

agreement and normal trade relations with Vietnam; and broader efforts toward economic recovery in Asia.

At the same time, however, we should avoid seeing the present strains in relations with China as signs of inevitable confrontation. They likely reflect growing fears of domestic unrest and loss of confidence in China's future strength, rather than an arrogance born of security and success.

And while we should be firm, we must also avoid being wilfully provocative or unwilling to seek out common interests.

#### U.S. INTERESTS IN WTO ACCESSION

That brings me to the largest single item of common interest on our agenda: China's potential accession to the WTO.

Such an accession would have immense potential benefits for both America and China.

From our perspective, it can create a more reciprocal trade relationship; promote the rule of law in China; and accelerate the long-term trend toward China's integration into the world economy and the Pacific region.

This integration is, we should always remember, immensely important to our long-term security interests.

To choose one example, twenty-five years ago China would likely have seen the Asian financial crisis as an opportunity to destabilize the governments of Southeast Asia, South Korea and perhaps even Japan. Today it sees the crisis as a threat to its own investment and export prospects and has thus contributed to IMF recovery packages and maintained currency stability.

Thus China's policy has paralleled and complemented our own; and as a result, the Asian financial crisis remains an economic and humanitarian issue rather than a political and security crisis.

From China's perspective, WTO entry has the long-term benefits of strengthening guarantees of Chinese access to foreign markets and promoting competition and reform in the domestic economy; and the short-term benefit of creating a new source of domestic and foreign investor confidence at a time of immense economic difficulty.

#### COMMERCIALLY MEANINGFUL ACCESSION ESSENTIAL

Neither of us, however, will win the full benefits of WTO accession unless the accession agreement is of commercially meaningful quality.

Thus Congress should be vigilant about the details of such an agreement. Broadly speaking, this means:

Significant tariff reductions and other measures to liberalize trade in goods;

Market access for agriculture, including the elimination of phony health barriers of Pacific Northwest wheat, citrus, meats and other products.

Liberalization of service sectors including distribution, telecommunications, finance, audiovisual and others;

This requires a lot from China. It is not entirely clear that China will make a commercially meaningful offer to us. and if they do not, we should be willing to wait rather than push forward with this accession.

#### ACCESSION MUST BE JUDGED ON TRADE POLICY MERITS

However, if they are ready to make such an offer, the United States should clearly be willing to say yes. That should include the permanent normal trade relations we offer virtually all WTO members.

Congress would, of course, have to vote on permanent normal trade relations. Because Congress already holds all the cards with respect to the Normal Trade Relations vote, I am concerned about proposals to create a second vote, which would delay accession by requiring a prior vote on admission. This raises a number of troubling questions.

First, I think we need to be prepared to move quickly if and when we get the desired commercially acceptable accession package—simply put, we must be prepared to strike when the iron is hot. Such an important step should not be hamstrung by requiring a separate vote by Congress.

Second, the proposal raises constitutional and precedential questions. Congress has not voted on any of the previous 100 GATT and WTP accessions since 1948, since WTO accessions are executive agreements which generally require no U.S. concessions.

But most important, a vote on WTO accession would more likely be a judgment on the immediate state of our overall relationship with China than on the trade policy details of the accession.

China's accession to the WTO is about whether China is ready to trade openly and fairly with the United States. Whether China will accept rule of law and abide by that rule of law.

In effect, we would likely hold a set of unilateral trade concessions by China to the United States hostage to every other concern we have about China—from human rights to security, environment, labor policies and much more. The likely result would be an immense loss to the United States. Therefore, I do not favor such a proposal and will oppose it on the floor.

#### CONCLUSION

In conclusion, Mr. President, China policy must not be considered simply in isolation.

Premier Zhu's visit offers us an immensely important opportunity, both to right the overall course of our relationship and to conclude the specific talks over WTO membership for China on the right, commercially meaningful basis. I welcome this and hope our colleagues will do the same.

But this relationship is only one piece—important, but only one piece—in our broader relationship with the Pacific region and our Asian allies.

If we are to develop these other relationships carefully; if we are firm with

China when necessary but also willing to seek out areas of common interest; if we react to difficult periods with confidence in our own strength and commitment to our own interests, we can expect a very good future.

I am fully confident that this is what we will do because we have some very important opportunities here to be sure to secure that relationship.

I thank the Chair and I yield the floor.

#### UNANIMOUS-CONSENT AGREEMENT—S. 544

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 28, S. 544, the supplemental appropriations bill, and the only tobacco amendments be relative to the Medicaid tobacco recoupment provision.

I further ask that Senator SPECTER be recognized to offer an earmarking amendment, that all debate conclude on the amendment this evening, with the exception of 90 minutes to be equally divided, and the Senate resume the amendment on Thursday at 9:30. I further ask that the vote occur on or in relation to the earmarking amendment at 11 a.m. on Thursday and that no further amendments be in order prior to that 11 a.m. vote.

I further ask that following that vote Senator HUTCHISON of Texas be recognized to offer her amendment relative to Kosovo.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. In light of that agreement, there will be no further votes this evening. However, Senators will be reminded that the next vote will occur at 11 a.m. on Thursday.

I thank the chairman of the committee, the managers of the bill, and the Senator from West Virginia for being ready to go, on relatively short notice, on this important matter.

I yield the floor, Mr. President.

#### EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR FISCAL YEAR 1999

Mr. STEVENS. Mr. President, is the supplemental bill before the Senate?

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 544) making emergency supplemental appropriations and rescissions for recovery from natural disasters, and foreign assistance, for the fiscal year ending September 30, 1999, and for other purposes.

The Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, this afternoon the Senate will consider a supplemental appropriations bill that includes both emergency and non-emergency spending for the fiscal year.

Over the past 3 months, the Office of Management and Budget has transmitted to Congress several supplemental budget requests, totaling \$2 billion.

These requests seek funding for agricultural relief, implementation of the Wye River Accords and recovery in Central America from the damage caused by Hurricane Mitch.

Each of the subcommittees has examined the requests under their jurisdiction, and closely reviewed other emergent agency needs.

In addition, the administration proposed deep cuts in defense funds to offset additional foreign assistance sought for Jordan, Israel and the Palestinian Authority.

This proposed offset re-opened issues settled in the omnibus bill in October, and violated the spirit of the firewalls that govern discretionary spending for fiscal year 1999.

In total, the bill reported by the committee provides \$1.538 billion in emergency appropriations and \$332 million in non-emergency appropriations.

These new appropriations are matched by \$1.87 billion in rescissions and program deferrals.

The recommendations made by the committee nearly double the administration's request for agricultural relief, providing a total of \$285 million.

That bill proposes \$100 million in funding this year for Jordan, to provide additional support for a vital ally during a period of transition and tension in the region.

The deferral of the remaining \$800 million in funding to implement the Wye agreements does not reflect opposition to that request.

After consultation with the administration, it was determined that those amounts can await consideration later this year. This committee has a long record of support for the Middle East Peace Process—our friends in the region know they can count on us.

The amounts requested for Hurricane Mitch relief respond to the truly desperate conditions facing our neighbors in Central America.

The Department of Defense, and the U.S. Southern Command, led by Gen. Charles Wilhelm, deserve great credit for their efforts to respond to the immediate crisis late last year.

We must backfill the amounts spent by the Department to ensure our ability to respond to future crises is not diminished—especially in respect to drawdown authorities and overseas humanitarian assistance.

In addition, we must address the needs of our friends in Honduras, Guatemala, El Salvador, Nicaragua, and the Dominican Republic to rebuild from this disaster. These funds provide a good first step in that effort.

Recognizing the considerable amount of emergency spending provided in the omnibus bill in October, I recommended that all new appropriations in this bill be offset by rescissions of other available funds.

These rescissions include defense and non-defense discretionary appropriations, mandatory appropriations, emergency appropriations and funding deferrals.

There were very few good choices to consider. I'm sure every Member here might have assembled a different mix of offsets.

These rescissions, totaling \$1.868 billion, reflect an effort to balance competing needs.

Only defense funds were rescinded to offset defense spending, and only non-defense amounts to balance the non-defense spending.

Some of these will be controversial, but our intention is to reduce only funds that are not likely to be obligated this year, or are of a low priority.

We are at or over the budget caps for 1999. We have no headroom or flexibility to make any non-emergency appropriation unless it is fully offset in both budget authority and outlays.

For that reason, any amendment to this bill must be accompanied by offsets. I must insist that even emergency spending amendments be accompanied by budget authority offsets.

Finally, many Members have raised various legislative amendments this week.

