

1 EXECUTIVE COMMITTEE MEETING TO CONSIDER THE CHAIRMAN'S
2 MARK ON TOBACCO LEGISLATION
3 THURSDAY, MAY 14, 1998
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to notice, at
8 11:15 a.m., in room SD-215, Dirksen Senate Office
9 Building, Hon. William V. Roth, Jr. (Chairman of the
10 Committee) presiding.

lmour 11 Also present: Senators Chafee, Grassley, Hatch,
pp. 12 D'Amato, Murkowski, Nickles, Gramm, Jeffords, Mack,
13 Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham,
14 Moseley-Braun, Bryan, and Kerrey.

15 Also present: Franklin G. Polk, Staff Director and
16 Chief Counsel; Mark A. Patterson, Minority Staff Director
17 and Chief Counsel.

18 Also present: Dr. Carl Scholz, Director, Office of
19 Tax Analyst, Department of the Treasury.

20 Also present: Ms. Lindy Paull, Chief of Staff, Joint
21 Committee on Taxation; Mr. Mark A. Prater, Chief Tax
22 Counsel; Mr. Grant Aldonas, Chief, International Trade
23 Committee, Majority; Mr. Dennis Smith, Medical Aid
24 Analyst, Majority.

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1 OPENING STATEMENT OF THE HON. WILLIAM V. ROTH, JR., A
2 U.S. SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON
3 FINANCE
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5 The Chairman. The committee will please be in
6 order.

7 As you all know, we are here today because the
8 Finance Committee last night was given sequential
9 referral of the tobacco bill. With this sequential
10 referral we have preserved the committee's jurisdiction.
11 It has not, and has never been, my intention to slow the
12 bill down, but instead to ensure that a bad precedent is
13 not set. In fact, Senator Moynihan and I requested this
14 bill nearly two months ago.

15 Under the sequential referral agreement worked out,
16 the committee is obligated to report out the bill today.
17 It is important that we get through this mark-up
18 relatively quickly so that staff has adequate time to
19 turn the committee changes into legislative language.

20 The committee has jurisdiction over the revenue
21 increases in the bill, as well as the international trade
22 provisions and health care provisions. Finance Committee
23 members have the expertise in these areas and the Senate
24 will benefit from their recommendation.

25 The Chairman's mark creates a revenue infrastructure

1 for the Commerce Committee bill. It does not attempt to
2 alter the basic content of the Commerce bill, but rather
3 proposes structural changes to incorporate the proper
4 trust funds and revenue mechanisms.

5 The Chairman's mark that I have laid down this
6 morning includes the following: a \$1.10 per pack increase
7 on cigarettes and proportionate increases on other
8 tobacco products, effective January 1, 1999; the Commerce
9 Committee's look-back penalty is converted to a non-
10 deductible penalty tax, and the teen smoking goals and
11 penalty rates are retained; the unconstitutional dollar
12 per thousand fee is stricken.

13 Two health care-related tax cuts are included. A 100
14 percent deduction for health insurance for self-employed,
15 a 100 percent deduction for employees whose employers do
16 not offer or pay for health insurance.

17 The Chairman's mark creates a national tobacco
18 settlement trust fund. All revenues not used for these
19 health care-related tax cuts are deposited into this fund
20 and their expenditures are subject to appropriations,
21 except for the tobacco agricultural program.

22 The Chairman's mark allocations 30 percent of the
23 revenue raised by the tax increases to the States as part
24 of the tax trust fund during the first five years, then
25 increases that allocation to 45 percent over the next

1 five years. These funds would be available to the
2 States.

3 Finally, the trade provisions in the Commerce bill
4 are modified so that, in general, these provisions are
5 consistent with applicable U.S. trade laws and
6 international obligations.

7 Senator Moynihan?

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1 OPENING STATEMENT OF THE HON. DANIEL PATRICK MOYNIHAN, A
2 U.S. SENATOR FROM NEW YORK

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4 Senator Moynihan. Mr. Chairman, every member of
5 this committee, present and future, is in your debt for
6 insisting on a proper referral of this major tax bill.
7 The referral of the bill to this committee last evening
8 has preserved the jurisdiction for which this committee
9 has been responsible for 181 years.

10 In the case of excise taxes, which figure prominently
11 in the bill, the Finance Committee's jurisdiction was
12 recognized in 1817, a year after the committee was
13 formed. That was the 14th Congress. George Campbell of
14 Tennessee was Chairman, Rufus King of New York was
15 Ranking Member. Might I add that Senator King was one of
16 the signatories to the Constitution.

17 At least on the Finance Committee, we would know that
18 imposing an export tax is a violation of Article 1,
19 Section 9 of the Constitution, as the Chairman has said.

20 Thank you, sir.

21 The Chairman. Thank you, Senator Moynihan. We are
22 now going to proceed----

23 Senator Moynihan. May I say, sir, one last thing.

24 The Chairman. Yes, sir.

25 Senator Moynihan. We have 9 hours, 40 minutes to

1 meet our deadline and that includes the time it will take
2 to draft^{and} to turn into legislative language, the few
3 decisions we will make this morning.

4 The Chairman. Senator Moynihan, thank you.

5 I would point out that I am modifying the Chairman's
6 mark to incorporate two amendments offered by Senator
7 Moseley-Braun and one amendment by Senator Murkowski.

8 I call on Dennis Smith.

9 Senator Breaux. Mr. Chairman, just a question. I
10 think all of us would want to acknowledge publicly the
11 work of the staff, who has been up all night. I mean,
12 that goes without saying. We said it in the back, but
13 publicly, these folks have been up all night doing all of
14 this and I think everybody would want to recognize that.

15 The Chairman. Well, I appreciate it, because that
16 is true. Both the Finance Committee staff and the Joint
17 Tax Committee have been up all night. It is due to their
18 work that we are able to proceed as expeditiously as we
19 are.

20 I would ask Dennis Smith and Grant Aldonas to quickly
21 identify those amendments which were incorporated.

22 Mr. Smith. Thank you, Mr. Chairman.

23 The Moseley-Braun amendment that has been agreed to
24 deals with, under current law, Medicaid allows the States
25 to exclude or restrict certain types of drugs from

1 coverage in their Medicaid program. That includes
2 prescription drugs or agents for smoking cessation. That
3 provision would be removed, but the States would retain
4 the ability to restrict non-prescription agents.

5 The Chairman. Grant?

6 Mr. Aldonas. Thank you, Mr. Chairman.

7 Senator Murkowski's amendment would prohibit the re-
8 importation of tobacco products sold at ship stores or
9 through duty-free stores--those sales through duty-free
10 stores or ship stores are currently exempt from excise
11 tax--to provide a disincentive to any re-importation of
12 those products. Senator Murkowski's amendment would
13 simply bar the re-importation of tobacco products sold
14 either at ship stores or through duty-free stores.

15 The Chairman. Thank you.

16 We are now open to amendments. Senator Chafee?

17 Senator Chafee. Mr. Chairman, I believe there is a
18 Chafee amendment. There is a Chafee-Graham amendment
19 before you, typewritten, if we could just get those
20 distributed.

21 What it does, while this is being distributed, I will
22 describe it to you. It increases the excise tax on
23 cigarettes by \$1.50 a pack within two years. Now, I
24 think what it would mean is it would be an additional 40
25 cents. This is not on top of what the committee mark

1 has. In other words, the committee mark has it at \$1.10.
2 This would add 40 cents in year two. Is that clear?

3 Second, it says, "With a comparable increase on other
4 tobacco products." What we mean there is, as this
5 committee decides--I understand, Mr. Chairman, you are
6 working on what other tobacco products will be taxed, and
7 however that works out with you--that is the way we
8 intend to do it here.

9 Mr. Chairman, in addition, we would spend the
10 additional revenues. In other words, the difference
11 between the \$1.10 and \$1.50, which is 40 cent a pack, on
12 public health programs, as appropriated. They would be
13 smoking cessation, prevention programs, counter-
14 advertising, prevention and cessation research, and NIH.

15 Mr. Chairman, there is no question but what a steep
16 rise in price curbs teenagers from taking up smoking and,
17 indeed, from continuing smoking. The public health
18 community has supported vigorously the \$1.50 per pack, so
19 I would move that and yield to Senator Graham for a
20 couple of comments.

21 Senator Graham. The only reason that we are here,
22 the only justification for this legislation, is to begin
23 to attack the annual loss of lives which are attributable
24 to young people having started to smoke. We know that
25 every day 3,000 young Americans under the age of 18 take

1 up smoking; 1,000 of those will die prematurely of a
2 tobacco-related affliction.

