task that forms the real test of any legislation. And at the center of this paramount public health issue will be the authority given to the Food and Drug Administration and how that authority is structured.

Reversing the position it had taken just a few years earlier, in 1996 the FDA asserted jurisdiction over tobacco products on the theory that nicotine is a drug and that cigarettes are a drug-delivery device. Not surprisingly, the tobacco companies filed suit against this

The tobacco legislation we have introduced establishes comprehensive and effective control over tobacco products by the FDA without trying to fit the square peg of tobacco into the round hole of drug and device law.

effort and the matter is now before a federal court.

As a legal matter, I think that the position the FDA took is a defensible one. The agency was trying to address one of biggest public health challenges before us in the environment of the time and with the legal authority it possessed at the time.

However, the tobacco settlement and efforts in Congress have fundamentally changed the environment and we now have the opportunity to develop a comprehensive national tobacco policy. As a part of that legislation, we also have the opportunity to enact clear, unambiguous, and sensible authority for the FDA to regulate cigarettes and nicotine.

That is what Sens. Susan Collins (R-Maine), Mike Enzi (R-Wyo), Orrin Hatch (R-Utah), and I have tried to do in S. 1648, the Preventing Addiction to Smoking among Teens (PAST) Act.

Despite this great opportunity to give the FDA the special tools it needs to deal with a new and unique responsibility, some are resisting giving the FDA specific authority over tobacco products, preferring instead to maintain the notion that such products should be considered medical devices.

However, the history of the FDA's present medical-device authority would argue that failure to draft legislation dealing specifically with cigarettes will hobble the FDA's ability to adequately regulate tobacco, and, in the long run, could paralyze the FDA's cigarette activity in a protracted legal morass that could take years, if not decades.

When the FDA was established at the beginning of the century, it was given authority over food and drugs. At the time, few medical devices even existed. This continued to be the case until the middle of the century. After World War II, as the science of medicine began to develop, there became a growing awareness that greater scrutiny was needed over the emerging medical device industry.

In an interesting parallel with the FDA's current t to (ex-isting legislation to exert authority over cigarettes and nicotine, the FDA began to exert authority over medical devices using its broad drug authority. This early attempt to regulate devices using drug law was an imprecise and haphazard affair. While some early court cases upheld the FDA's ability to use this new drug authority for medical devices, the results were less than perfect.

By the 1960s and 1970s, it became apparent that existing drug law provided an inadequate framework for regulating the rapidly expanding number of medical devices, and the growing complexity of these devices made it even more difficult to continue to regulate them as drugs. Eventually, even the FDA began to realize that using drug law as a way of regulating devices was inadequate and it began pressing for specific device authority.

Those efforts succeeded in passage of the 1976 Medical Device Amendments. The inadequacy of using drug law for regulating medical devices is apparent when you realize that the device amendments increased the length of the Federal Food, Drug and Cosmetic Act (FFDCA) by a full one-third. Devices were now regulated by a newly formed Bureau of Medical Devices, where previously devices had been regulated through the Drug Center.

When you consider that the FDA's first limited device authority was enacted in 1938, it only took 38 years to give them specific authority tailored to medical devices. Not bad for government work.

Now, on the verge of drafting a new national policy on smoking, we are being told to ignore this history and use inadequate and inappropriate medical-device authority to regulate cigarettes. In any place other than Washington, pure common sense would be enough to counter such an unimaginative idea, but here in Washington there are those committed to the idea that cigarettes should be considered medical devices.

The tobacco legislation we have introduced establishes comprehensive and effective control over tobacco products by the FDA without trying to fit the square peg of tobacco into the round hole of drug and device law. Instead, in a new chapter of the FFDCA, we gather together modified aspects of drug, device, and food law, along with several new concepts that are unique to tobacco.

Sen. James Jeffords (R-Vt) is the chairman of the Labor and Human Resources Committee.

As American University Washington College of Law professor and FDA legal expert Lewis Grossman clearly stated in a recent Labor Committee hearing:

"[T]he medical device provisions [of FDA law] were not drafted with tobacco products in mind the regulatory : for devices tains important gaps when applied to tobacco. The PAST Act, on the other hand, was crafted in light of the particular challenges of regulating tobacco, and it thus imposes various critical requirements on manufacturers that the device authorities do not. Why use the side of a wrench to pound in the nail when there is a hammer available?"

The FDA authority in the PAST Act includes the power to regulate nicotine levels and order the removal of harmful tobacco ingredients through informal notice and comment regulation. Our bill also drops the settlement's burdensome procedural hurdles which would have made it all but impossible for the FDA to act. Outside of the Beltway this would be considered common sense, here its controversial.

In addition, the PAST Act gives the FDA tobacco-specific authority which current device law does not provide. For instance, the PAST Act mandates the disclosure of all tobacco company health-related scientific and marketing documents. It is stronger than current law and better suited to the task. To quote Grossman again, "If we compare the likely shape of tobacco regulation under the medical device sections of the FFDCA to the regulatory program envisioned by the PAST Act, it is clear that the latter is, if anything, more comprehensive than the former."