I hope that controversial amendments can again be deferred. Every Member has a right to propose amendments, but this is a supplemental appropriations bill, and deals with some very real emergency needs.

In my judgment, we need to complete final action and try to send this bill to the President before the Easter recess which commences a week from tomorrow. I believe we must pass the bill in the Senate this week to meet that schedule.

Mr. President, compared to previous emergency supplemental appropriations bills presented to this body, this bill does not respond to the kind of domestic disasters we faced in 1997 or 1998.

This is a modest bill, that is fully offset in terms of new budget authority.

It extends an important hand of friendship and support to our neighbors in Central America, and a closer partner in the Middle East Peace Process, Jordan.

Mr. President, it is our goal to complete this bill by Friday, no later than 11 a.m.

I yield for my good friend from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, S. 544, the Emergency Supplemental Appropriations and Rescissions Bill for Fiscal Year 1999, as reported by the committee, recommends appropriations which total some \$1.9 billion, of which approximately \$1.6 billion is designated as emergency spending pursuant to Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Very importantly, in Title I of the bill, the Committee unanimously approved provisions that I included to establish the Emergency Steel Loan Guarantee Program. This initiative is

designed to respond to record levels of foreign steel imports that have been illegally dumped in U.S. markets. As a result of these imports, more than 10,000 American jobs have been lost, and the United Steelworkers of America estimates that another 100,000 jobs are in peril nationwide. In my home state of West Virginia, nearly 800 men and women have been laid off from Weirton Steel. Three domestic producers have already filed for bankruptcy, and others are in dire financial straits.

If the U.S. steel industry goes under, not only will there be lost jobs, but there will also be lost communities; the domestic industrial base that underpins our security will be irreparably weakened; and the nation's defense readiness will be diminished.

This initiative, cosponsored in Committee by Senators SPECTER, DURBIN, SHELBY, and HOLLINGS, would create a revolving fund to give domestic steelmakers a sorely needed infusion of capital. The program, which is fully compliant with international trade laws, would give cash-strapped companies access to the funding they may need to keep their furnaces burning and keep workers on the job until proper trade mechanisms can be implemented to end this crisis. The loan guarantees would help to bolster the financial security of a threatened industry that is critical to this nation's economic base and domestic security.

Specifically, the guaranteed loan program would provide qualified U.S. steel producers with access to a two-year, \$1 billion revolving guaranteed loan fund. The minimum loan that would be guaranteed for a single company at any one time would be \$25 million, and the aggregate amount of loans that would be guaranteed for a single company over the duration of the program would be \$250 million. A board, to be chaired by the Secretary of Commerce, would oversee the program and would have flexibility to determine the specific requirements for awarding the guaranteed loans. The Act protects taxpayers by requiring that a reasonable assurance for the repayment of the loans exists, and that the loans would bear market interest rates.

Finally, in Title I, the committee increased FEMA's emergency disaster assistance funding by \$813.6 million, while at the same time reducing a like amount from HUD's Community Development Block Grant emergency funding. The VA/HUD Subcommittee was concerned over HUD's failure to implement an effective emergency disaster relief program. The committee felt that FEMA could more appropriately respond to unmet disaster needs throughout the nation.

Title II of the bill contains a number of appropriations for regular supplemental budget requests of the administration, including: NOAA operations research and facilities activities, \$3,900,000; Salaries and Expenses of the

Supreme Court, \$921,000; Bureau of Indian Affairs, \$1,136,000; Office of the Special Trustee for American Indians, \$6,800,000; Corporation for Public Broadcasting, \$18,000,000; and Military Construction for the Army National Guard, \$11,300,000.

For each of these regular supplementals, offsets have been included in the bill.

Title II also provides non-emergency supplemental appropriations of \$210 million for the Department of Defense to reimburse the DOD for its assistance in Central America, as well as \$80 million in non-emergency appropriations for the salaries and expenses of the Immigration and Naturalization Service to cover increased costs of handling the large influx of aliens from Central American countries. Both of these items have been requested by the administration as emergency spending, but the Defense and Commerce/Justice/State Subcommittees chose to fully offset these appropriations and to include them in Title II as non-emergency spending.

I note that Title II also contains a number of general provisions, one of which, Section 2008, extends the Airport Improvement Program which under present law, would expire on March 31, 1999. Additionally, section 2011, is a general provision which prohibits the Federal Government from recouping any of the savings to the Medicaid program achieved by the States as a result of their tobacco settlements.

Title III of the bill contains rescissions sufficient to offset all of the emergency appropriations contained in the bill. It is my personal view that emergency spending for natural disasters and for unanticipated military spending, such as the operations in Desert Fox and Kosovo, as well as the military's assistance to the disaster victims in Central America need not be offset. In fact, I participated in the creation of the provisions in the Balanced Budget and Emergency Deficit Control Act, which allow emergency spending to be provided in order to respond to natural disasters and other types of emergencies without having to come up with offsets to pay for those unpredictable events. The emergency designation was negotiated as part of the Budget Enforcement Act of 1990, in large part because the discretionary budget caps established there, and which have remained in place each year since, are very tight. I have never felt that the American people should be required to pay for spending which appropriately qualifies as emergency relief under that Budget Enforcement Act. If that is to be the case, we need not have gone to the trouble of adopting the emergency provisions I have just described.

Regarding the specific rescissions proposed in Title III of the bill now before the Senate, I know that a number of Senators have concerns about one or the other of those rescissions. I am cer-

tain that the concerns of those Senators will be expressed as the Senate progresses with this bill.

I urge my colleagues to help the managers of the bill, the distinguished chairman, Senator STEVENS, and myself, in expediting completion of Senate action in time to meet with the other body and complete conference action on the bill prior to the upcoming Easter recess.

I especially commend the work of the distinguished chairman of the Appropriations Committee, Mr. STEVENS. For many years, I have worked with the Senator from Alaska. I have always found him to be evenhanded, courteous, congenial, cooperative, and very able in handling the difficult legislation on the floor, in committee and in conference. He is my friend, has been my friend through the years, and will always be my friend. I consider it a great privilege and a honor, indeed, to be able to stand by his side and express support for this legislation. I count it a privilege to work with him. He is one of the finest Senators with whom I have ever had the pleasure of serving. I have served with almost 300 Senators in my time here. I say that without any reservations. I salute him, believe in him, trust him, and can count him not only as my friend but as a very fine Senator. The people of Alaska are to be commended for sending him here and sending him back repeatedly.

The assistance provided in this bill to the people of this country, as well as those in Central America, is desperately needed.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I say to my friend, I was looking around to see who he was talking about when he was talking about that kind, benevolent and calm fellow, but I do thank you for your courtesy and kindness. It is a pleasure to work with you. Mr. President, I studied under Senator BYRD so long I think I imitate his ways. I have tried to anyway.

Mr. President, it is now time to have an amendment offered by the Senator from Pennsylvania, Mr. SPECTER. It is my hope, and I want to announce to the Senate it is my hope, we will get an agreement tomorrow that will require amendments to this bill to be filed no later than 5 o'clock. We don't have that agreement yet. It has not been cleared. But if we are to finish this bill and get it ready to go immediately to the House after the House passes their bill on Monday, it will be necessary to complete this bill on Friday. I am hopeful we will complete it in time to allow those people who have to catch planes to go West, so they can make their schedules.

I yield to the Senator from Pennsylvania. There is a time agreement for tomorrow on this amendment, is my understanding, but there is no time limit this evening. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

The Senator from Pennsylvania.

AMENDMENT NO. 77

(Purpose: To permit the Secretary of Health and Human Services to waive recoupment of Federal government medicaid claims to tobacco-related State settlements if a State uses a portion of those funds for programs to reduce the use of tobacco products, to improve the public health, and to assist in the economic diversification of tobacco farming communities)

Mr. SPECTER. Mr. President, I send an amendment to the desk on behalf of myself, Senator HARKIN, Senator JEFFORDS, and Senator KENNEDY, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself, Mr. HARKIN, Mr. JEFFORDS, and Mr. KENNEDY, proposes an amendment numbered 77.

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

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

The amendment is as follows:

Beginning on page 35, strike line 13 and all that follows through line 24 on page 36 and insert the following:

SEC. 2011. WAIVER OF RECOUPMENT OF MEDICAID TOBACCO-RELATED RECOVERIES IF RECOVERIES USED TO REDUCE SMOKING AND ASSIST IN ECONOMIC DIVERSIFICATION OF TOBACCO FARMING COMMUNITIES. (a) FINDINGS.—Congress makes the following findings:

(1) Tobacco products are the foremost preventable health problem facing America today. More than 400,000 individuals die each year as a result of tobacco-induced illness and conditions.