3 There are a number of initiatives in the legislation
4 that is before us which have as their common objective to
5 reduce teenage smoking. The goal which the public health
6 community has urged us to adopt is a 65 percent reduction
7 in 10 years. There is no single provision which will
8 move us closer to that objective than the amendment that
9 Senator Chafee has just offered.

10 The Centers for Disease Control has estimated that
11 for every 10 percent increase in the price of cigarettes,
12 there will be a 7 percent reduction in the number of
13 young people who will commence smoking.

14 If someone wants to challenge that analysis, I
15 believe this is the time to make that challenge. The
16 practical effect of this amendment, raising the cost to
17 \$1.50, using the CDC numbers, would be, in and of itself,
18 to reduce teenage smoking by 55 to 60 percent. So this
19 would bring us within range of that goal of the 65
20 percent reduction.

21 If someone wants to challenge that that should not be
22 America's goal, that our goal ought to be only a 40
23 percent reduction in teenage smoking or whatever number
24 you think is appropriate, but what is, I think, the key
25 to this debate, is let us focus on our reason for being

1 here, which is to reduce teenage smoking and the linkage
2 between the cost of cigarettes and that goal.

3 I am not here to carry the case of how this money
4 should be spent. The relevant question is, are we
5 committed to a 65 percent reduction in 10 years, and
6 seeing this increase in price as a key part of achieving
7 that objective?

8 The Chairman. Senator Nickles.

9 Senator Nickles. Mr. Chairman, I need to ask a
10 couple of questions about this. So this amendment, in
11 two years, would increase tobacco excise taxes on
12 cigarettes by \$1.50.

13 Senator Chafee. That is right.

14 Senator Nickles. Does it index it thereafter?

15 Senator Chafee. No.

16 Senator Nickles. My notes said indexed. It's
17 penciled in. It says, index begins at 2000.

18 Senator Chafee. Well, some vigorous person put it
19 in there.

20 Senator Nickles. That is not your intent.

21 Senator Chafee. That is not my intent, no. I am
22 opposed to all indexing anyway.

23 Senator Nickles. Good. All right. So it is not
24 indexed.

25 Now, it also says, "With a comparable increase on

1 other tobacco products," and then there is a parenthesis,
2 "as stipulated in Commerce Committee bill." The Commerce
3 Committee bill exempted some cigarettes, exempted other
4 tobacco products and has different taxes on some
5 different commodities. But you are wanting the \$1.50 tax
6 on cigarettes to apply to all tobacco commodities?

7 Senator Chafee. What I said in my opening
8 statement, and maybe you missed it, was that, as you will
9 remember, we discussed in this back room here eliminating
10 some tobacco products or dealing with different tobacco
11 products in various ways. As I understood it, Mr.
12 Chairman, the staff and you are going to be looking at
13 just how to handle that.

14 Senator Nickles. We will probably have to wrestle
15 with that in another amendment.

16 Senator Chafee. Yes.

17 Senator Nickles. Let me just ask staff, how big of
18 a tax increase is this?

19 Senator Chafee. You mean, in dollars?

20 Senator Nickles. Yes.

21 Ms. Paull. We have just kind of roughly estimated
22 the 40 cents against the mark, because I thought that is
23 what you were doing.

24 Senator Chafee. That is right.

25 Ms. Paull. Which would have included indexing,

1 because the mark includes indexing. This amendment would
2 raise \$6.7 billion against the mark over the first five
3 years, and \$8.3 billion over the second five years.

4 The second five years, there is an adjustment to the
5 look-back. The look-back on payments will be smaller.

6 Senator Nickles. So the committee mark has tax
7 increases of about \$82 billion before you take the tax
8 cut, and I understand we will debate that in a minute.

9 Ms. Paull. No, sir. You have to add those two
10 columns together.

11 Senator Nickles. I know. 74.6 plus 7.3, plus 6.7
12 and 8.3. So altogether, you are looking at 82 plus 17,
13 so you are talking about \$99 billion over 10 years. Is
14 that close?

15 Ms. Paull. Well, I am in the 130 range here. But
16 let me just turn it over a little more.

17 Senator Gramm. Yes. It's 51.9 plus 74.6.

18 Ms. Paull. Plus 7.3.

19 Senator Gramm. Well, yes, if you get the look-back.

20 Ms. Paull. Ten years, I believe, is what the
21 question was about, right?

22 Senator Nickles. Well, the five and 10 years. So,
23 Lindy, you said it is how much?

24 Ms. Paull. The current mark is 51.9 over five
25 years.

1 Senator Nickles. All right.

2 Ms. Paull. And 82 over the second five years.

3 Senator Nickles. All right.

4 Ms. Paull. All right?

5 Senator Nickles. All right. I get you. I get you.

6 Ms. Paull. All right. So you add those together to
7 get a 10-year number. And this 40 cent increase
8 beginning next year, on top of the mark but indexed--
9 which is a little confusing here but the mark has
10 indexing in it----

11 Senator Nickles. All right. Go ahead.

12 Ms. Paull. [Continued]. Is \$6.7 billion additional
13 in the first five years and \$8.3 billion in the second
14 five years.

15 Senator Nickles. All right. So the Chairman's mark
16 has \$134 billion over 10 years, and this would add \$17
17 billion to it, so it would be a total of \$151 billion,
18 \$150 billion, in that neighborhood?

19 Ms. Paull. In that neighborhood, yes.

20 Senator Nickles. All right. I just wanted to get
21 the figure.

22 I also understand, my colleague from Florida said, we
23 want to go after teenage smoking. Correct me if I am
24 wrong, but only about three percent of the cigarettes are
25 sold to teenagers, so 97 percent of this tax is going to

1 be paid by non-teenagers. So you may hit some teenagers
2 in the process, but you are hitting a lot of people a
3 little bit older.

4 Mr. Chairman, I hope we do not pass this amendment.
5 I think it would be a serious mistake. This is a tax
6 increase that, frankly, the Chairman's mark, without the
7 tax reduction, it is \$51 billion over the first five
8 years, is a little less than the tax cut that we passed
9 last year.

10 If you put this together, you are just about at a tax
11 level that is equal to the tax that we passed in the tax
12 reduction last year. Not quite, almost. I think that
13 would be a mistake.

14 Again, I had a town meeting with teenagers, asking
15 them, if we increased tobacco taxes a dollar, would that
16 decrease consumption, or \$1.10, and the answer was no.
17 So I would urge our colleagues to vote no on the
18 amendment.

19 The Chairman. I would urge that we keep the debate
20 limited. I think everybody knows the pros and cons. I
21 would urge that we go ahead.

22 Kent, please be very brief, if you can.

23 Senator Conrad. All right. I thank the Chairman
24 and I will be brief.

25 I just want to add my voice to what Senator Chafee

1 and Senator Graham have talked about. If the priority is
2 to protect public health and to reduce youth smoking,
3 then the scientific evidence is clear. Scientific
4 evidence comes to us from the Congressional Research
5 Service that tells us, for every 10 percent increase in
6 the price, the number of underage smokers drops by 5 to 7
7 percent.

8 The literature coming to us from the scientific
9 community, the summary of the econometric literature on
10 the demand for tobacco products, concludes that
11 approximately half of the impact of cigarette price and
12 youth demand is on the decision of smoking. Average
13 elasticity, 0.675. In other words, for every 10 percent
14 increase, you get a 6.75 percent reduction.

15 The American Cancer Society's expert, Dr. Harris from
16 MIT, said, "A \$1.50 cent a pack increase, I estimate,
17 would be sufficient to reduce the daily smoking rate
18 among teen smokers by 58 percent."

19 Now, the difference between the Chairman's mark,
20 based on the science and the proposed amendment, under
21 the Chairman's mark we would reduce teen smoking roughly
22 38 percent; under the amendment of Senator Chafee and
23 Senator Graham we would reduce it roughly 58 percent.
24 That is the difference based on the science.

25 Senator Moynihan. Mr. Chairman.

1 The Chairman. We have one additional, Senator
2 Gramm, and then I would like to move on to a vote.

3 Senator Gramm. Well, Mr. Chairman, first of all, if
4 you could reduce smoking by 7 percent by raising taxes by
5 10 percent, we could eliminate smoking by doubling the
6 tax. It is funny that there is no evidence in any real
7 country that that works. It certainly has not worked in
8 Europe, where you have got the black market.

9 But since I have got to be brief, let me reduce this
10 whole tax question down to a simple point. My mother
11 smokes Marlboro cigarettes. She is 85 years old. We are
12 now telling her she has been victimized for a lifetime
13 because Joe Camel is making her smoke, and we have got to
14 do something about it.