Under our approach the FDA will establish regulations governing the manufacture of tobacco products and have pre-market review of any new-technology tobacco products which might be less harmful than convent products. It is no wonder that shortly after S. 1648 introduced, the tobacco industry branded it extreme and unbalanced.

Putting aside the likely continuing legal quagmire the FDA will find itself in by trying to pretend that a cigarette is a medical device, the even greater threat is that by combining tobacco with the regulation of medical devices, we will reduce the resources committed to the review of new drugs and devices.

The possible assault on the device work of the FDA by the highly visible tobacco issue has not been lost on the medical device community. The president of the Health Industry Manufacturers recently wrote to me: "We strongly believe it would be bad public policy to regulate tobacco products as medical devices. Medical devices are very different from tobacco products and their regulations should be different as well."

The letter goes on to say: "If tobacco products fall within the device regulatory authority, the Agency could conceivably reallocate sizable portions of the [device] budget to tobacco regulation. This concern has also been expressed by the Medical Device Manufacturers Association."

Courtesy Food and Drug Administration

"The PAST Act would shield the FDA's work on new drugs and devices from tobacco," writes Jeffords. Above, an advertisement that is part of the Department of Health and Human Services campaign to reduce illegal sales of tobacco to children.

The PAST Act would shield the FDA's work on new drugs and devices from tobacco and provide a separate source of funding, but the danger which concerns the device community is already apparent in the Administration's fiscal 1999 budget request. In the ly proposed budget, the amount requested for device review is reduced by more than 27 percent. At the same time, the tobacco request is increased.

The debilitating effect of combining with the FDA's responsibility over the review of new drugs and devices just last year was a concern of Democrats on the Labor and Resources Committee. Congress spent the last three years working to reform drug and device law at the FDA, and we were successful.

As we worked on the provisions affecting medical devices, time and again we asked by our Democratic colleagues to exempt tobacco products because they didn't fit. After we carved tobacco out of one provision and then another, we finally exempted tobacco from every device provision in last year's FDA reform law.

Creating a new chapter to regulate tobacco is simply the logical extension of what we were forced to do last year. Tobacco products are not — in any practical sense — medical devices.

This debate brings to mind the story of the couple who moved to Vermont some time ago, and upon moving there had a child. Filled with pride, they declared to their neighbor that their child was a Vermonter. Their neighbor, whose native lineage stretched back over generations, was a bit skeptical that roots in our rocky soil could be sent down so easily. His laconic response to his neighbors: Just because a cat has kittens in the oven doesn't make 'em biscuits.

As this legendary Vermonter and any American could tell you, just because cigarettes can be regulated as devices doesn't make them so. Let's follow a common approach to FDA regulation of tobacco products.

Humphrey: Tobacco Companies' Proposal Is 'Toothless'

Continued from page 18

The Koop-Kessler Commission called for an immediate $2 per-pack increase in the price of cigarettes, citing evidence this would cut teen smoking in half. A leading economic expert, professor Jeffrey Harris of the Massachusetts Institute of Technology, tells us the price could be increased by $2 per pack before having any negative effect on tobacco industry profits.

The proposal the tobacco companies have brought to Congress includes so-called "look-back" penalties, which they say would punish them if they fail to reduce youth smoking rates. Most everyone outside the industry agrees their proposal is toothless. To get the industry to stop marketing to kids, we need real financial penalties. I agree with the Koop-Kessler Commission that the penalties "should be structured so that failure to meet the target directly reduces total revenue and affects total shareholder value."

Any national legislation must also protect the power of states and cities to go beyond federal standards. In my state, R.J. Reynolds filed, then dropped, a suit against our new law requiring the disclosure of harmful chemicals added to cigarettes. Perhaps they didn't want to be in court fighting the disclosure of poisons such as ammonia, formaldehyde, arsenic, cadmium, and lead in their products while Congress was considering new national policy.

Any national policy needs to give the FDA full and unfettered authority to regulate tobacco products as drug-delivery devices and to regulate nicotine as a drug. We have exposed, through our lawsuit, that contrary to its public statements, the industry has understood for decades that nicotine is an addictive drug. In fact, internal documents speak candidly about the cigarettes as sophisticated, highly engineered drug-delivery devices.

Which brings me to my last point — disclosure of the truth. Internal tobacco documents are coming out each and every day in the Minnesota court. The industry has made clever attempts to appear more open with internal documents, but Congress shouldn't be fooled by this public relations ploy.

To get the industry to stop marketing to kids, we need real financial penalties.

All the documents need to be released. Congress needs to know what the industry knows about manipulating nicotine, manipulating kids, and manipulating public policy. Remember, the odds are good that no one would ever have known about the study targeting five-year-old children (quoted in the judge's order) if we had settled for anything less than the full truth here in Minnesota. And we believe the industry's darkest secrets will be revealed in the 39,000 documents we hope to obtain in the next several weeks.

Congress can solve our nation's number-one health crisis now — whether the tobacco industry likes it or not. Let's use the truth, get it right, and save our kids from this deadly addiction. Should we look to the future, as Geoffrey Bible urges? Of course. The future of our children is what this is all about. But let's not forget the deceit of the last 40 years either. It's high time this industry faced the truth and accepted responsibility for its actions.