(2) Each day 3,000 young individuals become regular smokers. Of these children, 1,000 will die prematurely from a tobacco-related disease.

(3) Medicaid is a joint Federal-State partnership designed to provide to provide health care to citizens with low-income.

(4) On average, the Federal Government pays 57 percent of the costs of the medicaid program and no State must pay more than 50 percent of the cost of the program in that State.

(5) The comprehensive settlement of November 1998 between manufacturers of tobacco products and States, and the individual State settlements reached with such manufacturers, include claims arising out of the medicaid program.

(6) As a matter of law, the Federal Government is not permitted to act as a plaintiff in medicaid recoupment cases.

(7) Section 1903(d) of the Social Security Act (42 U.S.C. 1396b(d)) specifically requires that the State reimburse the Federal Government for its pro rata share of medicaid-related expenses that are recovered from liability cases involving third parties.

(8) In the comprehensive tobacco settlement, the tobacco companies were released from all relevant claims that can be made against them subsequently by the States, thereby effectively precluding the Federal Government from recovering its share of medicaid claims in the future through the established statutory mechanism.

(9) The Federal Government has both the right and responsibility to ensure that the Federal share of the comprehensive tobacco settlement is used to reduce youth smoking, to improve the public health, and to assist in the economic diversification of tobacco farming communities.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 1903(d)(3) of the Social Security Act (42 U.S.C. 1396b(d)(3)) is amended—

(1) by inserting “(A)” before “The”; and

(2) by adding at the end the following:

“(B) Subparagraph (A) and paragraph (2)(B) shall not apply to any amount recovered or paid to a State as part of the comprehensive settlement of November 1998 between manufacturers of tobacco products (as defined in section 5702(d) of the Internal Revenue Code of 1986) and States, or as part of any individual State settlement or judgment reached in litigation initiated or pursued by a State against one or more such manufacturers, if (and to the extent that) the Secretary finds that following conditions are met:

“(i) The Governor or Chief Executive Officer of the State has filed with the Secretary a plan which specifically outlines how—

“(I) at least 20 percent of such amounts recovered or paid in any fiscal year will be spent on programs to reduce the use of tobacco products using methods that have been shown to be effective, such as tobacco use cessation programs, enforcement of laws relating to tobacco products, community-based programs to discourage the use of tobacco products, school-based and child-oriented education programs to discourage the use of tobacco products, and State-wide awareness and counter-marketing advertising efforts to educate people about the dangers of using tobacco products, and for ongoing evaluations of these programs; and

“(II) at least 30 percent of such amounts recovered or paid in any fiscal year will be spent—

“(aa) on Federally or State funded health or public health programs; or

“(bb) to assist in economic development efforts designed to aid tobacco farmers and tobacco-producing communities as they transition to a more broadly diversified economy.

“(ii) All programs conducted under clause (i) take into account the needs of minority populations and other high risk groups who have a greater threat of exposure to tobacco products and advertising.

“(iii) All amounts spent under clause (i) are spent only in a manner that supplements (and does not supplant) funds previously being spent by the State (or local governments in the State) for such or similar programs or activities.

“(iv) Before the beginning of each fiscal year, the Governor or Chief Executive Officer of the State files with the Secretary a report which details how the amounts so recovered or paid have been spent consistent with the plan described in clause (i) and the requirements of clauses (ii) and (iii).”.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) apply to amounts recovered or paid to a State before, on, or after the date of enactment of this Act.

Mr. SPECTER. Mr. President, parliamentary inquiry. It is my understanding that the unanimous consent agreement provides for argument, debate this afternoon, and then 90 minutes equally divided tomorrow morning, between 9:30 and 11?

The PRESIDING OFFICER. That is correct.

Mr. SPECTER. So, whatever time is used this afternoon does not count against the 90 minutes which will be equally divided tomorrow?

The PRESIDING OFFICER. There are 90 minutes tomorrow.

Mr. SPECTER. Mr. President, this amendment seeks to require that the States allocate a portion of the funds recovered under the tobacco settlement

for purposes relating to tobacco-smoking cessation education for children, 20 percent; and some 30 percent to be allocated for public health matters.

The origin of this issue arose when there was a settlement in November of last year where 46 States agreed to accept \$206 billion over 25 years. The settlement grew out of lawsuits that primarily sought the recovery of Medicaid costs, although there is a contention that there were some other allegations in the cause of action. The current law requires the States to share Medicaid recoveries from third parties with the Federal Government. The Federal Government's share of Medicaid costs is generally 57 percent, but varies from State to State.

Under the existing law, only the States have the authority to bring suits for the recoveries. During the course of the litigation, the States, as I understand the legal documents, released all of the claims which the Federal Government would have for these Medicaid funds. An amendment to the appropriations bill was offered by the distinguished Senator from Texas, Senator HUTCHISON, to provide that all of the funds would be paid over to the States, specifically prohibiting the Federal Government's recoupment of funds recovered by States from the tobacco companies.

At the appropriations markup, some concerns were expressed by this Senator and by others. On Monday of this week, March 15, we held a hearing, participated in by Senator HUTCHISON and myself, where we heard from the Governor of Kentucky and the attorneys general of Pennsylvania, Texas, and Iowa. At that time, the assertion was made by the Governor and the three attorneys general that all of these funds should be retained by the States, and a representation made that there were other claims involved in the settlement besides Medicaid funds.

Senator HARKIN and I worked together to craft the amendment which is now before the Senate, joined, as I noted, by Senator JEFFORDS and Senator KENNEDY; Senator HARKIN and I taking the lead because of our positions as chairman and ranking member of the appropriations subcommittee having jurisdiction over the Department of Health and Human Services.

It is a fact that we are very limited in the funding which is available for health care. Our subcommittee has a budget which has to be divided among education matters and also the Department of Labor, which implicates many issues of worker safety, so that every dollar is of vital importance and we must make an application to purposes of health care.

The problem of tobacco in America is well recognized and the statistics are really very, very stark. Some 400,000 people die each year from tobacco-related illnesses. Approximately 5 million Americans under 18 are projected to die from smoking if the current trend continues. Some \$72 billion a

year constitute the health care expenditures in the United States on tobacco-related illnesses; some \$7.3 billion annually total Medicaid payments directly related to tobacco, and between \$1.4 and \$4 billion constitute expenditures for infant health and developmental problems caused by mothers who smoke. It is a matter of overwhelming importance.

There is a very pervasive mantra in America today that the Federal Government should not dictate to the States how the funds are to be used. In accordance with the principles of federalism, I believe in leaving as much control as is possible to the State governments and also to local governments, as they carry out their responsibilities.

But when you have a very major settlement involving \$206 billion and where the Federal Government has a very strong claim to 57 percent of those monies and the existing law provides that an allocation shall be determined by the discretion of the Secretary of Health and Human Services, it is my view that it is preeminently reasonable to ask States to make a commitment to spend at least a portion of these funds—50 percent, I think, would be a reasonable sum—on matters which are related to tobacco. The cause of the damages involves tobacco, and that is why we are asking that 50 percent be allocated, as we have said—20 percent for smokers cessation and education; and 30 percent for public health programs.

We do not propose an elaborate series of regulations; we do not propose micromanaging in any way what the States will be doing, but require only a certification from the States. We have already seen announcements from officials in a number of States on plans to spend these monies for other purposes; for example, for highways. Highways are very important. States would have latitude to spend part of the money for highways, but certainly should not have unfettered discretion to spend the total sum of the money on highways. Other funds are proposed to be spent for mental health services—here again, a very, very important item. Perhaps some of the mental health services are reasonably related to tobacco causes. That contention can be made and may well be honored.

Another State official is talking about eliminating the State debt, which is certainly a worthwhile matter. Again, 100 percent of the funds ought not be used for that purpose, nonrelated to tobacco. Other proposals are to increase teacher pay. Perhaps some of that is allocable for drug education. In another State, the officials propose using the funds to finance tax relief. That, again, is a worthwhile objective, but there ought to be some assurance that on a matter like this, some of the funds ought to be used for tobacco-related purposes.

Other States propose scholarships, which may be related, if the educational portion is to be assigned to tobacco-related education. We see that in the very short term, there are a great many purposes where the States have a need for funds where they would like to have unfettered discretion. In a perfect world, we would like to see them have \$206 billion. But with a very, very substantial Federal claim, there ought to be at least some allocation for public health, which we are proposing in this amendment.