15 So what are we doing, are we taxing Joe Camel, are we
16 taxing the cigarette companies? No. We are saying to my
17 mother, you have been victimized, and we are going to
18 victimize you more by making you pay \$1.10 a pack.

19 Now Senator Chafee says, actually, you have been
20 victimized more and we are going to do more for you by
21 making you pay \$1.50 a pack for cigarettes. Seventy-
22 three percent of this cost is going to be borne by
23 families that make less than \$50,000 a year. This is one
24 of the most regressive tax increases in the history of
25 the country. I think it would be an outrage if we

1 adopted the Chafee amendment and I hope it will be
2 defeated.

3 The Chairman. Thank you. Are we ready for a vote?

4 Senator Nickles. Mr. Chairman?

5 The Chairman. Yes.

6 Senator Nickles. Mr. Chairman, a couple of
7 comments. You have two amendments here. We had a
8 significant discussion on whether we are going to deal
9 with taxes and then deal with spending. This amendment
10 has both.

11 I would suggest we vote on the taxes. We know we are
12 going to have a vote at some point on a clean \$1.50. We
13 ought to decide what the tax is going to be. Then if we
14 are going to have a discussion on how we are going to
15 spend money, let us have that discussion, too.

16 The Chairman. Are you calling for a division?

17 Senator Nickles. I would ask for a division of the
18 amendment.

19 The Chairman. A division has been called for. The
20 Senator is within his rights.

21 Senator Chafee. No, I am opposed to splitting them
22 out, Mr. Chairman. It seems to me we ought to know what
23 the money is for. We do not want to spend some reduction
24 of marginal rates of income taxes or something like that,
25 we want it on these public health programs. That is the

1 whole purpose of it.

2 Senator Moynihan. Mr. Chairman, let us vote on the
3 motion to divide.

4 The Chairman. Well, I think he is within his right
5 in calling for a division. He has asked for a division.
6 We will, first, have a vote on the increase. The Clerk
7 will call the roll.

8 Senator Breaux. Mr. Chairman, wait a minute. We
9 are talking about a huge amendment here. We ought to
10 have a right to say something about it. Mr. Chairman?

11 Senator Moseley-Braun. Not only that, Mr. Chairman,
12 but do we not get to vote on the request for a motion to
13 divide?

14 The Chairman. No.

15 Senator Moynihan. No, that is to begin with.

16 The Chairman. He has the right to ask for a
17 division. He has that right. Why do we not go ahead and
18 vote.

19 Senator Moseley-Braun. We do not get to vote?

20 Senator Moynihan. This is purely procedural. There
21 will be plenty of talk afterwards.

22 Senator Breaux. Mr. Chairman, I would like to speak
23 on the amendment that is still pending, then.

24 The Chairman. John.

25 Senator Breaux. I will be brief. The Chairman's

1 mark is \$1.10. As I understand it, it is immediate, it
2 is not phased in. So with \$1.10, we are going to get a
3 substantial amount more than we would have gotten with
4 \$1.10 had it been phased in. So we have already got a
5 substantial amount of additional funds.

6 Now, if anybody has looked at the distributional
7 chart, I mean, this should knock the socks off of a lot
8 of people. The distributional chart from the Joint
9 Committee on Taxation. You talk about who is paying
10 this. People with income categories of less than \$10,000
11 will get a 41.2 percent tax increase. If you are in the
12 category between \$75,000 and \$100,000, your tax increase
13 is 0.6 of 1 percent. That is an incredible focus on the
14 very poorest among the poor.

15 Yet, we do not know how it is going to be spent. Are
16 they going to get it back in the same proportion or are
17 other people going to get it back in the same proportion?
18 I mean, I think \$1.10 up front, not phased in, is a
19 substantial amount of revenue and should be sufficient.

20 The Chairman. I think there has been ample
21 opportunity. Time is running out. There is a right to
22 call for a division.

23 Senator Baucus. Mr. Chairman?

24 The Chairman. The Clerk will call the roll to vote
25 on the tax aspect.

1 Senator Baucus. Mr. Chairman, there is one point
2 which has not been made which I think is important to
3 this debate, if I might, Mr. Chairman.

4 One, is that the underlying bill, your mark here,
5 which is indexed so that in the last year the price will
6 be at least \$1.50 a pack already. In fact, it keeps
7 going up. It is indexed. Your bill is indexed so it
8 keeps going up, and after the final year it will go up
9 beyond \$1.50 a pack.

10 The underlying amendment offered by the Senator from
11 Rhode Island is not indexed, so, in effect, what is
12 really happening here is his amendment just moves the
13 date by which it will be \$1.50 a little earlier. Because
14 it is not indexed, the fact of the matter is it will end
15 up at a lower price per pack after a good number of years
16 than will the underlying bill.

17 The Chairman. The Clerk will call the roll. An aye
18 vote is to increase the tax to----

19 Senator Moynihan. No, Mr. Chairman. We were voting
20 on the division.

21 The Chairman. No, we do not have to vote on a
22 division. As a matter of right.

23 Senator Moynihan. Right. It is done.

24 The Chairman. So the Clerk will call the roll.

25 The Clerk. Mr. Chafee?

1 Senator Chafee. Aye.
2 The Clerk. Mr. Grassley?
3 Senator Grassley. Aye.
4 The Clerk. Mr. Hatch?
5 Senator Hatch. No.
6 The Clerk. Mr. D'Amato?
7 The Chairman. No, by proxy.
8 The Clerk. Mr. Murkowski?
9 Senator Murkowski. No.
10 The Clerk. Mr. Nickles?
11 Senator Nickles. No.
12 The Clerk. Mr. Gramm, of Texas?
13 Senator Gramm. No.
14 The Clerk. Mr. Lott?
15 The Chairman. Not present.
16 The Clerk. Mr. Jeffords?
17 Senator Jeffords. Aye.
18 The Clerk. Mr. Mack?
19 The Chairman. No, by proxy.
20 The Clerk. Mr. Moynihan?
21 Senator Moynihan. Aye.
22 The Clerk. Mr. Baucus?
23 Senator Baucus. Aye.
24 The Clerk. Mr. Rockefeller?
25 Senator Rockefeller. Aye.

1 The Clerk. Mr. Breaux?
2 Senator Breaux. No.
3 The Clerk. Mr. Conrad?
4 Senator Conrad. Aye.
5 The Clerk. Mr. Graham, of Florida?
6 Senator Graham. Aye.
7 The Clerk. Ms. Moseley-Braun?
8 Senator Moseley-Braun. No.
9 The Clerk. Mr. Bryan?
10 Senator Bryan. Aye.
11 The Clerk. Mr. Kerrey?
12 Senator Kerrey. No.
13 The Clerk. Mr. Chairman?
14 The Chairman. No.
15 The Clerk. The votes are 9 yeas, 10 nays.
16 Senator Chafee. No, no, no, no. It is vice versa.
17 The Clerk. I reversed it. I am sorry. Can we do it
18 again?
19 Senator Chafee. We had it. We had a roll call.
20 There it is. The vote is 10, 9.
21 The Chairman. The Clerk had a problem. Let us go
22 through it quickly. The Clerk will call the roll.
23 Senator Nickles. I liked the way she announced the
24 vote.
25 The Chairman. The Clerk will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. Aye.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. No.
7 The Clerk. Mr. D'Amato?
8 The Chairman. No, by proxy.
9 The Clerk. Mr. Murkowski?
10 Senator Murkowski. No.
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. Not present.
17 The Clerk. Mr. Jeffords?
18 Senator Jeffords. Aye.
19 The Clerk. Mr. Mack?
20 The Chairman. No, by proxy.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux?

3 Senator Breaux. No.

4 The Clerk. Mr. Conrad?

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham, of Florida?

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun?

9 Senator Moseley-Braun. No.

10 The Clerk. Mr. Bryan?

11 Senator Bryan. Aye.

12 The Clerk. Mr. Kerrey?

13 Senator Kerrey. No.

14 The Clerk. Mr. Chairman?

15 The Chairman. No.

16 The Clerk. The votes are 9 yeas, 10 nays.

17 The Chairman. The amendment on the tax increase is

18 not agreed to.

19 The vote will now come on the----

20 Senator Gramm. Mr. Chairman, it is no longer

21 relevant. You have nothing to divide.