If this legislation is not enacted, it is possible that there could be very bitter, protracted, and expensive litigation, with the Federal Government asserting its claim under existing law, which could take a great deal of time. The Governor of Kentucky and three attorneys general who testified on Monday at the hearing and I agreed that we ought to try to resolve the matter so they would know what is going to happen and their planning would be firm. This, we think, is a pre-eminently reasonable approach to a very, very difficult issue.

I am joining with my colleagues, Senator TOM HARKIN, Senator JIM JEFFORDS, and Senator KENNEDY in introducing an amendment to the fiscal year 1999 supplemental appropriations bill concerning the State tobacco settlements. In November 1998, 46 States agreed to a settlement with the tobacco industry that totals \$206 billion over 25 years. If focused in the right direction, these settlement funds could serve as a significant resource for improving the quality of life in the 21st century.

Each year, the total health care expenditures in the USA directly related to smoking is \$72 billion. \$7.3 billion is spent by Medicaid for smoking-related illnesses. Smoking-related diseases claim an estimated 430,700 American lives each year. Despite all of what we know about the consequences of smoking, it is estimated that every day 3,000 young people become regular smokers and it is believed that approximately 89 percent of smokers begin to smoke by or at the age of 18. And finally, it is reported that cigarette smoking kills more Americans than AIDS, alcohol, car accidents, violence, illegal drug use, and fires combined.

On March 15, 1999, the Labor, Health and Human Services, and Education Subcommittee, which I chair, held a hearing to discuss the State tobacco settlements. We heard from the National Governors' Association, States' Attorneys General, a teen smoking prevention advocacy group, and the Deputy Administrator of the Health Care Financing Administration to review the policy implications of how the tobacco settlement funds will be used and whether the Federal Government should receive a share of these funds for programs to reduce the use of tobacco products as well as programs for the public health.

Michael Hash, Deputy Director of the HCFA, testified that the comprehen-

sive settlement of November 1998 between manufacturers of tobacco products and States, and the individual State settlements reached with these manufacturers, included claims arising out of the Medicaid program. Mr. Hash explained that as a matter of law, the Federal Government is not permitted to act as a plaintiff in Medicaid recoupment cases. 42 U.S.C. section 1396a provides that "the State or local agency administering such plan will take all responsible measures to ascertain the legal liability of third parties . . . to pay for care and services available under the plan. . . ." The statute further gives the State the authority to "pursue claims against such third parties." The Department of Justice, in interpreting this statute, has determined that the State has the sole power to take action against third parties, and that the Federal Government has no authority to take this action. During his testimony, Deputy Director Hash further explained that Section 1903(d) of the Social Security Act specifically requires that the State reimburse the Federal Government for its pro rata share of Medicaid-related expenses that is recovered from liability cases involving third parties.

In a letter addressed to me dated March 15, 1999, Secretary Shalala expressed the Administration's strong opposition to the provision approved by the Senate Appropriations Committee as part of the FY 1999 supplemental appropriations bill that would prohibit the Federal Government from recouping its share of the Medicaid funds from the settlement with the tobacco companies. She noted that "by releasing the tobacco companies from all relevant claims that can be made against them subsequently by the states, the settlement effectively precludes the federal government from recovering its share of Medicaid claims in the future through the established statutory mechanism." Specifically, in section XII of the Master Settlement Agreement, the States and tobacco companies agreed to the following:

Under the occurrence of State-Specific Finality in a Settling State, such Settling State shall absolutely and unconditionally release and forever discharge all Released Parties from all Released Claims that the Releasing Parties directly, indirectly, derivatively or in any other capacity ever had, now have, or hereafter can, shall or may have.

During the hearing, we also heard from representatives of the states. Governor Paul Patton of Kentucky and Attorney Generals' Mike Fisher of Pennsylvania, John Cornyn of Texas and Tom Miller of Iowa argued that because the states took the risk and burden of the tobacco lawsuits on their own, they are entitled to all of the tobacco funds.

While I agree with the Governor and Attorney Generals' that the Federal Government should not micromanage the use of the funds, I am not prepared to turn all of this money over to the states carte blanche to use on matters

unrelated to tobacco. Several of my colleagues have proposed creating a bureaucratic system that would strictly dictate how the states must spend the tobacco funds. I do not think this is a wise approach. However, I think it is entirely appropriate for the Federal Government to set general standards to ensure that the federal share of the tobacco funds is spent to advance the public health.

Medicaid is a joint Federal-State partnership designed to provide health care to citizens with low-income. On average, the Federal Government pays 57 percent of the costs of the Medicaid program, and no State must pay more than 50 percent of the cost of the program in that State. The Federal government has both the right and the responsibility to ensure that the federal share of the comprehensive tobacco settlement is used to reduce youth smoking, to improve the public health and to assist in the economic diversification of tobacco farming communities.

The amendment that I am introducing today would require states to use at least 20% of the total funds received in the settlement for tobacco reduction and education programs. Further, my amendment would require states to use at least 30% of the total funds received in the settlement for public health programs or to assist tobacco farmers. The amendment contains a provision that these funds must supplement and not supplant funds already being spent on similar activities in the State. Finally, in order to ensure that we do not create an unnecessary bureaucracy to implement this program, each Governor would merely have to certify to the Secretary of HHS each year how the funds have been used.

It is vital that we act now to ensure that these funds are used to protect public health. During the discussion which is currently occurring in the states on how to use the tobacco funds, a wide variety of uses have been proposed. Specifically, I understand that states have plans to spend funds on roads, mental health services, to assist tobacco farmers, and to eliminate the State debt, increase teacher pay, other proposed uses include financing tax relief, and using these revenues to fund a new Merit Award Trust Fund. While all of these goals may be noble, I am convinced that states, who sued tobacco companies to reimburse state health costs as a result of smoking, have a fiduciary duty to use these funds to reduce smoking and to support public health.

The Federal Government has both the right and the responsibility to ensure that the federal share of the comprehensive tobacco settlement is used to reduce youth smoking, to improve the public health and to assist in the economic diversification of tobacco farming communities. I urge my colleagues to support this amendment.

I ask unanimous consent to print a March 15, 1999, letter from Secretary Shalala.

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

THE SECRETARY OF HEALTH  
AND HUMAN SERVICES,  
Washington, DC, March 15, 1999.

Hon. ARLEN SPECTER,  
Chairman, Appropriations Subcommittee on  
Labor, HHS, Education and Related Agencies,  
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: I am writing to express the Administration's strong opposition to the provision approved by the Senate Appropriations Committee as part of the FY 1999 supplemental appropriations bill that would prohibit the federal government from recouping its share of Medicaid funds included in the states' recent settlement with the tobacco companies. The Administration is eager to work with the Congress and the states on an alternative approach that ensures that these funds are used to reduce youth smoking and for other shared state and national priorities.

Under the amendment approved by the committee, states would not have to spend a single penny of tobacco settlement funds to reduce youth smoking. The amendment also would have the practical effect of foreclosing any effort by the federal government to recoup tobacco-related Medicaid expenditures in the future, without any significant review and scrutiny of this important matter by the appropriate congressional authorizing committees.

Section 1903 (d) of the Social Security Act specifically requires that the states reimburse the federal government for its pro-rata share of Medicaid-related expenses that are recovered from liability cases involving third parties. The federal share of Medicaid expenses ranges from 50 percent to 77 percent, depending on the state. States routinely report third-party liability recoveries as required by law. In 1998, for example, states recovered some \$642 million from third-party claims; the federal share of these recoveries was \$400 million. Over the last five years, federal taxpayers recouped over \$1.5 billion from such third-party recoveries.

Despite recent arguments by those who would cede the federal share, there is considerable evidence that the state suits and their recoveries were very much based in Medicaid. In fact, in 1997, the states of Florida, Louisiana and Massachusetts reported the settlement with the Liggett Corporation as a third-party Medicaid recovery, and a portion of that settlement was recouped as the federal share.

Some also have argued that the states are entitled to reap all the rewards of their litigation against the tobacco industry and that the federal government can always sue in the future to recover its share of Medicaid claims. This argument contradicts the law and the terms of the recent state settlement. As a matter of law, the federal government is not permitted to act as a plaintiff in Medicaid recoupment cases and was bound by law to await the states' recovery of both the state and federal shares of Medicaid claims. Further, by releasing the tobacco companies from all relevant claims that can be made against them subsequently by the states, the settlement effectively precludes the federal government from recovering its share of Medicaid claims in the future through the established statutory mechanism. The amendment included in the Senate supplemental appropriations bill will foreclose the one opportunity we have under current law to recover a portion of the billions of dollars that federal taxpayers have paid to treat to

bacco-related illness through the Medicaid program.

The President has made very clear the Administration's desire to work with Congress and the states to enact legislation that resolves the federal claim in exchange for a commitment by the states to use that portion of the settlement for shared priorities which reduce youth smoking, protect tobacco farmers, assist children and promote public health. I would urge you to oppose efforts to relinquish the legitimate federal claim to settlement funds until this important goal has been achieved.

Sincerely,

DONNA E. SHALALA.

Mr. SPECTER. Mr. President, I note the presence of my distinguished colleague, the Senator from Iowa, on the floor. I yield the floor, Mr. President.

The PRESIDING OFFICER (Mr. AL-LARD). The Senator from Iowa.

Mr. HARKIN. Mr. President, first of all, I want to commend and congratulate Senator SPECTER, my chairman, for taking the lead on this issue, for holding the hearings, doing all the work that is necessary to get the information that we need to come up with this amendment. Senator SPECTER has certainly been the lead in addressing this very vital issue of health in the United States, medical research, and all that goes along with making our people healthier citizens.

He has always taken a lead on this one issue of how we get tobacco use down among teenagers, which is one of the most serious health risks in our society today. I want to thank Senator SPECTER for taking the lead on this amendment. It is a very, very, very important amendment. The repercussions of this single amendment alone could do more to enhance the health of our young people in the future than perhaps anything we are going to do this year. I will get into more about that later, but this single amendment, if adopted, I maintain, will do more to enhance the well-being and health of our future citizens—the kids today—10, 15, 20 years from now, 30 years from now, than anything that we will do this year.

Why do I say that? Look at this chart. This really illustrates what is happening today and continuing to happen with the consumption of tobacco. Tobacco kills more Americans than alcohol, car accidents, suicides, AIDS, homicides, illegal drugs and fires, all combined. I use this chart a lot because I think it just spells it out in stark detail. Add up everything from alcohol to homicides to AIDS and illegal drugs. How much money do we spend every year fighting illegal drugs? Compare it to how many people die of tobacco-related illnesses. It is minute.

This is what we are going after—cutting down the illnesses and deaths caused by tobacco uses in this country. It is an epidemic. Tobacco also imposes a heavy financial cost, \$50 billion a year estimated in health costs alone. And a big portion of that is borne by Federal taxpayers, who, as the Senator from Pennsylvania pointed out, pay over half the cost of Medicaid. The av-

erage, as he said, is 57 percent. Sometimes it goes as high as 77 percent. In no case is it less than 50 percent of the Federal taxes used to fund the Medicaid programs in the States.

I want to commend the States for their efforts to recover the costs that they and the Federal Government have borne related to tobacco. What our amendment does, as the Senator from Pennsylvania very correctly pointed out, is simply require the States to use 20 percent of the total settlement on reducing tobacco use, mainly going after teen smoking, because if we know we can get it there, we solve the problem, but just to use 20 percent of that and 30 percent for public health programs—again, public health broadly; we did not spell it out, we did not try to micromanage—or for tobacco farmer assistance, to help some of the tobacco farmers in some of our States in their transition away from growing tobacco to doing something else.

Again, our amendment did not in any way dictate specific programs the states can spend the money on. It did not require the Federal Government have a role in designing any initiative the states undertake. This amendment simply sets broad, commonsense parameters on a portion of the funds.

The Congressional Budget Office has estimated that the Federal share of the State's tobacco settlement would total \$14 billion over the next 5 years. That is a lot of money, \$14 billion.

I know there are some who are saying that the Federal Government had no role in these lawsuits; therefore, no right to these funds. I heard that argument made in the committee when the amendment was adopted. That is not true. If it were true, we would not be here today.

Keep in mind that Medicaid is a Federal-State partnership. The Federal Government pays over 50 percent of the cost of each State's Medicaid Program. But here is the real clincher. Under the Social Security Act, it is the responsibility of the States to recover any costs caused by third parties. In fact, the law says that only the States can file such suits.

It is really kind of, I think, shading the truth a little bit to say the Federal Government was not involved in the lawsuits. The Federal Government could not be involved in the lawsuits. By law, only the States can file such suits. Then the Medicaid law requires a State to turn back to the Federal Government its share of any money the State recovers. That is the law.

A, the Social Security Act says it is the responsibility of the States to recover any costs caused by third parties.

B, the law says only the States can file such lawsuits.

C, Medicaid law says the States then have to turn back to the Federal Government its share of any Federal money that they recover.

All right. What happened? The States settled this case with the tobacco companies, and in November of 1998, when

the States settled this case, even those that did not include a Medicaid claim in their suit, waived their right to any future claims under Medicaid.

Think about that. If the States, in conjunction with the tobacco companies—and I have to hand it to the tobacco companies, they have great lawyers; they have the best—they negotiated with the States that if you settle for \$206 billion over 25 years, we will agree to that if you waive your right to any future claims under Medicaid.

The States said, "We waive our rights." By waiving their rights, they waive our rights, the Federal Government's rights, to go out and reclaim any of those Federal tax dollars that went out. So the States have, by using the law, precluded us on the Federal end from reclaiming any of these monies.

It is just not right. Federal taxpayers have provided over 50 percent of those Medicaid payments to those States. As I said, the law requires the States to file those lawsuits and only the States can file those lawsuits. The States then must, under the law, return those funds to the Federal Government. Yet, they made an agreement with the tobacco companies to waive all of their rights and, thus, waiving our rights.

Turning over all of the Federal share of the tobacco settlement to the States without any requirement that a penny of the funds be used to reduce teen smoking defies common sense. The whole purpose of this effort was to protect our kids and to cut down on smoking. Now that the States have settled with the tobacco companies, it only makes sense to use some of those monies to strengthen the public health system and to fight tobacco use.

As the Senator from Pennsylvania said, I have to ask the questions: Did the States file their lawsuits against the tobacco companies because the tobacco companies were not building highways in their States?

Did the States file a lawsuit against the tobacco companies because they were not building enough prisons in their States?

Did the States file the lawsuit against the tobacco companies because you, tobacco companies, were not building a sports arena in our State?

Did they file the lawsuit because you, tobacco companies, were not building enough highways in our State?

No, that was not the basis of the lawsuit. The basis of the lawsuit was the health impact on its citizens from smoking.

Now we hear from the States, oh, now they want to use the money for highways, they want to use the money to build some prisons, they want to use the money to build a sports arena, they want to use the money for tax relief, and on and on and on and on. That was not the basis for the lawsuits.

The basis for the lawsuits were to recoup the costs that Medicaid spent taking care of the health impacts of smoking on our people. It had nothing to do

with paving a highway or building a prison or anything else.

Again, we are not even saying that the States have to use their money for that. If the States want to use their share of the money to build a prison, that is their business. I can tell you, if I were a citizen of a State, and our State legislature and Governor were spending money that way, I would be vocal about it in my State, and I assume other people would be in their States. But that is not for us here at the Federal level. It is for us at the Federal level to say how about the Federal portion. What should you do with that? Should we be allowed to build highways with it when the basis of the lawsuit had to do with the health impact and the deaths of people that we paid for on Medicaid to take care of them because they got hooked on tobacco, because they were lied to by the tobacco companies?

All we are saying is that the Federal share be used to attack tobacco use and to protect the public health. How much are we saying? Fifty percent: 20 percent to reduce teen smoking, 30 percent for a broad variety of public health programs to reduce smoking or to assist farmers, to assist the tobacco farmers.

No State receives less than 50 percent of its Medicaid money from the Federal Government. Some States receive as high as 77 percent. The average is 57 percent. So actually we are being somewhat generous in this amendment. We are not saying you have to spend even all of your Federal moneys.

Some States are going to get a windfall. Those States that are getting 70 percent of their Medicaid moneys paid for by the Federal Government, if our amendment is adopted, will have at least 20 percent of that Federal money that they can use as they see fit. Rather than trying to draw the line in each State, we just settled on the 50 percent and said that is fair for everybody. It gives some States, I will admit, a bit of a windfall. Again, it does not take away from any State any more than the Federal shares that they already get.

Mr. President, this is a bipartisan, commonsense amendment. I hope all of our colleagues can support it. It will be a dramatic step forward in saving lives and protecting children and saving billions of dollars in future health care costs.