22 The Chairman. The floor is open to amendments.

23 Senator Moynihan. Mr. Chairman, I believe Mr.

24 Conrad is going to ^{offer} ~~be~~ the first Democratic amendment.

25 The Chairman. Kent?

1 Senator Conrad. Thank you, Mr. Chairman.

2 My amendment strikes the excise tax increase in the
3 Chairman's mark and instead inserts a health fee to be
4 collected in the same manner as an excise tax of 50 cents
5 in the first year, \$1.00 in the second year, and \$1.50 in
6 the third year. Thereafter, the fee would be adjusted
7 annually for inflation. The additional revenue generated
8 by the amendment would go to the trust fund. Medicare
9 and black lung would be added as accounts within the
10 trust fund.

11 The justification is the same justification that I
12 gave before, that you need to raise the price to \$1.50 in
13 order to accomplish the goals that are set out in the
14 legislation. All of the science indicates that is what
15 it takes.

16 This is phased in so that there is not the consumer
17 backlash that might otherwise develop, and we think this
18 is a responsible way to raise the price in a way that
19 accomplishes the goals for the reduction of teen smoking.

20 Senator Gramm. Mr. Chairman?

21 The Chairman. Yes, Senator Gramm.

22 Senator Gramm. Mr. Chairman, in addition to all of
23 the arguments that I made before, we are trying to cause
24 consumer backlash. I think what we are doing here
25 reveals our real objective. This is not about teenage

1 smoking, it is about money.

2 If your objective is to get people to quit smoking,
3 why would you phase the tax increase in? If your
4 objective is to get them to stop smoking, that is called
5 consumer backlash.

6 So what you would want to do is put the tax on full
7 tilt to begin with. Phasing it in is living, honest-to-
8 God proof that this is not about getting people to get
9 smoking, this is about getting money. We defeated the
10 Chafee amendment, I trust we will defeat this amendment.

11 Senator Moynihan. Mr. Chairman?

12 The Chairman. Senator Moynihan.

13 Senator Moynihan. Mr. Chairman, may I say with the
14 best of will to my friend, Senator Conrad, that this
15 amendment would defeat the entire purpose of the referral
16 of this legislation to the Finance Committee. It would
17 ~~say we would~~ strike the excise tax and insert a health
18 fee. That is the proposition of the Commerce Committee,
19 which is that they can impose fees as against taxes.
20 There is no difference, but I would hope we would not
21 agree to this.

22 Senator Conrad. Mr. Chairman, could I answer that
23 and say that I offered this legislation in the U.S.
24 Senate and that bill was referred to this committee.
25 This committee has jurisdiction over health fees. This

1 would not be a matter that would upset the jurisdiction
2 of this committee. I would repeat, I offered this
3 legislation in the U.S. Senate and the parliamentarian
4 referred this bill to the Finance Committee. This is in
5 our jurisdiction.

6 The Chairman. I would have to respectfully
7 disagree. I think it does raise a very substantial
8 question, as Senator Moynihan has indicated. I would
9 hope that the author of the amendment would withdraw it,
10 but if he does not, I think it is important, one of the
11 principal reasons for getting referral here is to assure
12 our jurisdiction over these matters that are within our
13 jurisdiction. This could raise a question which I do not
14 think would be in the interest of the committee.

15 Senator Graham. Mr. Chairman?

16 The Chairman. Yes.

17 Senator Graham. Mr. Chairman, I would like to ask
18 for division of the question, to vote first on the
19 statement, "strike the excise tax increase in the
20 Chairman's mark and insert a health fee to reflect in the
21 same manner as an excise tax." That would be the first
22 vote. Then the second vote would be on the structure of
23 the fee, as suggested by the Senator from North Dakota.

24 The Chairman. Orrin?

25 Senator Hatch. Mr. Chairman, I think we have to

1 take a moment to examine exactly what we are doing here.
2 Last June, 40 State Attorneys General, the tobacco
3 companies, the Costano litigants, the public health
4 representatives, announced a settlement which presented
5 Congress with a one-in-a-generation opportunity to get
6 our kids off of smoking. The whole point of this
7 exercise is to prevent kids from smoking, not to punish
8 adults who have a legal product or to raise revenue for
9 other purposes.

10 The public health experts will tell you, the best
11 plan is a comprehensive plan which contains advertising
12 restrictions, counter-advertising, smoking cessation and
13 education programs, the whole gamut.

14 The only way a comprehensive plan works, and we have
15 had 10 hearings on tobacco in the Judiciary Committee,
16 and I believe Senator Jeffords has had at least 10 in his
17 committee, and Senator McCain has had 10 in his
18 committee, the Commerce Committee.

19 But the only way this is going to work is with the
20 participation, albeit grudgingly, of the tobacco
21 companies. They have tremendous resources and ingenuity
22 to fight a plan unless they are partners in it. That was
23 the beauty of the original settlement.

24 We heard testimony yesterday that if we raised these
25 prices as high as the McCain, and this is going to go

1 higher than the McCain, that the tobacco companies
2 certainly are not going to come on this bill, it is going
3 to be counterproductive, and in the end what we are going
4 to have is a situation of about 10 years of litigation
5 with a million kids a year getting hooked on cigarettes.

6 Now, the Commerce bill is fundamentally flawed in
7 this area, and we all know it. It has numerous
8 Constitutional problems, as were testified to yesterday,
9 which we all acknowledge. It does not have the support
10 of the manufacturers. In fact, they are openly opposing
11 it and they are making some progress in opposing it.

12 The President, last September, endorsed a
13 comprehensive ban and said that the price tag should be
14 up to \$1.50 per pack over 10 years. Then his budget came
15 in at \$1.10 cents after five years, which testimony in my
16 committee indicates amounts to a retail increase which is
17 twice as high, twice as fast as the President's request.
18 Now, here we are considering a bill which is not modeled
19 on the settlement and which raises the price even
20 further.

21 Now, if we are deciding to raise some revenues at the
22 expense of one industry, then this bill is going to be
23 one heck of a good bill. If our goal is to stop youth
24 tobacco use, then I think we are going to fail,
25 especially if this amendment is passed.

1 I know it is fashionable-----

2 The Chairman. Will the Senator please----

3 Senator Hatch. Well, I will wrap it up with just
4 another 20 seconds.

5 I know it seems fashionable to knock tobacco, big
6 tobacco. But this pile-on mentality is destroying the
7 fundamental principle which is the only workable way to
8 get a comprehensive youth anti-tobacco plan to begin
9 with.

10 If we are trying to stop kids from smoking, then we
11 cannot make the mistake of just piling on here. We have
12 got to find some way of getting the tobacco companies
13 back on board. This will not work without it and we will
14 have 10 years of litigation, take it from me as chairman
15 of the Judiciary Committee. We have had lots of
16 testimony on that and I do not think there is any
17 question that that is what will happen. I apologize for
18 taking so long.

19 The Chairman. A request has been made for a
20 division on this matter so there will be a roll call
21 vote.

22 Senator Conrad. Mr. Chairman?

23 The Chairman. I am going to proceed.

24 Senator Conrad. Mr. Chairman, I could save you some
25 time, perhaps.

1 The Chairman. Kent.

2 Senator Conrad. I would ask my Ranking Member his
3 disposition. I mean, the parliamentarian assigned my
4 bill that has a health fee to this committee, but if our
5 Ranking Member were convinced that that does endanger the
6 jurisdiction of the committee, I would then have to
7 seriously consider withdrawing the amendment.

8 Senator Moynihan. I respectfully say I do fear it
9 does.

10 The Chairman. Senator Conrad, are you withdrawing?
11 Let me say, it is almost 12:00 and I think it is
12 critically important that we make some progress if we are
13 going to get done. So I would ask, Senator Conrad, would
14 you withdraw this amendment?

15 Senator Conrad. I would like to modify my amendment
16 to take out the health fee provision, but still to
17 provide the 50 cents.

18 Senator Moynihan. The vote for the \$1.50^{increase} again.

19 Senator Conrad. \$1.50. Fifty cents a year for
20 three years.

21 Senator Rockefeller. Mr. Chairman, I just want to
22 say that I understand what is going on here, but there
23 are a lot of lawyers who are sitting behind those of us
24 on this side who have read case law on this issue, and
25 they say that the health fee will not disturb the

1 jurisdiction of the Finance Committee. It will not do
2 it.

3 The Chairman. Well, I understand that there is some
4 difference of opinion. But the fact is, it does raise a
5 serious question. My understanding is, Senator Conrad,
6 you are going to withdraw the amendment?

7 Senator Conrad. No. I have asked to modify it so
8 that the health fee is removed. We do not have to go
9 through a vote on the division on the health fee, that we
10 just take out that part of it and we stick with the 50
11 cents a year increase.

12 Senator Moynihan. To \$1.50.

13 The Chairman. To \$1.50.

14 Senator Nickles. You want \$1.50 and you want it
15 phased in over three years, so it would be 50 cents, 50
16 cents, 50 cents, and it is really a tax, but you want to
17 call it a fee?

18 Senator Gramm. No, he does not call it a fee
19 anymore.

20 Senator Conrad. It would be real helpful if we all
21 kind of paid attention to the flow of events here.

22 Senator Nickles. Fifty cents in three years.

23 The Chairman. So you are modifying accordingly. I
24 think everybody knows what the issues are.

25 The Clerk will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. No.
7 The Clerk. Mr. D'Amato?
8 Senator D'Amato. Aye.
9 The Clerk. Mr. Murkowski?
10 Senator Murkowski. No.
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. Not present.
17 The Clerk. Mr. Jeffords?
18 Senator Jeffords. Aye.
19 The Clerk. Mr. Mack?
20 Senator Mack. No.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

- 1 Senator Rockefeller. Aye.
- 2 The Clerk. Mr. Breaux?
- 3 Senator Breaux. No.
- 4 The Clerk. Mr. Conrad?
- 5 Senator Conrad. Aye.
- 6 The Clerk. Mr. Graham, of Florida?
- 7 Senator Graham. Aye.
- 8 The Clerk. Ms. Moseley-Braun?
- 9 Senator Moseley-Braun. No.
- 10 The Clerk. Mr. Bryan?
- 11 Senator Bryan. Aye.
- 12 The Clerk. Mr. Kerrey?
- 13 Senator Kerrey. No.
- 14 The Clerk. Mr. Chairman?
- 15 The Chairman. No.
- 16 Senator Grassley. Mr. Chairman, before the vote is
17 announced, I want to change my vote to aye because the
18 correction makes my vote inconsistent with the first vote
19 and I want to be consistent. I want to change from no to
20 aye.
- 21 The Clerk. With that change, the votes are 10 yeas,
22 9 nays.
- 23 The Chairman. The amendment is agreed to.
- 24 Senator Hatch?
- 25 Senator Hatch. Mr. Chairman, I know that by

1 offering this amendment or this motion to strike I am
2 opening myself up to charges that I am against tax cuts.
3 However, I feel strongly enough about the purpose of the
4 overall tobacco bill to risk that.

5 Everybody knows that I have been for tax rate
6 reduction, and especially marginal tax rate reductions,
7 and helped to lead the fight for the 25 percent marginal
8 tax rate reductions during the Reagan years, including
9 fighting so hard for the reduction of the marriage tax
10 penalty, and of course the capital gains rate reductions
11 last year.

12 But I feel strongly enough about the purpose of the
13 overall tobacco bill to risk this criticism. I do want
14 to state that, of course, I am for the provision of
15 health care and would like to do that. After all, I
16 voted against the 1990 Budget Agreement because of the
17 tax increases that it contained.

18 I have advocated significant capital gains rate
19 reductions and eliminating the marriage penalty for
20 several years now, and I think my stand on tax cuts is
21 pretty clear.

22 However, the bill before us today----

23 The Chairman. There will please be order in the
24 room.

25 Senator Hatch. The bill before us today is not

1 about tax cuts, it is not about revenue, it is about the
2 health of our teens. The ultimate goal of the underlying
3 legislation before us is to reduce teen smoking. We need
4 to keep our eyes focused on that goal as far as I am
5 concerned, and use the money raised by the excise tax
6 toward that end.

7 I strongly support these particular tax cuts in the
8 Chairman's mark, but I do not believe that we should
9 treat this tobacco money as a Federal piggy-bank. I am
10 concerned that once we start down this road of using
11 tobacco money for other items, as laudable as they may
12 be, it becomes a slippery slope with the tobacco revenues
13 going to the highest bidder.

14 We should take the high ground and resist the lure of
15 the easy revenue. Let us keep the focus of this
16 committee amendment on teen smoking and tobacco-related
17 programs. Let us save the tax cuts for later in the
18 year.

19 Now, as I see it, what we have called for here is to
20 have these health care reductions and to try and help
21 those on the lower end of the spectrum, which I am for.
22 But the problem is, if you take that money and use it for
23 those purposes, you are not going to have it for public
24 health and a whole raft of other anti-teen smoking
25 purposes that are absolutely critical to us.

1 I think this bill, whatever it is when it comes
2 through the Senate and hopefully the House, ought to be a
3 bill for reduction of teen smoking, it ought to be a bill
4 for smoking-related purposes, health care purposes, and
5 we should not use it as a vehicle to just do anything we
6 want to do here in Congress. If we keep it on that
7 basis, the American people can understand it. If we keep
8 it on that basis we can get through this thing, and I
9 think people will accept it.

10 If we could get the tobacco companies back on board
11 so that we could get the voluntary consent protocols that
12 are essential to make this Constitutional, then I have
13 got to tell you, we would have something where we have
14 the community itself, the tobacco community, voluntarily
15 supporting the payments here.

16 Unfortunately, if we keep piling on we are not going
17 to be able to ever get that done. But my amendment moves
18 to strike that provision with regard to the taxation.

19 Senator Gramm. Mr. Chairman?

20 The Chairman. Senator Gramm.

21 Senator Gramm. Well, Mr. Chairman, my colleague
22 from Utah talks about easy revenue. I do not think
23 raising the tax burden on Americans who make less than
24 \$10,000 a year by 41.2 percent is easy revenue. It is
25 certainly not revenue that I am comfortable with.

1 Our colleague talks about taxing tobacco companies.
2 I wish we were taxing tobacco companies. But every penny
3 of these taxes will be paid by honest-to-God, real flesh
4 and blood, blue-collar workers in this country.

5 Now, the whole purpose of our provision in the bill
6 to allow workers who do not get health insurance on their
7 jobs to have the same treatment as General Motors, and
8 that is that they can buy it on a tax-deductible basis,
9 that is a way of putting some of this money back in the
10 hands of the very blue-collar workers who are going to
11 see their effective Federal tax burden explode under this
12 bill.

13 Finally, our colleague talks about public health.
14 What about private health? Why is it such a great thing
15 when the government creates billions, and tens of
16 billions of dollars of programs, and why is it a bad
17 thing when we help blue-collar workers buy their own
18 private health insurance? I think having working people
19 in this country have health insurance is a public health
20 issue and I strongly oppose this amendment. I thank the
21 Chairman.

22 Senator Nickles. Mr. Chairman?

23 The Chairman. Two minutes to Senator Rockefeller,
24 then we will recognize you.

25 Senator Rockefeller. Mr. Chairman, the Senator from

1 Texas talks about helping the working person. I say this
2 in the context of fully agreeing with the Senator from
3 Utah's amendment to strike these two tax deductions.

4 First of all, if you are trying to help the working
5 person, then certainly he does not want to vote for
6 something which will give an average of \$8.20 to somebody
7 making between zero and \$15,000, and \$350 plus to
8 somebody making over \$1 million, which is what he would
9 be doing in the amendment.

10 Second, we all know that giving 100 percent
11 deductibility will allow companies to, in fact, drop
12 their coverage, which will, in fact, put more people at
13 risk of not having health insurance, which will, in turn,
14 up the public cost that we are already putting into
15 health care. This is an amendment by the Senator from
16 Utah which should absolutely pass.

17 The Chairman. I will now recognize Senator Nickles.
18 Then we will have to move to a vote. Senator Nickles?

19 Senator Nickles. Mr. Chairman, last year in the tax
20 bill the Senate voted, I think, 97, almost a unanimous
21 vote, to give a 100 percent deduction, phased in over
22 some period of time, for self-employed individuals.

23 I used to be a self-employed individual. We are
24 trying to accelerate that. We are trying to make it
25 happen next year. We should. Why in the world should

1 General Motors or Nickles Machine Corporation get a 100
2 percent deduction but a self-employed person only get 40
3 or 45 percent? It is not right. It is not fair.

4 We are trying to say, let us take some of the tax
5 increase that we have--we have a very large tax increase--
6 --and let us allow some tax equity and allow self-employed
7 people to be able to get a deduction, just like we allow
8 every other big corporation.

9 So I would urge our colleagues to defeat this
10 amendment.

11 Senator Grassley. Mr. Chairman, could I have 30
12 seconds?

13 Senator Hatch. I want one minute.

14 The Chairman. I have to repeat to the committee
15 again that time is running out. We have heard two argue
16 this on both sides of the issue. We all know what the
17 issues are. It is not going to change any vote. The
18 Clerk will call the roll.