I know you are going to hear talk about how all the Governors support the Hutchison amendment that was added in committee. By the way, it should not even be on this bill. It should be in the Finance Committee. All the Governors support it. I said to myself, "If I was Governor, I probably would support it, too." But I am not a Governor.

I represent my State, but we all have to represent the national interest here. More than that, we have to represent the interest of those people who are getting hooked on tobacco and what

this tobacco lawsuit was all about. So I think we ought to keep that in mind as the debate goes forward. I know we will hear some more this evening, but tomorrow morning we will have more debate on the amendment and we will have more to say at that time.

Again, what we have to keep in mind is the basic underlying fact: Why was the lawsuit brought? On what basis? On the health basis, Medicare expenditures to pay for the sickness and illness and death of people. Who put the money into Medicaid? The Federal Government, 57 percent average; States, 43 percent average.

Law requires the States to file the lawsuits. Law requires the States to return to the Federal Government the Federal Government share of those lawsuits.

Law—only the States can file those lawsuits.

Settlement facts—States settle with the tobacco companies and strike a sweetheart deal, where they waive all of our rights to ever sue again under Medicaid to recoup those costs—waive our rights. Think about that. That is why this amendment is so important, Mr. President. If this amendment is adopted, it will have a big impact on cutting down on health care costs in the future. That is what it is all about.

I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I rise in opposition to the plan of the Senator from Iowa to mandate to the States how they will spend the money they won in litigation against tobacco companies. It went on for quite a number of years. The State attorneys general gradually, through various different theories of law—and there were lots of different theories—won those lawsuits and achieved a tremendous settlement. Basically, the tobacco companies, at some point, just capitulated and agreed to pay billions of dollars.

At this point, the Federal Government may or may not have a claim upon that money. Senator HUTCHISON of Texas has introduced legislation, which I intend to support, which would say that that money would stay with the States. They won it in the litigation. It is part of their settlements. They should keep it. And the Federal Government is not claiming it.

I understand the Senator's idea—and I know he has the highest motives behind it—is to tell the States how they should spend portions of that money, primarily under the theory that it was Medicaid money, and the Federal Government put money into Medicaid, a big chunk of the money is paid by the Federal Government for Medicaid. But let me just say why I think we would be better off not doing that.

First of all, in all the settlements, as I understand it, only one settlement, Florida's, mentions Medicaid. A large number of the cases mentioned Medicaid in their lawsuits, but a lot of

they were based on other causes of action against the tobacco companies: RICO, the racketeering charges; anti-trust violations—unjust enrichment was the one in Mississippi, which I thought was astounding, to win several billion dollars on the old common law theory, equity theory, of unjust enrichment. In fact, they filed it in an equity court and did not even have a jury trial. They eventually settled it without even a trial occurring.

But at any rate, that money goes to the States, and it is their money. I suggest that the States already are planning how to spend it. I understand in Texas, according to Senator HUTCHISON, who will be back on the floor shortly, they have antismoking educational campaigns planned.

Alabama has, I believe, a good program. It is called Children First. It is a program to deal with dropouts, to deal with teen smoking and drinking and drug abuse and problem kids, preschool programs, a comprehensive plan to deal with juvenile crime and violence and delinquency, and to help place children first. The funding for it will come from the settlement of this lawsuit. They are counting on doing that.

To mandate them to spend it on entirely a new set of proposals they have never given any thought to would complicate Alabama's freedom to spend the money they won the way they want to spend it. I really believe it would be a terrible burden on the State of Alabama. I think that is going to be true in every State where these settlements have taken place.

So what we have is the Federal Government saying, "If we can't have the money, and if we're going to lose on this amendment"—and Senator HUTCHISON has bipartisan support for it, and I am confident it will pass—"if we're going to lose on this amendment, if we don't get to bring it into our Treasury so we can spend it and do what we want to do with it, we'll just declare how the States have to spend it. By the way, if you don't satisfy us, the Secretary of HHS, Secretary Shalala, can cut off your Medicaid funding or deny you benefits under these settlements in the future."

So I just believe that that isn't what we need to be doing here. I do not think that is good public policy. I believe that these States are already at this moment planning how to spend it.

And, by the way, these mandates are not easily achievable. Presumably, a State, to get money under it, would have to call a special session of their legislature—have to call a special session. And what if they did not want to vote to do that? What if good and decent State legislators said: We don't want to do these percentages that the Senator has just proposed. We don't want to spend our money just like that. We would like to spend it on Children First. We would like to spend it on delinquency camps or alternative schools. We want to do it on various other projects that are not precisely

what is mandated here. Maybe they are already spending money on programs mandated here.

I salute the Senator from Texas. I believe she has the right approach. We need to let this money go, give it up. We did not file the lawsuits; the States filed the lawsuits. We did not win the lawsuits; the States won the lawsuits. The tobacco companies agreed to pay the money to the States. And they are going to spend it for what they believe is best for their people. I think we ought to follow that.

I want to mention one other thing. I am uncomfortable with this deal in which the Secretary of HHS would be able to review the allocation of the funds by the States and given the power to cut off funds to the States if they did not precisely allocate it as this proposal would allocate it. I do not think that is the kind of power we need to have over the States.

I think this is good legislation. The Senator from Texas, I know, will be returning to the floor in just a moment, and she will be making further comments on it. I thank the Chair for his attention and I yield the floor.

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

Mr. STEVENS. Will the Senator withhold that?

Mr. SESSIONS. Yes.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I have not gone into this argument before. In the committee, in dealing with this supplemental, I did vote for the Hutchison amendment. I voted for it because I do believe that, because of the circumstances of this series of settlements coming after the failure of the Congress to pass the tobacco legislation, we should not force the States to turn the money over to the Federal Government as required by law.

The Social Security Act does provide that—I ask unanimous consent that this section 1903(d)(3) be printed in the RECORD.

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

#### SECTION 1903(D)(3)

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

Mr. STEVENS. This section states:

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

Clearly, that has required other States to make payments to the Federal Government to restore the amounts of money that were paid under the Federal plans and recovered by State litigation.

The difficulty with the position that I understand the Senator has just taken, Senator SESSIONS, is that the States did file their cases, but Section 1902(a)(9)(A) of the Social Security Act says:

... the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, group health plans (as defined in section 607(I) of the Employee Retirement Income Security Act). . .

And it sets forth the duty of the State to take that action, and since we have assigned that duty to the State, the Federal Government cannot take that action.

As a consequence, while I believe that Senator HUTCHISON's amendment is correct, that we should not take this money from the States at this time, I do believe that the requirement that the States show that they will spend the money in the way envisioned by the Social Security Act is a fair compromise, and it is my intention to support the amendment offered by the Senator from Pennsylvania in order to try to see to it that we have that consideration.

Failure to do so will exacerbate the future bills that we will present to the Senate which will have to seek money to make the payments for the programs that the State will not undertake unless that requirement is there. That money, incidentally, is projected in both the President's budget and in past budgets adopted by the Senate.

So if this money stays in the hands of the State, and there is no obligation to comply with existing law, we will be in the position where we will have to come up and find more money—in effect, break the caps on the Health and Human Services bill, which is the bill that is now the largest bill that we will prepare for the Congress this year; the largest bill is no longer Defense, it is the Health and Human Services bill.

That bill is under severe stress for the future and cannot afford to see this money stay in the State hands and the money be spent in the way envisioned by the recovery; really, a recovery for moneys spent by the States using Federal taxpayer's funds in the past. If the State diverts those funds to other endeavors, we will have to make that up in future appropriations bills, in my judgment.

I intend to support the amendment of Senator SPECTER and Senator HARKIN to require the States to show that they will, in fact, make those payments. As I understand it, it will not take a great deal of trouble on behalf of the States to show that they are doing that. I think many States are doing that.

I understand my State has taken the position that they don't like Senator SPECTER's amendment. I sometimes have duties here that are contrary to that of the Governors in terms of trying to see to it that fairness is provided as far as the use of funds from the recovery that comes about because of actions such as the States have taken,

and my State was one of them—to pursue those who have brought about the great expenditures for health care that we had to face because of the scourge of excessive smoking.

I do believe that this amendment is on the right track. I intend to vote for it. I put my friends on notice that I do not believe that it is inconsistent with the position of supporting the Hutchison amendment in the first place, because I think the States should retain the money and the States should make the plan of how the money should be spent. The power of the Secretary of Health and Human Services is to approve that plan, not to dictate how it is to be spent.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, we will have time tomorrow to speak on the amendment by Senator SPECTER and Senator HARKIN, but I think it is important that we understand what we are talking about. The Federal Government had nothing to do with the lawsuits that were brought by the States. In fact, the States asked for Federal help. They asked for Federal guidance, and they got none.

It was only after the States had settled with the tobacco companies and all States were covered that the Health Care Financing Administration decided that these suits were based on Medicaid and, therefore, the Federal Government should be able to take the average of the Medicaid expenditures from the States from these tobacco settlements. It came up with a figure of 57 percent. They are relying on the part of the law that says the States are responsible for recovering Medicaid overpayments or mistakes in billing; or if a person is covered with private insurance and they get Medicaid coverage, the States would go after the private insurance companies to pay these Medicaid costs.

The Health Care Financing Administration is using that law to say that the tobacco settlement should be covered for Medicaid, and they are coming in and saying to the States that the tobacco settlement that was made should not be allowed to be kept by the States and, in fact, they want to withhold 57 percent.

The amendment that is before the Senate today would take 50 percent and tell the States how to spend this money. It doesn't even tell the States that they have to spend it on Medicaid. We are not even now talking about what the Health Care Financing Administration had hoped to get in the first place, and that is help on Medicaid payments. They are just saying that big brother Federal Government is

going to tell the States that they must spend the money on health care or tobacco cessation programs or helping tobacco farmers, and they are going to allocate 50 percent of the State's money for these purposes.

Let's take the State of Ohio as an example. Say that the State of Ohio has a legislature that meets every other year. They are not in session. All of a sudden we have a Federal mandate that the States spend 50 percent of their hard-earned money on these specific program purposes and the Secretary of HHS says to the State of Ohio, "I'm very sorry, but your program doesn't meet my standard so I'm going to withhold your Medicaid money." The legislature is not in session, the programs are in place. Is the legislature going to have to come into special session to try to determine how they are going to change the program to meet this test? They are going to have to because no State can absorb the loss of their Medicaid money, and, most certainly, they are not going to leave people on the streets unserved by Medicaid.

This is going to be duplicated all over America if this amendment passes. Nobody is thinking about what happens after the Federal Government says, "This is simple, this is simple. We will say you have to spend 20 percent on tobacco cessation and 30 percent on the health-related or tobacco farmer aid programs." They don't say what happens after we pass this broad general guideline. But what happens is, we are going to have standards, we are going to have regulations, we are going to have certifications, and all of a sudden they have what always happens in Washington, and that is we are going to have the Federal Government encroaching on the States' rights with the States' money, earned by the States; and we are going to have costly regulations and bureaucracy, and then we are going to have crisis after crisis after crisis in States that are not going to meet the test of Health and Human Services Secretaries for 25 years to come, who will be able to hold on to the Medicaid money if we don't keep the underlying bill intact.

The underlying bill is very simple. It just says that the Federal Government will not encroach on the States at all. The States are using this money for very different purposes. Most of the States—in fact, almost all of the States—did not sue on Medicaid, and if your purpose is to help Medicaid, this amendment doesn't do it.

So I hope that we can keep it simple. I hope that we can allow the States to do what they have sued to recover and achieve their purposes. Some States sued on health care. Some States sued on consumer fraud. Some States sued for RICO. There were a myriad of causes of action. But the fact of the matter is, it is the States that sued.

So I say to the distinguished chairman of the committee, if he wants to help Medicaid, this amendment doesn't do it. If he wants to help Medicaid,

what he needs to do is add another amendment that requires the money go to Medicaid. He thinks that if we pass this amendment, it will keep the State budgets from growing. It won't keep the States' budgets from growing at all in Medicaid costs. What we are talking about here is 20 percent going for tobacco cessation programs and 30 percent going for health care or tobacco farmers.

So I hope, if the purpose is to give Medicaid money, that we will have a different amendment. The amendment that is before us today will be costly, it will cause more bureaucracy, more regulation, and it will cause crises in States if they don't meet the Secretary's test of what the program should be. And this Secretary of Health and Human Services will have a different interpretation, perhaps, than the next Secretary of Health and Human Services. So the States are going to fashion a program that meets Secretary Shalala's needs today, and 2 years from now they are going to have to fashion a new set of programs in order not to have the money jerked out from under their noses when they have counted on this money because their tobacco settlement was made by the States.

We have time to talk about this tomorrow. I hope Members will consider the havoc that this would wreak on the States and the fact that it will not help the Federal Government. It is putting a strain on that which has no relationship to the problem that is being alleged. If the problem is that we aren't going to share Medicaid, how are we going to help tobacco farmers and meet the Medicaid needs? It is not going to work.

This is not an amendment that has been thought through, and we have not thought of what is going to happen 2 years from now, and 4 years from now, and 6 years from now. I hope that Senators will understand that this will wreak havoc on our States. It is an encroachment on States' rights, and it will not help the Federal coffers at all.

I thank the Chair. I yield the floor.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DURBIN. Mr. President, I rise in support of an amendment that is to be offered by Senators SPECTER and HARKIN relative to the tobacco settlement funds and the question of Federal recoupment.

First, let me say that I have been involved in the tobacco issue on Capitol Hill for almost as long as I have been here. As a Member of the House of Representatives, I introduced legislation

to ban smoking on airplanes, and I have addressed this issue from so many different angles that I believe I have some knowledge on the subject.

Having said that, I have to tell you that I stand here in admiration of the 42 State attorneys general who had the political courage and foresight to file these lawsuits against the tobacco giants in an effort to recoup some of the money that had been spent on tobacco-related disease and death in their States. In my own home State, our attorney general, Jim Ryan, was one of those. I have saluted him privately and I do it publicly. I am happy they did this. The money they have recouped is going to be an important resource for the State of Illinois and all of the other States.

In addition, they have forced the tobacco companies to make some major changes in the way they sell the product. Perhaps, we will see—I hope in the not-too-distant future—a decline in the number of young people who have become addicted to tobacco products. It is truly a frightening statistic to consider the impact on America's public health when you consider the percentage of high school students, and even younger, who are taking up smoking. But now that we have recovered money from the tobacco companies, the debate now is how it should be spent. I have tried to come up with a reasonable approach to it. I salute my colleagues, Senators SPECTER and HARKIN, for what I consider to be a reasonable approach as well.

Mr. President, I ask unanimous consent to be shown as a cosponsor of the Specter-Harkin amendment.

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

Mr. DURBIN. Having said that, Mr. President, let me try to explain, if I can, the predicament we face. Many of the States that filed lawsuits against tobacco companies tried to recover in those lawsuits moneys that had been spent for Medicaid. Medicaid is, of course, health insurance for the poor and disabled. Across the United States, on average, out of every dollar spent on the Medicaid health insurance program, 57 cents of it comes from Washington, and 43 cents comes from the local State.

In my State of Illinois, it is a 50/50 split. But including all States, it is an average of 57 percent coming from the Federal Government. Now, we send the money to the States and ask them to administer the Medicaid funds. We also say to the States that if there are lawsuits to be filed relative to Medicaid, it is your responsibility as a State to do it. They are obligated to recoup any cost that they recover in these lawsuits against third parties back to the Federal Government, proportionately based on the Federal Government's contribution.

So the suggestion that a State would file a lawsuit against the tobacco company claiming expenditures for Medicaid funds and recover, and then be

asked to send some of that money back to Washington is not a novice suggestion. It is not radical. It is what happens by normal course. That is what has happened in the past.

But there have been some who have argued that when it comes to the tobacco settlement we should suspend that and say that the moneys recovered by the States against the tobacco companies for Medicaid expenditures should belong entirely to the States and not come back to the Federal Government at all. I have a problem with that inasmuch as I am concerned about how the money will be spent by the States.

Some Senators have come to the floor and said it is really none of our business. The States filed the lawsuit; let them spend the money the way they want. I think that is the wrong way to approach this. The lawsuits were filed because of a public health problem with tobacco. The money that was recovered—at least a portion of it—is Federal in nature. I think it is reasonable for us to say that the money recouped from these tobacco companies should at least be spent for the public health purposes of the lawsuit. That is what the Specter-Harkin, and now Durbin, amendment seeks to achieve.

I am also concerned, because, as part of their settlement, many of the States relinquished their right to file claims in the future against tobacco companies for Medicaid expenditures. In other words, they said they would give up the right of the Federal Government to recover funds under Medicaid against tobacco companies in the future. They have, in fact, surrendered a right of the Federal Government. I think that is noteworthy, because it means that, basically having settled these future claims, we have no opportunity to pursue them if we wanted to. The Federal Government has paid, and will continue to pay, one-half or more of Medicaid costs associated with treating tobacco-caused diseases, even though the States have now waived the Federal Government's right to any further tobacco-related Medicaid recovery. This further underscores the Federal right to have, if not a share of the settlement proceeds, at least a voice in how they are spent.