19 Senator Hatch. Mr. Chairman, as the sponsor of the
20 amendment I would like 30 seconds.

21 The Chairman. I think you have had adequate time.

22 Senator Hatch. Well, I just want to make this one
23 point.

24 The Chairman. Thirty seconds, and then I will give
25 you 30 seconds.

1 Senator Hatch. And then I will try and behave
2 myself.

3 The Chairman. I am going to insist on 30 seconds.

4 Senator Hatch. That will be fine.

5 Mr. Chairman, on this 100 percent deduction for
6 health insurance expenses for self-employed individuals
7 and other individuals not eligible to participate in an
8 employer-subsidized health plan, frankly, these people,
9 many of them do not pay taxes. Many of them are not
10 going to benefit from this at all on this lower end, and
11 most of the smokers are on that lower end. We take \$29
12 billion out.

13 The Chairman. All right. Senator Baucus.

14 Senator Baucus. Mr. Chairman, I might note that
15 with the passage of the previous amendment there is \$60
16 billion more over five years, which makes it easier to
17 pass the underlying provision that is opposed to the
18 Hatch amendment, and also money for other health-related
19 programs.

20 Second, I guess I am speaking more for my home State,
21 but we are very much a small business, self-employed
22 State. Very much. In a time when farm income is rock
23 bottom and ranch income is rock bottom, I can just tell
24 you that this is really important. I walked across
25 Montana in my last race.

1 I can tell you, the point I heard more than anything
2 else is, I do not have any health insurance because my
3 small company does not provide any health insurance, or I
4 am self-employed, more than any other single point. I
5 just think this is very much needed for rural States
6 certainly, and others with small business and self-
7 employed people.

8 The Chairman. The Clerk will call the roll.

9 The Clerk. Mr. Chafee?

10 Senator Chafee. Aye.

11 The Clerk. Mr. Grassley?

12 Senator Grassley. No.

13 The Clerk. Mr. Hatch?

14 Senator Hatch. Aye.

15 The Clerk. Mr. D'Amato?

16 Senator D'Amato. No.

17 The Clerk. Mr. Murkowski?

18 Senator Murkowski. No.

19 The Clerk. Mr. Nickles?

20 Senator Nickles. No.

21 The Clerk. Mr. Gramm, of Texas?

22 Senator Gramm. No.

23 The Clerk. Mr. Lott?

24 The Chairman. Not present.

25 The Clerk. Mr. Jeffords?

1 Senator Jeffords. Aye.
2 The Clerk. Mr. Mack?
3 Senator Mack. Aye.
4 The Clerk. Mr. Moynihan?
5 Senator Moynihan. Aye.
6 The Clerk. Mr. Baucus?
7 Senator Baucus. No.
8 The Clerk. Mr. Rockefeller?
9 Senator Rockefeller. Aye.
10 The Clerk. Mr. Breaux?
11 Senator Breaux. Aye.
12 The Clerk. Mr. Conrad?
13 Senator Conrad. Aye.
14 The Clerk. Mr. Graham, of Florida?
15 Senator Graham. Aye.
16 The Clerk. Ms. Moseley-Braun?
17 Senator Moseley-Braun. Aye.
18 The Clerk. Mr. Bryan?
19 Senator Bryan. Aye.
20 The Clerk. Mr. Kerrey?
21 Senator Moynihan. Aye, by proxy.
22 The Clerk. Mr. Chairman?
23 The Chairman. No.
24 The Clerk. The votes are 12 yeas, 7 nays.
25 The Chairman. The amendment is agreed to.

1 Senator Breaux?

2 Senator Breaux. Mr. Chairman, I have an amendment
3 that I think Senator Kerrey wants to join with me, he had
4 indicated he did, and is being passed out right now.

5 One of my concerns is that we in the Finance
6 Committee are establishing a trust fund, but we are not
7 really saying what the trust fund is going to be used
8 for. I think, if we are going to raise the tax, which we
9 are doing, we establish a trust fund, which we are doing,
10 we ought to be at least involved in where the money is
11 spent that comes out of the trust fund.

12 What I am concerned about, is that the language that
13 I am seeking to strike, which is being passed out, the
14 report says that the amounts in the trust fund would be
15 available for expenditure for the programmatic purpose as
16 established in S. 1415 as reported by the Commerce
17 Committee. We had some discussion in the back about, it
18 was necessary for us to refer to something in
19 establishing a trust fund. I appreciate that.

20 But my concern is, and in the other committee that I
21 happen to sit on as well, so I have mixed emotions in
22 this, but we laid out a whole bunch of things that the
23 trust fund will be spent for, some of which were not
24 within the jurisdiction of the Commerce Committee.

25 For instance, we said it should be spent for child

1 care, for black lung, for veterans benefits, for
2 Medicaid, for farmers, for all of these things, some of
3 which are not in their jurisdiction either.

4 So what my suggestion is, is that we replace that
5 language in the current draft with a statement that says
6 the amounts in the trust fund would be available for
7 expenditure for the programmatic purpose as established
8 in S. 1415, as passed by the Senate. That simply
9 recognizes that the spending is going to be really
10 accomplished on the floor.

11 The Chairman. I would say to the distinguished
12 Senator that his amendment is acceptable.

13 Senator Moynihan. Most acceptable, sir.

14 Senator Breaux. I will shut up.

15 The Chairman. So the amendment is agreed to. Open
16 for further amendment.

17 Senator Moseley-Braun?

18 Senator Moseley-Braun. Thank you very much, Mr.
19 Chairman. I have, I think, a very logical amendment,
20 particularly with what we have just done in terms of the
21 amount of this fund.

22 Right now, the States will receive about 30 percent
23 of the money and there is no language in the bill to
24 limit what they use on it. So they could use it for
25 tourism, they could use it for roads, they could use it

1 for whatever they care to.

2 It just seems to me that if the whole idea of this
3 legislation is about reducing teen smoking, then I think
4 it is important that we have some direction that the
5 money will be used for health-related activities. This
6 is not overly prescriptive. It simply says that the
7 States have to spend the money on health-related, and
8 particularly smoking cessation, kinds of activities.

9 I would urge my colleagues to support it. Over five
10 years, it will be \$17 billion going to the State, with no
11 direction whatsoever as to the use of the money. Over 10
12 years, \$37.3 billion, as I understand it, Lindy, given
13 the amendment that we have passed, about \$37 billion.
14 Again, the States could use it for whatever and not
15 anything related to smoking. That, ostensibly, is the
16 reason for this legislation and I would encourage my
17 colleagues to support the amendment.

18 Senator Gramm. Mr. Chairman?

19 The Chairman. Senator Gramm.

20 Senator Gramm. Mr. Chairman, let me just try to
21 explain that the tobacco settlement was to compensate
22 States for the billions of dollars they had spent on
23 Medicaid as a result of people having smoked in the past,
24 and as a result of having to pay a mounting cost on
25 Medicaid. Many States have been forced to deny funds

1 going into other areas, such as education.

2 I think it would be wrong-headed for us to try to
3 force States to spend the money in a certain area when
4 the payment to the States was for compensation for money
5 they have already spent in Medicaid.

6 Now, maybe we would like to tell States how to spend
7 their money, but the whole tobacco settlement logic was
8 to compensate them for the money that had been taken away
9 from programs like education as they spent the money on
10 Medicaid.

11 I do not think we ought to be telling States what to
12 do with money that they have, in essence, gotten in the
13 settlement. We are not giving them more money than they
14 had already agreed to. I think the States ought to be
15 able to decide where to spend the money, myself.

16 The Chairman. No further debate.

17 Senator Murkowski. Mr. Chairman?

18 The Chairman. Senator Murkowski.

19 Senator Murkowski. The States would start taxing
20 itself. In my State of Alaska, we have \$1.00 tax. The
21 State has the obligation, obviously, of meeting its
22 priorities with that and the public assumes it is going
23 to be rehabilitation and curbing smoking. So it seems to
24 me it is not necessary. The States should have the
25 responsibility and they should be up to meeting that

1 responsibility without a dictate of where the funds
2 should basically go.

3 The Chairman. I would urge that we proceed with the
4 vote.

5 Senator Moseley-Braun. Just in closing, Mr.
6 Chairman. The States could pass this tax themselves, for
7 that matter.

8 Senator Murkowski. They are.

9 Senator Moseley-Braun. But the point is, they can
10 spend this money on anything and not have it health
11 related. This bill is supposed to be about stopping teen
12 smoking and stopping smoking, and I would encourage a yes
13 vote for the amendment.

14 The Chairman. The Clerk will call the roll.

15 The Clerk. Mr. Chafee?

16 Senator Chafee. No.

17 The Clerk. Mr. Grassley?

18 Senator Grassley. Yes.

19 The Clerk. Mr. Hatch?

20 Senator Hatch. No.

21 The Clerk. Mr. D'Amato?

22 Senator D'Amato. No.

23 The Clerk. Mr. Murkowski?

24 Senator Murkowski. No.

25 The Clerk. Mr. Nickles?

1 Senator Nickles. No.
2 The Clerk. Mr. Gramm, of Texas?
3 Senator Gramm. No.
4 The Clerk. Mr. Lott?
5 The Chairman. Not present.
6 The Clerk. Mr. Jeffords?
7 Senator Jeffords. No.
8 The Clerk. Mr. Mack?
9 Senator Mack. No.
10 The Clerk. Mr. Moynihan?
11 Senator Moynihan. Aye.
12 The Clerk. Mr. Baucus?
13 Senator Baucus. No.
14 The Clerk. Mr. Rockefeller?
15 Senator Rockefeller. Aye.
16 The Clerk. Mr. Breaux?
17 Senator Breaux. Aye.
18 The Clerk. Mr. Conrad?
19 Senator Conrad. Aye.
20 The Clerk. Mr. Graham, of Florida?
21 Senator Graham. No.
22 The Clerk. Ms. Moseley-Braun?
23 Senator Moseley-Braun. Aye.
24 The Clerk. Mr. Bryan?
25 Senator Bryan. Aye.

1 The Clerk. Mr. Kerrey?

2 Senator Moynihan. Aye, by proxy.

3 The Clerk. Mr. Chairman?

4 The Chairman. No.

5 Senator Nickles. Mr. Chairman?

6 The Chairman. Senator Nickles.

7 Senator Nickles. Aye.

8 Senator Conrad. Mr. Chairman, how am I recorded on
9 this?

10 The Chairman. How is Senator Conrad recorded?

11 The Clerk. Aye.

12 The Chairman. Senator Conrad, no change?

13 Senator Conrad. Yes. I just wanted to know how I
14 was recorded.

15 The Chairman. The Clerk will give the results.

16 The Clerk. The votes are 9 yeas, 10 nays.

17 The Chairman. The amendment is not agreed to.

18 Senator D'Amato. Mr. Chairman?

19 The Chairman. Senator D'Amato.

20 Senator D'Amato. Mr. Chairman, I have an amendment
21 to offer. But, first, I would like to propound a request
22 to the Chair, or of the committee, that will not alter a
23 vote. But if I was here and were to have voted, and my
24 proxy, I understand, was voted on the Chafee amendment, I
25 would have voted aye. It does not change the outcome,

1 but I wish it to be noted.

2 Senator Chafee. It would have changed the outcome.

3 Senator D'Amato. Is that right?

4 Senator Chafee. Yes. It sure would have.

5 Senator D'Amato. Well, John, you would have won it.

6 Senator Chafee. Thanks. That is little

7 consolation.

8 [Laughter].

9 Senator D'Amato. They are not going to let me do
10 that.

11 But, Mr. Chairman----

12 Senator Rockefeller. Had the Senator from New York
13 given his proxy?

14 Senator D'Amato. Let me say, the Chair had the
15 authority to vote the proxy. We did not give
16 instructions on that, so the Chair voted it. But again,
17 it will be down on the floor and we will vote on it
18 again.

19 The Chairman. The vote stands.

20 Senator D'Amato. Mr. Chairman, I would like to
21 offer an amendment that this committee is well aware of.
22 It deals with the problem of guaranteeing that no
23 hospital can put a patient out before the doctor and the
24 patient's medical necessity, that is, it will stop the
25 drive-by mastectomies for those plans that are covered by

1 ERISA.

2 In addition, it would provide for reconstructive
3 surgery where there is a procedure radical mastectomy, as
4 opposed to some plans denying this procedure on the basis
5 of it being called cosmetic. That is ridiculous. It
6 happens every day in this country. I have constituents
7 who call me regularly who are being denied basic medical
8 treatment.

9 It has been very limited, very carefully tailored to
10 deal with just these two examples. It is not the end-all
11 and be-all of all health care, but certainly is a
12 beginning. I offer the amendment.

13 Senator Nickles. Mr. Chairman?

14 The Chairman. Senator Nickles.

15 Senator Nickles. Mr. Chairman, I think I know where
16 the votes are so I am not going to waste much time. I
17 have a strong reservation or a strong hesitation to
18 legislate by body part. That is what we are doing. We
19 have done it before and it has not been good, it has not
20 been effective. I will compliment the Senator from New
21 York. I think he has made some improvements over his
22 amendment as it was maybe a couple of months ago.

23 So I am not even going to ask for a roll call vote,
24 but I do have strong reservations about us getting this
25 in. One, I do not think it belongs on this bill. We can

1 have an amendment on mastectomies, and somebody is going
2 to say, maybe we should have an amendment on prostate, or
3 somebody else would say we should have an amendment on
4 some other body part that we are going to decide that we
5 know exactly what is best. I question the wisdom of
6 doing that, but I think I know where the votes are, too.

7 So, I would hope we would not go down this track.

8 Senator D'Amato. Well, Mr. Chairman, let me simply
9 say that I am going to request a roll call vote, one.
10 Number two, I have heard about this business of saying,
11 we should not be legislating or making mandates. It is
12 unfortunate that we have to do that. It should be a
13 recognized right that reconstructive surgery for a
14 woman's breast, my gosh, should be in every plan and
15 provided, and it is not. It is not in many, many cases.
16 People have to go through appeals. They have to actually
17 go through an appeal process that sometimes takes six to
18 eight weeks. How comforting do you think that is to that
19 woman and to the rest of the family as she goes through
20 this? I can tell you, it is rather disquieting.

21 As to this business about legislating on body parts,
22 is it not too bad that at this day and age we still have
23 people turning down, as a doctor said to me, "it does not
24 serve a bodily function." That is what he told me in
25 denying a woman by the name of Fran Kett this basic

1 protection.

2 Now, we already have basic protections in the law,
3 like the Safe Drinking Water Act. It is too bad we have
4 to do it, but we do it. So let me simply say, and by the
5 way, cancer is caused by smoking, and indeed, many of
6 these afflictions come about as a result of tobacco use
7 and this is an appropriate place. We are dealing with
8 health in this area, so I think it is very appropriate.

9 Senator Breaux. Mr. Chairman?

10 The Chairman. Yes, John.

11 Senator Breaux. Here we are with a tobacco
12 settlement bill and we are legislating what is going to
13 be required in health plans. I cannot argue that this is
14 not a wonderful thing that should be included in every
15 health plan in America, but this just points to the whole
16 problem with Medicare that we micromanage it from
17 Washington. We should not be writing the contents of a
18 defined benefits health plan on a tobacco settlement
19 bill.

20 I am not arguing about the merits of whether it
21 should be included; of course it should. But this is not
22 the way to handle it. This points to the whole reason
23 why we have such incredible problems with the Medicare
24 program, because everything is micromanaged out of
25 Washington. We should not be doing this. This is not

1 the place to do it and we should not be doing it.

2 Senator Gramm. Mr. Chairman.

3 The Chairman. I would like to move ahead. I think
4 we have heard considerable discussion. Thirty seconds.

5 Senator Gramm. Mr. Chairman, far be it from me to
6 try to improve an already impossible bill, but all we are
7 doing is that every year we have a new concern medically
8 and we pile more, and more, and more costs on health
9 insurance, and then we marvel that young working families
10 cannot pay for it. Somebody is going to have to pay for
11 it. What is going to happen is, young, blue-collar
12 families are going to lose their health insurance.

13 The Chairman. The Senator from New York wants a
14 roll call vote?

15 Senator D'Amato. Yes.

16 The Chairman. The Clerk will call the roll.

17 The Clerk. Mr. Chafee?

18 Senator Chafee. No.

19 The Clerk. Mr. Grassley?

20 Senator Grassley. Aye.

21 The Clerk. Mr. Hatch?

22 Senator Hatch. Aye.

23 The Clerk. Mr. D'Amato?

24 Senator D'Amato. Aye.

25 The Clerk. Mr. Murkowski?

1 Senator Murkowski. Aye.
2 The Clerk. Mr. Nickles?
3 Senator Nickles. No.
4 The Clerk. Mr. Gramm, of Texas?
5 Senator Gramm. No.
6 The Clerk. Mr. Lott?
7 The Chairman. Not present.
8 The Clerk. Mr. Jeffords?
9 Senator Jeffords. No.
10 The Clerk. Mr. Mack?
11 Senator Mack. No.
12 The Clerk. Mr. Moynihan?
13 Senator Moynihan. Aye.
14 The Clerk. Mr. Baucus?
15 Senator Baucus. Aye.
16 The Clerk. Mr. Rockefeller?
17 Senator Rockefeller. Aye.
18 The Clerk. Mr. Breaux?
19 Senator Breaux. No.
20 The Clerk. Mr. Conrad?
21 Senator Conrad. No.
22 The Clerk. Mr. Graham, of Florida?
23 Senator Graham. Aye.
24 The Clerk. Ms. Moseley-Braun?
25 Senator Moseley-Braun. Aye.

1 The Clerk. Mr. Bryan?

2 Senator Bryan. Aye.

3 The Clerk. Mr. Kerrey?

4 Senator Moynihan. Aye, by proxy.

5 The Clerk. Mr. Chairman?

6 The Chairman. No. Senator Lott votes no by proxy.

7 The Clerk. The votes are 11 yeas, 9 nays.

8 The Chairman. The amendment is agreed to.

9 If there are no further amendments----

10 Senator Nickles. Mr. Chairman?

11 Senator Graham. Mr. Chairman?

12 The Chairman. We will recognize you, Senator
13 Graham.

14 Senator Graham. Mr. Chairman, I have filed an
15 amendment which clarifies the discussion that we have had
16 with staff which states that those States which have
17 already entered into a settlement would not receive less
18 money under the mark than under their current State
19 settlement. If I get a statement that that concept,
20 without equivocation, is included in the mark, I will
21 withdraw this amendment. If not, I would like to have a
22 vote on it.

23 The Chairman. We are agreeable to accepting the
24 amendment.

25 Senator Moynihan. The amendment describes the

1 intent and the content of the legislation.

2 Senator Nickles. Mr. Chairman?

3 The Chairman. Senator Nickles.

4 Senator Nickles. Mr. Chairman, I have an amendment
5 to strike the provision in the Commerce Committee bill
6 that says that we should create two asbestos trust funds
7 and compensation programs out of this trust fund.

8 Senator Breaux. Would the Senator yield?

9 Senator Nickles. Yes.

10 Senator Breaux. In accepting the amendment that I
11 offered that struck out all reference to the Commerce
12 reported bill, do we not have nothing in the trust fund?

13 Senator Nickles. Oh, you already did that?

14 Senator Breaux. Yes. Yes. We took all references
15 to the Commerce-passed spending out.

16 Senator Nickles. If the Senator would yield, I
17 believe your amendment struck out the section dealing
18 with sense of the Senate. But there is a specific
19 section that deals with the asbestos trust fund that is
20 very extensive that I do not think your amendment
21 covered.

22 Senator Breaux. Can we get some comment? I mean,
23 we may be on the same page here.

24 Mr. Prater. Senator Nickles, Senator Breaux's
25 amendment has the effect of tying in the expenditure

1 purposes of the Commerce Committee bill, when it is
2 passed--when it is passed--by the Senate and not as it
3 sits now. So those issues would remain open for debate
4 on the floor.

5 Senator Nickles. You confused me. Is Title 12
6 still in the bill that deals with asbestos?

7 Mr. Prater. That is in the Commerce bill. Our
8 document only talks about, as a general reference to
9 expenditure purposes, and ties that to whatever we end up
10 with when the bill is passed.

11 Senator Nickles. My point being, Mr. Chairman, this
12 Finance Committee is in charge of entitlement programs.
13 This was written by a different committee. Correct me if
14 I am wrong, Mark. It has compensation schemes, and so
15 on. If the Senator from Louisiana has already stricken
16 that section, that is great.

17 Senator Breaux. If you would yield. What I said,
18 what is in our bill now, it says, "The amount in the
19 tobacco trust fund would be available for expenditure for
20 the purpose as established in S. 1415, as passed by the
21 Senate." So until it passes by the Senate, nothing is
22 being spent.

23 Mr. Prater. Right.

24 Senator Breaux. On asbestos, or anything else for
25 that matter.

1 Mr. Prater. Senator Nickles, you have to strike
2 this on the floor because we do not have jurisdiction
3 over that particular piece here.

4 Senator Nickles. Well, just answer a question then.
5 If we are going to set up an asbestos compensation fund,
6 should that not be done by the Finance Committee instead
7 of by the Commerce Committee? There are two sections in
8 here that clearly, in my opinion, at least, belong in the
9 Finance Committee, one is asbestos and the other one is
10 child care. In both cases, you had the Commerce
11 Committee legislating in our domain, and I do not think
12 we should have that happen.

13 Mr. Prater. The jurisdiction, you have to some
14 extent the authorization could be in the Commerce
15 Committee. We definitely could specify or not specify
16 the account or the contours of the trust fund.

17 The Chairman. I would say to the distinguished
18 Senator, Senator Moynihan and I are in agreement that we
19 will accept your amendment.

20 Senator Nickles. Thank you, Mr. Chairman.

21 The Chairman. I hope there are no more amendments.

22 Senator Nickles. Mr. Chairman, I have an additional
23 amendment that strikes the provision of the Child Care
24 Development Block Grant Program that was to be funded out
25 of this trust fund and I would like to strike that as

1 well. Again, that belongs in this committee and not in
2 the Commerce Committee, which they put in their bill.

3 The Chairman. Yes. We are willing to take that
4 amendment as well.

5 Senator Nickles. Thank you, Mr. Chairman.

6 Senator Chafee. What does that amendment do? What
7 does that amendment do?

8 Senator Nickles. They put in an amendment that said
9 that we would have a Child Care Development Block Grant
10 Program, in addition to the existing program that we
11 would fund out of this trust fund. And I thought the
12 trust fund was supposed to be designed towards helping
13 reduce tobacco consumption amongst teenagers, not fund or
14 duplicate an existing program.

15 The Chairman. I see no further amendments.

16 Senator Moynihan. Mr. Chairman, I move ^{for} the adoption
17 of the bill, as amended.

18 Senator Gramm. I would like a roll call vote.

19 Senator Nickles. Mr. Chairman?

20 The Chairman. Well, I really would like to move on.
21 Time is running out. Those in favor, signify by saying
22 aye.

23 Senator Gramm. Mr. Chairman, I would ask for a
24 calling of the roll.

25 The Chairman. The Clerk will call the roll.

1 The Clerk. Mr. Chafee?
2 Senator Chafee. Aye.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. Aye.
5 The Clerk. Mr. Hatch?
6 Senator Hatch. No.
7 The Clerk. Mr. D'Amato?
8 Senator D'Amato. Aye.
9 The Clerk. Mr. Murkowski?
10 Senator Murkowski. Aye.
11 The Clerk. Mr. Nickles?
12 Senator Nickles. No.
13 The Clerk. Mr. Gramm, of Texas?
14 Senator Gramm. No.
15 The Clerk. Mr. Lott?
16 The Chairman. Not present.
17 The Clerk. Mr. Jeffords?
18 Senator Jeffords. Aye.
19 The Clerk. Mr. Mack?
20 Senator Mack. No.
21 The Clerk. Mr. Moynihan?
22 Senator Moynihan. Aye.
23 The Clerk. Mr. Baucus?
24 Senator Baucus. Aye.
25 The Clerk. Mr. Rockefeller?

1 Senator Rockefeller. Aye.

2 The Clerk. Mr. Breaux?

3 Senator Breaux. Aye.

4 The Clerk. Mr. Conrad?

5 Senator Conrad. Aye.

6 The Clerk. Mr. Graham, of Florida?

7 Senator Graham. Aye.

8 The Clerk. Ms. Moseley-Braun?

9 Senator Moseley-Braun. Mr. Chairman, I know you
10 said we were not going to have speeches, and I do not
11 intend to make one, except to say that I strongly support
12 the goals of this legislation, but I do not support the
13 bill, however, so I am going to vote no.

14 The Clerk. Mr. Bryan?

15 Senator Moynihan. Aye, by proxy.

16 The Clerk. Mr. Kerrey?

17 Senator Moynihan. Aye, by proxy.

18 Senator Kerrey.

19 The Clerk. Mr. Chairman?

20 The Chairman. No.

21 The Clerk. Mr. Grassley?

22 Senator Grassley. Aye.

23 The Clerk. The votes are 13 yeas, 6 nays.

24 The Chairman. The committee is agreed to the
25 legislation.

1 Senator Moynihan. Well done.

2 The Chairman. It will be reported duly out.

3 [Whereupon, at 12:28 p.m., the meeting was
4 concluded.]

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