Let me say that the States routinely follow the requirements of the Medicaid statutes when it comes to money that they collect.

For those who argue that the tobacco suits should be treated somewhat differently, let me give them some evidence to consider.

In March 1996, five States—Florida, Louisiana, Massachusetts, Michigan, and West Virginia—settled a lawsuit with the Liggett tobacco company. In fiscal year 1996 and fiscal year 1997, the total reported to HCFA, the Federal agency, as the Federal share, was \$465,359. This is the precedent for a Federal claim for the tobacco proceeds.

It is important to keep in mind that if we don't recoup this money from the

State in some form, we also create a budget problem on our own.

The Congressional Budget Office estimates, for scoring purposes, that we would recover from State tobacco suits \$2.9 billion over 5 years and \$8.8 billion over 10 years. Any legislation that allows the States to keep all the funds is going to require some more on our part to offset this budget priority, this budget assumption.

Having said that, let me try to address my point of view on what I believe the Specter-Harkin amendment will achieve.

It is less important to me who spends the money from the Tobacco companies than how it is spent. It is not as important to me that a Federal agency achieve the results so much as the results are achieved. And the results I am seeking are several.

First, it reduces the number of young people who are taking up tobacco and becoming addicted to it. Ultimately, one out of three die. If we can bring that percentage down by innovative, creative, and forceful State programs, that is all the better as far as I am concerned.

But I worry about suggestions in the underlying Hutchison amendment that we not be specific in terms of what we ask of the States. I am happy to see that the amendment that has been proposed by Senators SPECTER and HARKIN will try to address this by putting 20 percent of the proceeds into tobacco control to reduce the number of young people who are addicted to the product. I think that is sensible.

Second, I think it is reasonable to ask that a portion of the money recovered go toward public health purposes, particularly children's health programs. And it is my understanding that the Specter-Harkin amendment does that. It says that another 30 percent will go for those purposes.

This is consistent with the National Governors' Association, which I already identified, as their priorities at their 1999 winter meeting for the tobacco settlement money. Let me quote from the statement that they released:

The Nation's Governors are committed to spending a significant portion of the settlement funds on smoking cessation programs, health care education and programs benefiting children.

The Specter-Harkin-Durbin amendment seeks to follow the recommendations of the National Governors' Association—to say the Federal Government will not claim a share of these proceeds so long as they are spent for this purpose, and then to make certain that we are doing something with the money that is consistent with the goals of the initial litigation.

It would be troubling to me, and to many others who have been involved in this battle for a long time, if the net result of the tobacco lawsuits by the States should result in a windfall to the State treasuries and are spent on other things that really forget these important elements, important priorities of smoking cessation, as well as children's health care.

So I will be supporting the amendment being offered by Senators SPECTER and HARKIN.

I can tell you that when the American people were asked through a poll conducted by the American Heart Association last November, that 74 percent of the voters supported at least half of the Medicaid dollars to go to tobacco addiction treatment and to efforts to educate teens about the dangers of tobacco.

I am hoping that Members on both sides of the aisle will join us in this bipartisan amendment to the supplemental appropriations bill.

At this point, I yield my time on this issue.

#### MORNING BUSINESS

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

I believe the Senator from Illinois has a resolution and a discussion that he wants to put forward about St. Patrick, of all things, if you can imagine that. Of course, that is a very worthy cause.

I yield the floor.

Mr. DURBIN. Mr. President, I thank the Senator from Kansas.

#### THE GOOD FRIDAY PEACE AGREEMENT

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 64, introduced earlier today by myself.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 64) recognizing the historic significance of the first anniversary of the Good Friday Peace Agreement.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, as the Senator from Kansas has noted—and, Mr. President, your tie notes—today is St. Patrick's Day, and it is a fitting time to remember not only the Irish heritage, which so many Americans—over 40 million—claim, but also as equally important is the significant progress that has been made in this island nation over the last several months to finally bring peace. Tributes, of course, could be given to so many different people.

Today, we were meeting with Taoiseach Bertie Ahern, as well as President Clinton, and the leaders from Northern Ireland, as well as the Republic of Ireland, celebrating their courage and the fact that they have received the Nobel Peace Prize for their endeavors, and really making certain that we double our resolve so that peace can come to that land.

The Good Friday Peace Agreement that was entered into and initiated about a year ago outlined the political settlement to three decades of political and sectarian violence in Northern Ireland. It also reminds us, too, that there is a lot of hard work to be done to complete this agreement.

Over the last 30 years, more than 3,200 people have died in Northern Ireland and thousands more were injured. In 1997, the British and Irish Governments sponsored peace talks, chaired by our former colleague, Senator George Mitchell, and attended by eight political parties.

Senator Mitchell will be receiving an award this evening at the White House from the President and representatives of Ireland for his amazing role in bringing about this peace process. It is a much-deserved accolade.

An agreement was reached on April 10, 1998, that includes the formation of a Northern Ireland Assembly, a North/South Ministerial Council, and a British-Irish Council. The agreement also contains provisions on human rights, decommissioning of weapons, policing, and prisoners. Voters in both Northern Ireland and the Republic of Ireland approved the agreement on May 22. Elections to the new assembly were held on June 25. Enabling legislation has been passed by the Irish and British Parliaments, the necessary international agreements have been signed, and many prisoners have been released.

However, some contentious issues still remain before the agreement is implemented. In addition to former Senator George Mitchell, the Clinton administration and many Members of Congress and Senators have played a positive role in the peace process. Again, the parties have turned to the United States for leadership and mediation. Many party leaders from Northern Ireland will be at the White House this evening. Let me also say I attended last night a special tribute to one of our colleagues, Senator TED KENNEDY. The American-Ireland Fund presented him with their Man of the Year Award for his extraordinary contribution toward this peace process throughout his career in the U.S. Senate.

This resolution which we are considering today is cosponsored by 34 of my colleagues. It recognizes the historic first anniversary of the Good Friday peace agreement, encourages the parties to move forward to implement it, and congratulates the people of the Republic of Ireland and Northern Ireland for their courageous commitment to work together for peace. I appreciate my colleagues' support of this resolution, and I hope it will add another constructive measure of support for the meetings going on at the White House today.

I am glad the Senate, when it enacts this resolution, will be on record this year to not only celebrate the legacy of Ireland and the legacy of St. Patrick, but to look to the future of that great

country, a future in peace, a future as one people.

Mr. KENNEDY. Mr. President, I strongly support this timely resolution and its tribute to the courage and vision of the political leaders of Northern Ireland who have given that land an extraordinary opportunity for peace.

By signing the historic Good Friday Peace Agreement last April, leaders such as John Hume, David Trimble, Gerry Adams, and others launched a new era of peace and reconciliation for all the people of Northern Ireland. And I commend as well the indispensable contributions to the peace process by President Clinton, our former Senate colleague George Mitchell, Prime Minister Bertie Ahern of Ireland and Prime Minister Tony Blair of Great Britain.

The goal of the peace process is to end thirty years of violence and bloodshed in Northern Ireland, reduce divisions between Unionists and Nationalists, and build new bridges of opportunity between the two communities. Through this process, they have committed themselves to finding the needle of peace in the haystack of violence—and they are finding it. When those of lesser vision urged a lesser course, the leaders in Northern Ireland acted boldly. They tirelessly dedicated themselves to the pursuit of peace, and they made difficult political choices to bring their noble vision of a peace agreement to reality.

As we all know, there are still miles to go before the victory of lasting peace is finally won. But because of what they accomplished, there is better hope for the future. They have made an enormous difference, perhaps all the difference, for peace. Their achievement in the Good Friday Peace Agreement has changed the course of history for all the people in Northern Ireland.

The task now facing all of us who care about this process is to build greater momentum for full implementation of the Agreement. There has been welcome recent progress. Last month, the Northern Ireland Assembly approved the designation of the Northern Ireland Departments and the group of cross-border bodies. Last week, Britain and Ireland signed historic treaties for closer ties. Prisoners have been released. The British have reduced their troop levels to the lowest point in twenty years. We are also heartened by the establishment of the Human Rights Commissions.

Full implementation of the Agreement offers the best way forward and the best yardstick to judge the policies and actions of all involved. The goal of peace is best served by prompt action on the Agreement. Those who take risks for peace can be assured of timely support by President Clinton, Congress, and the American people.

Mr. DURBIN. Mr. President, at this point I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid